



Neutral Citation Number: [2024] EWHC 1957 (Comm)

Case No: CL-2019-000127 and 11 Others<sup>1</sup>

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

Royal Courts of Justice  
Rolls Building  
London

Date: 29/07/2024

**Before:**

**THE HON MR JUSTICE ROBIN KNOWLES CBE**

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**Between:**

**THE REPUBLIC OF MOZAMBIQUE**  
**(Acting through its Attorney General)**  
***(Defendants in CL-2019-000817, CL-2020-000199, CL-2020-000328, CL-2020-000355, CL-2020-000404, CL-2020-000823 and CL-2021-000351)***

**Claimant**

**- and -**

- 1. CREDIT SUISSE INTERNATIONAL**  
***(Defendants in CL-2021-000351 and CL-2020-000243)***
- 2. CREDIT SUISSE AG**  
***(Defendants in CL-2021-000351 and CL-2020-000243)***
- 3. MR SURJAN SINGH**
- 4. MR ANDREW JAMES PEARSE**
- 5. MS DETELINA SUBEVA**
- 6. PRIVINVEST SHIPBUILDING SAL (HOLDING)**
- 7. ABU DHABI MAR INVESTMENTS LLC**
- 8. PRIVINVEST SHIPBUILDING INVESTMENTS LLC**
- 9. LOGISTICS INTERNATIONAL SAL (OFFSHORE)**

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<sup>1</sup> CL-2020-000328, CL-2020-000404, CL-2019-000817, CL-2020-000199, CL-2020-000355, CL-2020-000822, CL-2020-000823, CL-2021-000351, CL-2020-000243, CL-2019-000775 and CL-2021-000628

**10. LOGISTICS INTERNATIONAL INVESTMENTS  
LLC  
11. CREDIT SUISSE SECURITIES (EUROPE) LIMITED  
12. MR ISKANDAR SAFA**

**Defendants**

**- and -**

**1. MANUEL CHANG  
2. ANTONIO CARLOS DO ROSARIO  
3. ARMANDO EMILIO GUEBUZA  
4. ARMANDO NDAMBI GUEBUZA  
5. TEOLIO NHANGUMELE  
6. BRUNO LANGA  
7. GREGORIO LEÃO JOSE  
8. ISALTINA LUCAS  
9. PROINDICUS SA**  
*(Defendants in CL-2020-000328, CL-2021-000351 and CL-2020-000404)*

**Third Parties**

**- and -**

**VTB CAPITAL PLC (IN ADMINISTRATION)  
OWH SE (IN LIQUIDATION) (FOMERLY KNOWN AS  
VTB BANK (EUROPE) SE i.L.)**  
*(Claimants in CL-2020-000328, CL-2019-000817 and CL-2020-000404)*

**- and -**

**BANCO COMERCIAL PORTUGUES S.A.**  
*(Claimants in CL-2020-000199 and CL-2020-000355, and CL-2021-000351)*

**- and -**

**BEAUREGARDE HOLDINGS LLP  
OROBICA HOLDINGS LLC**  
*(Claimants in CL-2020-000822 and CL-2020-000823)*

**- and -**

**MOZAMBIQUE ASSET MANAGEMENT S.A.**  
*(Defendant in CL-2020-000199, CL-2020-000328, CL-2019-000817, CL-2020-000355)*

**- and -**

**UNITED BANK OF AFRICA PLC**  
*(Claimant in CL-2021-000351)*

**-and -**

**BANCO INTERNACIONAL DE MOZAMBIQUE**  
*(Claimant in CL-2020-000243)*

- and -

**VR GLOBAL PARTNERS L.P.**  
*(Claimant in CL-2021-000628)*

- and -

**OTHERS**

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**Joe Smouha KC, Jonathan Adkin KC, Ciaran Keller, Richard Blakeley KC, Zahler Bryan, Ryan Ferro, Edward Gilmore, Sarah Parker and Akash Sonecha**  
(instructed by **Peters & Peters Solicitors LLP**) for the **Republic of Mozambique**

**Laurence Rabinowitz KC, Kenneth Maclean KC, Sharif Shivji KC, Andrew Scott KC, Tom Gentleman, Emma Horner and Andrew McLeod** (instructed by **Slaughter & May**)  
for the **Credit Suisse parties** (the 1<sup>st</sup>, 2<sup>nd</sup> and 11<sup>th</sup> Defendants in CL-2019-000127)

**Peter Knox KC, Daniel Goldblatt, Charlotte Pope-Williams and Christopher Convey**  
(instructed by **Leverets Group**) and **Rupert Butler** of **Leverets Group** for **Mr Singh and Mr Pearse**  
(the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in CL-2019-000127)

**Jonathan Cohen KC and Ashley Cukier** (instructed by **Arch Law**) for **Ms Subeva** (the 5<sup>th</sup> Defendant  
in CL-2019-000127)

**Duncan Matthews KC, Philip Riches KC, Ben Woolgar, Frederick Wilmot-Smith and Matthew Chan** (instructed by **Signature Litigation LLP**) for the **Prinvest Companies and Mr Safa**  
(the 6<sup>th</sup> to 10<sup>th</sup> and 12<sup>th</sup> Defendants in CL-2019-000127)

**Timothy Howe KC, Rupert Allen, Daniel Edmonds, Nick Daly and Orestis Sherman** (instructed by  
**Weil, Gotshal & Manges London LLP**) for **VTB Capital plc (in administration)**

**Stephen Midwinter KC, Laura Newton and Tom Wood** (instructed by **Enyo LLP**)  
for **Banco Comercial Portugues S.A, United Bank for Africa and Banco Internacional de Mocambique**

**Richard Hill KC and Gregory Denton-Cox** (instructed by **Macfarlanes LLP**)  
for **VTB Bank (Europe) SE LL, now named OWH SE i.L**

**David Davies KC, Robert Winspear and Duncan Bagshaw** (instructed by **Howard Kennedy LLP**)  
for **Ms Isaltina Lucas**

**Michael Bloch KC, James Macdonald KC, Timothy Lau** (instructed by **Pallas Partners LLP**)  
for **Beauregarde Holdings LLP, Orobica Holdings LLC and VR Global Partners LP**

Hearing dates:  
October 2, 5, 16-20, 23-26, 30-31;  
November 1-3, 6, 9, 13-16, 20-23, 28-30;  
December 4-7, 13-15, 18-21 2023

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**JUDGMENT (12: TRIAL)**

**Robin Knowles J, CBE:**

**Introduction**

1. Around the world, these disputes have attracted the shorthand name of the “Tuna Bonds” affair or the “Hidden Debts” affair. They concern alleged corruption, within business and state.
2. In 1975, independence was declared in Mozambique. The Government of the Republic is and has been formed by a political party known as the FRELIMO party. The position at the head of Government is that of President. The Assembly of the Republic of Mozambique is its Legislature.
3. Mozambique enjoys a substantial coastline on the eastern side of the continent of Africa. With this, and a related Exclusive Economic Zone (EEZ) extending 200 nautical miles from its coast, comes commercial opportunities for fishing and for energy. In 2010, a natural gas field was discovered in the Rovuma Basin.
4. In turn, with those opportunities come increased issues of maritime security, and of the resources required to realise the opportunities. Before the chapter in Mozambique’s life with which this trial is concerned, Mozambique explored engaging with China over some of the infrastructure required.
5. Mozambique’s National Report to the Scientific Committee of the Indian Ocean Tuna Commission of 2011 recorded that for the reporting periods ending 30 December 2010 and 30 June 2011 “the country has only foreign fleet”. By 2011, the Government was also looking to develop a naval industry to reduce its dependency on foreign sourcing of naval repair and maintenance.
6. Then in 2013 and 2014 three freshly incorporated state-owned enterprises (variously “SOEs” or “SPVs”) entered into supply contracts with members of the Privinvest group of companies, led by Mr Iskandar Safa. On the face of things, the first supply contract was for the supply of radar stations, boats and aircraft for monitoring and protecting the EEZ, including from piracy. The second was for the supply of a fishing fleet to fish tuna in the EEZ. The third supply contract was for the supply of shipyard facilities, including for shipbuilding and repair.
7. After change orders and increases, a total of approaching US\$2 billion, or more than 12% of GDP, was payable for the supplies contracted under these three supply contracts. Loan facilities of US\$622 million (later increased to US\$900 million), and US\$850 million were agreed by members of the Credit Suisse banking group in relation to the first two. And of US\$540 million by a member of the Russian banking group VTB, in relation to the third. On the face of things, Mozambique, as sovereign, guaranteed the lending under these facilities.
8. The ambition for protection, fishing and shipbuilding and repair was one thing. But the evidence at trial made me sure that Mozambique, by its Government, did not, by any measure, have the experience, expertise or organisational strength to put successfully to work what was to be supplied. There were projections that were not worth the name, not founded on scoping or preparation or strategy, and which were simply “made to fit.”

9. Mozambique contends that corruption underlays these three projects (“the Projects”). Behind the Projects were a number of individuals, including those working for Privinvest, Credit Suisse or VTB group companies, and a number of senior officials or those holding senior public office within Mozambique. Their focus was on themselves rather their responsibilities to others. This self-interest drove activity, including a focus on the money that was to be provided by lending rather than on what was to be supplied. No-one looked out for the interests of Mozambique and its people.

### **The litigation**

10. Regulatory and criminal proceedings have followed in various parts of the world, and in Mozambique itself. They continue in the United States. There have been arbitration proceedings too, including in Switzerland.
11. The litigation that has come to trial in this Court was commenced between 2019 and 2021, by way of 12 separate sets of proceedings. These have been closely case managed on what has been termed a “unitary” basis over the two years from 2021 to the commencement of trial in October 2023.
12. The lead claim (“the Republic Claim”) is that of Mozambique. It seeks to hold a number of parties liable for damage done to Mozambique. Members of the Credit Suisse group of companies were First, Second and Eleventh Defendants to the Republic Claim (together “Credit Suisse”), and three of their employees (“the Credit Suisse Deal Team”) were Third to Fifth Defendants. Member companies (“the Privinvest Companies”) of the Privinvest group of companies (“the Privinvest Group”) are Sixth to Tenth Defendants to the Republic Claim, and their Chairman, Mr Safa, is the Twelfth Defendant.
13. A number of officials or those holding public office in Mozambique (including its former President) are Third Parties to the Republic Claim. Over the summer leading to the trial, the current President of Mozambique (and former Defence Minister, a Fourth Party joined by Mr Safa and the Privinvest Companies to these proceedings) made a successful claim to immunity from the proceedings whilst he is Head of State (see Republic of Mozambique v Credit Suisse and Others (Nyusi, Fourth Party) [2023] EWHC 2215 (Comm) and, on appeal as Privinvest Shipbuilding (Holding) SAL and Others v Nyusi [2024] EWCA Civ 184).
14. Mozambique’s liability under the guarantees was also the subject of claims brought by other banks including members of the VTB banking group, and a number of syndicated lenders including the Portuguese bank Banco Commercial Portugues (“BCP”), and the African banks, United Bank of Africa and Banco Internacionalde Moçambique. These claims became known as the “Immunity Proceedings” because of a challenge by Mozambique that it enjoyed sovereign immunity, a challenge that potentially involved a wide factual compass and was included in the trial. As formulated by Mozambique, the preliminary question for the Court was whether Mozambique was entitled to assert its presumptive sovereign immunity under section 1 of the State Immunity Act 1978, or whether the exceptions in that Act under section 2 (submission to the jurisdiction) and section 3 (commercial transaction) applied to the claims.
15. There are other parties.

### **The settlements**

16. On the eve of the trial, Credit Suisse and a number of other banks who were syndicated lenders reached a settlement with Mozambique. This included a compromise of lending. This major development provided, directly or indirectly, a path to settlement by some of the individuals, including those who made up the Credit Suisse Deal Team. In light of the settlements at that stage and their effect there was a successful application by Ms Lucas, a senior Mozambican official at the Ministry of Finance, to strike out the remaining claims by Mr Safa and the Prinvest Companies against her.
17. The trial continued throughout but substantively and procedurally the shape of the proceedings changed. Claims of the banks who were syndicated lenders under the transactions were settled, except for BCP.
18. After trial and before judgment there were further important settlement efforts. The Court was asked to, and agreed to, postpone judgment to give them a chance to succeed. They bore fruit with a further settlement agreement dated 26 June 2024, between Mozambique and the banks from VTB group and BCP. A limited further period was then allowed to allow those remaining settlements to take effect, but it is now time to give judgment on what remains.
19. As a result of the various settlements, it is not now necessary for me to decide a number of issues. The major remaining issues are those between Mozambique, the Prinvest Companies and Mr Safa, and perhaps a number of Mozambican officials or office holders. I do nonetheless address something of the roles played by parties that have settled, but this is not in order to decide their liability. It should be kept in mind that, because of the settlements, evidence and argument was not fully deployed on some points.

### **The Prinvest Group and Mr Safa**

20. The Prinvest Group is a substantial international shipbuilding business, one of the major privately-owned naval shipbuilding groups in Europe and the Middle East. The Group was led by its Chairman, Mr Safa.
21. Mr Safa was seriously ill at the time of trial but nonetheless gave evidence on which he was cross-examined. This required courage and that courage deserves respect. There were things he wanted to say to the Court, and these were heard. His evidence was given by videolink from France, with the considerable and expedited help of the French judicial and administrative authorities, for which I express appreciation.
22. The role of Mr Jean Boustani was to seek business opportunities for the Prinvest Group. He also gave evidence on which he was cross-examined. He had started working for the Prinvest Group in 2010. Mr Safa wanted the Prinvest Group to expand across the market that was the African continent, and Mr Boustani had what Mr Safa described as “broad and formal authority to develop potential projects” on that continent on behalf of the Prinvest Group. His reporting line included the Group’s CEO Mr Boulos Hankach and Mr Safa.
23. It was invaluable at trial to hear the evidence of Mr Safa and Mr Boustani and to have the opportunity to assess that evidence, and to do so against the available documents and in context. I have reached conclusions about their evidence as will appear in the course of this judgment. On the whole I was not able to accept either as a consistently truthful witness. In the body of this judgment where I set out their evidence I am not to be taken as accepting its truth unless I make that clear.

24. But there are a number of more general points to make at the start.
25. Mr Safa and Mr Boustani acted for the Prinvest Group as a whole, and not simply a restricted number of companies in that group. That was the way the Group, including each of the Prinvest Companies, went about its major business. When the stage was reached to execute a transaction, a choice would be made about which group company should transact, but the negotiation up to that stage would be with the Group and the work to follow would be by the Group.
26. The nature of Mr Safa's chairmanship was executive, and full-time executive. I am quite satisfied that Mr Safa insisted on and had a close grasp of matters, and across the Prinvest Group. The Group would work with less formal procedures and bureaucracy than many other large corporations.
27. Mr Safa would often deal with ministers and other senior individuals. He emphasised that one of the most important issues in business dealings was trust. There was reference at trial to his having a poor reputation for business methods and integrity. I did not find that persuasive where it was based on unattributed rumour rather than evidence.
28. Given the volume of work on his shoulders, the subject of how Mr Safa worked and kept informed was relevant. It was unsurprising that in parts of his evidence at trial he did not remember what he had or had not seen at the time. He may not have received or studied every "technical and commercial" proposal (as he would describe them at one point) or "run each and every payment". His preference with email and documents was for them to be printed by a secretary for his review. He may not have noticed every email.
29. However, I am satisfied no major activity proceeded without his knowledge and approval, including of the figures. Given the amounts involved, I am left quite sure that all material proposals in relation to the three Projects were in fact advised to him and were put forward only with his knowledge and approval. This includes significant payments and proposed payments to individuals in relation to the three Projects and addressed in this judgment.
30. Mr Safa described his role in these terms when Mr Jonathan Adkin KC, for Mozambique, was asking about the Second Project:

"Mr Adkin KC: You were involved in the negotiation of the EMATUM [supply] contract and you discussed the project with Mr Boustani and gave him instructions on it, didn't you?"

Mr Safa: No, I was not involved in the negotiation. Mr Boustani and Mr Hankach actually gave me – told me what the summary of the project was and I agreed at the end. I told them to do it but I didn't negotiate it with anybody.

Mr Adkin KC: You were the final decision-maker as to what was to go into the contract weren't you?"

Mr Safa: No. I was the final decision-maker to say whether I approve the transaction, the way it is done or not. But I'm not the one who puts the content of what the contract is. The one who discussed the contract, the content is the one who discussed with the customer what their needs are and it is not me."

31. Mr Safa was also to say in his evidence as the Second Project progressed that it was not surprising Mr Boustani called him “and said that’s what’s going on and then I gave him my opinion”. He did not remember it, he said, but that was “a normal chat”. In relation to the Third Project Mr Safa put things in this way:

“... I asked everybody if they agree with this and if everyone’s okay and I’m okay, we suggest go ahead.”

32. Mr Boustani handled a lot of the detail. In his evidence, he attempted to minimise Mr Safa’s part and awareness. But this evidence was not convincing. At one point Mr Boustani sought to minimise Mr Safa’s part by exaggerating his own, as when he said in cross examination over the First Project:

“... I kept Mr Safa informed of the general, general very high level parameters of the project but this project is mine. I was handling it. I was on the ground. I was the one they called me, in the United States they called me the mastermind, so I, if you want to call me the mastermind, I am the mastermind and this project, practically the whole details and everything was mine.”

As I say, there is exaggeration here, and the truth is that they were each closely involved in all material aspects.

33. Sadly, shortly after the trial Mr Safa died. As the point for handing down this Judgment approached, contested applications were issued by Mozambique and by the Privinvest Companies to appoint representatives of his estate for the purpose of these proceedings. The determination of these applications may involve consideration of questions of Lebanese and French law, and there have been jurisdictional reservations by Mr Safa’s family.

34. I received additional written argument from Mozambique and from the Privinvest Companies. With the benefit of that argument, I made an Order dated 28 June 2024, and in keeping with the terms of that Order which owe much to careful discussion between a number of the legal teams (here and abroad), I record that the following matters are not determined in or by this Judgment:

- (a) All questions as to the consequences of the death of Mr Safa. These are reserved for subsequent consideration and are to be determined together with what are contested applications to appoint representatives of his estate (“the Reserved Issues”).
- (b) In relation to claims against and made by Mr Safa (“the Safa Claims”), this Judgment states only what the outcome of the determination of the Safa Claims would have been had Mr Safa not died prior to the Judgment.
- (c) This Judgment does not determine which person or persons shall be representatives and/or party to the determination of the Safa Claims.
- (d) For the avoidance of doubt, the Reserved Issues include all questions as to the participation or otherwise of Mr Akram Azoury (a member of the Lebanese Bar) and Mr Akram Iskandar Safa, Ms Clara Martinez Thedy de Safa and Mr Alejandro Safa (members of Mr Safa’s family) in these proceedings (whether as joined parties, or as representatives pursuant to CPR, r.19.12).

#### **Other business activity by Mr Safa and the Privinvest Group in Mozambique**

35. Mr Safa and the Privinvest Group had a wider investment strategy in Mozambique than the Projects alone. Mozambique's economy was strong and growing. Mr Boustani referred to it as the "Qatar of Africa", as commonly did others. It was therefore unsurprising that the Privinvest Group and Mr Safa would want to invest in Mozambique more broadly.
36. Mr Duncan Matthews KC for Mr Safa and the Privinvest Companies describe the initial position in this way in his oral opening, and I accept the description:

"By the time Privinvest appeared in the scene around June 2011 looking to create investment opportunities in Mozambique, it was not just for what would turn out to be the supply contracts but a wider scale interest in investing in the country. But it was linked with the Mozambique recognition of their need to develop some system for protecting and exploiting its fisheries, its hydrocarbons resources because it occurred at a time when ... internally that analysis was well advanced."

37. Mr Safa and the Privinvest Group were encouraged to invest more broadly by President Guebuza and others. There was evidence that the Guebuza family were commercially involved in Mozambique and had diverse business interests. The President's son, Mr Ndambi Guebuza, was a businessman in his own right.
38. The Re-Amended Defence of the Privinvest Companies and Mr Safa develops the position in terms that I accept:

"289. Privinvest entered into a number of business ventures with Mr Ndambi Guebuza and companies owned or controlled by him. ... [P]art of Privinvest's commercial strategy in relation to Mozambique was that it would enter into other long-term business ventures in Mozambique and elsewhere. The Guebuza family, and in particular Mr Ndambi Guebuza and his sister Valentina, owned various substantial businesses operating in Mozambique and other parts of Africa. For the avoidance of doubt, Privinvest did not intend to invest, and did not invest, with former President Guebuza during or after his presidency.

290. In execution of this strategy, Privinvest explored a number of other business ventures with Mr Ndambi Guebuza ...:

39. Investments made in Mozambique were consistent with Mr Safa's preferences and prevailing market conditions at the time. Land was one of the areas of business explored. A joint venture ("the Real Estate JV") in respect of real estate assets was to be co-ordinated through two real estate agencies in South Africa, Pam Golding Properties and Apple Creek Real Estate, connected as a result of the former having acquired the latter in 2005. The Privinvest Companies and Mr Safa accept that in the event, the Real Estate JV has not materialised but add that this is:

"... in part because of the public allegations made by the Republic concerning the Projects which made it difficult for Privinvest to do business anywhere in the world, but it is still intended that the funds will be used for the Real Estate JV in future.

40. Another area of business was telecoms. The company Now PrePay Mozambique SA is a mobile telecoms and electronic financial services business, established on 21 July 2014 between the Privinvest Group and Mr Ndambi Guebuza. "Now PrePay" developed into a mature business within Mozambique, which continues today. Its shareholders included

Quilua Investments Holding (87%), Vivre Consultoria-Sociedade Unipessoal Limitada (a Guebuza family investment vehicle, with 10%), and (with 1% each) Pantera Investments SA, Anlaba Investments SA and Txopela Investments SA.

41. Of these, Quilua was a Mozambican incorporated company intended as a vehicle through which the Privinvest Group would hold its investments. It was and is owned 80% by Logistics International SAL (Offshore), the Ninth Defendant in the Republic Claim and within the Privinvest Group, 7.5% each by Anlaba and Pantera, and 5% by Txopela. There were numerous internal discussions about the progress of Quilua, as well as Now Prepay, within the Privinvest Group. Quilua's financial statements for 2021 feature a due diligence report on its assets conducted by a Mozambican law firm, showing ownership of some 30 properties.
42. Anlaba and Pantera were in turn respectively owned by Mr Gregório Leão and by Mr Manuel Chang, the former a Mozambican public official at material times, the latter Minister of Finance of Mozambique at material times. Txopela was owned by Mr António Carlos do Rosário, also a Mozambican public official at material times and specifically a senior official at SISE, the Mozambican State Intelligence and Security Service. The Privinvest Group discussed and decided investment opportunities with Mr do Rosário.
43. There is evidence that the Privinvest Group explored other investment opportunities in Mozambique around this time. They included, in March 2013, an offer by Mr Boustani that he and Mr Safa travel to Maputo to work with President Guebuza's staff on discussions between Mozambique and Abu Dhabi on investments in energy, strategic infrastructure and agriculture. Then there was a proposed fund for critical national infrastructure (the "Mozambique Investment Authority", also known as MIA), funding to conduct offshore engineering and construction works, and a "New Bank" (involving the Minister of Finance, Minister Chang, and the Governor of the Central Bank).
44. Other proposed activities included private business ventures to be undertaken by the Privinvest Group, including oil and gas exploration licences (to be acquired jointly with Bouygues, the French conglomerate), floating hotels (to be operated by the Privinvest Group in Pemba and Maputo), and agriculture projects. A project to develop transport infrastructure, leveraging the Safa family's existing indirect shareholdings in Olympic Airways and a transport company named Attica, was discussed in April 2013 with Mozambique's then Minister of Transport and Communication.
45. In the course of this varied business activity, payments were made. Mr Safa and the Privinvest Companies accept that six payments were made by Privinvest Shipbuilding SAL (Holding) (the Sixth Defendant in the Republic Claim), and say these payments were in relation to the "Real Estate JV". They were as follows: (a) on 29 April 2013, US\$1.75 million, to the trust account of Pam Golding Properties with Standard Bank of South Africa (the "Pam Golding Trust Account"); (b) on 13 June 2013, US\$780,870, to an account in the name of "Imperial Collection" with First Rand Bank Ltd, South Africa ("First Rand"); (c) on 16 June 2013, US\$2.5 million, to a trust account of Jouberts Attorneys, a South African law firm, at First Rand (the "Jouberts Trust"); (d) on 9 December 2013, US\$800,000, to the Pam Golding Trust Account; (e) on 21 April 2014, US\$1 million, to a trust account in the name of Apple Creek Real Estate at Nedbank, and (f) on 17 June 2014, US\$700,000, to the Jouberts Trust.

46. I understand there to be no dispute as between Mozambique and the Privinvest Companies and Mr Safa that Ms Lucas, the senior official at the Ministry of Finance, was paid a total of US\$2,456,000. Mr Boustani's evidence was that these were originally intended as joint investments in real estate, and subsequently it was intended that the funds would be repurposed for an investment in a maritime agency with her brother. (Ms Lucas herself denied that she received or benefited from the funds; as there is no surviving claim against her I do not make findings as against her.)
47. I will deal with other payments in the course of this judgment.
48. Not all the business activity and payments referred to above were necessarily fully documented. The Privinvest Companies and Mr Safa emphasised, and I can accept, that business in Mozambique was heavily based on trust and personal relationships. Transactions might not be documented as fully as they might otherwise have been in other parts of the world. And as Mr Safa and the Privinvest Companies put it, that a Middle Eastern businessman does business in Africa with less formal paperwork does not make that business illegitimate.

### **The First Project: Proindicus**

49. In this judgment each combination of supply contract, lending and sovereign guarantee is referred to as a "Project", with the name of the relevant state-owned enterprise or SPV, respectively Proindicus (Proindicus SA), EMATUM (Empresa Moçambicana de Atum, SA) and MAM (Mozambique Asset Management SA).
50. In his opening oral address for Mr Safa and the Privinvest Companies, Mr Duncan Matthews KC gave this summary which I accept:

"The genesis of this dispute today started with the realisation by Mozambique back in 2010 that it was ill-equipped to protect its Exclusive Economic Zone in respect of the discovery of hydrocarbons offshore together with its extensive fisheries and in general the protection and exploitation by Mozambique of commercial activity in its Exclusive Economic Zone.

...

The solution was an enhanced protection of the EEZ combined with the provision of commercial services by the state, a two-pronged approach. Make the area safe for hydrocarbons and fisheries, make the area within the commercial control of the Republic and it could exploit valuably the hydrocarbons work that was being done, it could enhance the hydrocarbons work that was being done and it could profit significantly from it.

There was [a] defence element to that and a fisheries element to that and a supply services element to that and when you combine that package together, it was recognised that linked to that there was a need for servicing vessels, support, training, transfer of knowledge, intellectual property, all of these measures form a package, but it was recognised by the Republic internally at the time that this was something they needed to do and that if they did do it they could significantly increase their, effectively, GDP."

51. The First Project envisaged the supply of boats, radar stations, satellite surveillance systems and services, a training centre, a central command centre, maritime patrol aircraft, training and spare parts. The supply contract was to be entitled: “Contract for providing an EEZ Monitoring and Protection Solution for the Republic for Mozambique”.
52. Mr Boustani had visited Mozambique in September 2011. In November 2011, during the Presidency of Mozambique of Mr Armando Emílio Guebuza, Mr Boustani received an email from a Mr Teólio Nhangumele in relation to what was to become the First Project. The email included the passage:

“To secure that the project is granted a go-ahead by the [Head of State], a payment has to be agreed before we get there, so that we know and agree, well in advance, what ought to be paid and when.”

Mr Boustani’s response to the passage was:

“I am very glad that we are now talking openly .... A very important issue which needs to be clear: we had various negative experiences in Africa. Especially related to the "success fees" payments. Therefore, we have a strict policy in the Group consisting of not disbursing any "success fee" before the signature of the Project Contract .... The "success fee" disbursements will be also divided proportionally to the Project payment instalments.”

53. Mr Nhangumele wrote back. He began:

“Let us [agree] and look at project in two distinct moments. One moment is to massage the system and get the political will to go ahead with the project. The second moment is the project implementation/execution. I agree with you that any monies can only be paid after the project signing. This has to be treated separately from the project implementation. I will tell you why. Because for the project implementation there will ... be other players whose interest will have to be looked after eg ministry of defence, ministry of interior, air force, etc ... At the present moment, all these people are not directly involved. Our task at Mulepe is to ensure that the project is given a formal go-ahead, and a success fee for that has to be guaranteed. Of course we will not walk out of the project, as we will continue to offer our support and ensure that nothing is compromised.”

54. Mr Nhangumele continued in these terms:

“You will agree with me if I say that in democratic governments like ours people come and go, and everyone involved will want to have his/her share of the deal while in office, because once out of the office it will be difficult. So, it is important that the contract signing success fee be agreed and paid in once-off, upon the signing of the contract. ... The project implementation fees/commissions can be paid as monies are being paid to your organization.”

In a later email Mr Nhangumele was to add:

“...Brother, I am being frank and open with you. We have people to pay to ensure that the project is given a go-ahead. I am begging you to understand this and come in my support.”

55. In the course of Mr Safa's cross examination by Mr Adkin KC for Mozambique, Mr Adkin KC put things squarely:

"Mr Adkin KC: What I am going to suggest to you, Mr Safa, and you can agree or disagree, is that the Privinvest Group had at the time Mr Boustani sent this email a policy in relation to payment of bribes. That policy was that it would pay bribes but only do so by adding the amount of the bribe payment to the contract price and only after the contract for the project had been signed, and that that had been brought about as a policy because you had previously had experiences in Africa when bribes had been paid but the contract hadn't eventuated. Now, there is a lot in there. I am going to invite you to agree, disagree or comment.

Mr Safa: I say it again, Mr Adkin. Privinvest does not pay bribes full stop.

Mr Adkin KC: And I am going to suggest that the original plan was to make bribe payments to the necessary Mozambican officials through a company called Mulepe. Do you want to comment on that?

Mr Safa: My answer to that is that Privinvest does not pay bribes, so there were no policy or whatever you mentioned it to pay bribes to anybody."

56. Mr Boustani continued the correspondence with Mr Nhangumele on 14 November 2011 as follows:

"Good morning brother,

This is good news.

However, there is an element of 'marriage' between us which must be cemented.

Brother Teo, I want Mulepe to be our local partner in Mozambique. Ultimately forming a joint venture between ADMAR [the Seventh Defendant in the Republic Claim] and Mulepe for the execution of the Project.

Mulepe imperative and paramount role is to ensure that it acts as ... 'the one and only hub' for the disbursement of all 'success, lobbying, and other Projects related fees'.

We will not and simply can not deal with various parties in Mozambique for this subject. It has to be managed and controlled by Mulepe as the sole interface between ADMAR and the Mozambique Authorities/different Project actors.

So the 'success fees' agreement has to enclose from now all actors.

I am sure that you will fully endorse this issue.

Awaiting the delegation list and passport copies ASAP.

Take care brother, ..."

57. Mr Adkin KC again suggested to Mr Safa that it was clear from this email exchange that Mr Boustani and Mr Nhangumele were talking about the payment of bribes in respect of Mozambican public officials. Thus the cross examination continued:

“Mr Safa: I didn't read it Mr Adkin. I don't read it that way.

Mr Adkin KC: And when Mr Boustani –

Mr Safa: I didn't read it –

Mr Adkin KC: When Mr Boustani was making clear to Mr Nhangumele in this exchange, and you can see it on the page: "We will not and simply cannot deal with various parties in Mozambique for this subject", and saying "We will not ... deal with various parties in Mozambique ... for the disbursement of all 'success, lobbying, and other Projects related fees", and it had to be done through a central hub, the "we" that Mr Boustani was talking about was the Privinvest group, wasn't it?

Mr Safa: I cannot comment on this. On the Privinvest group side, Mr Adkin, we don't pay bribes full stop. Now what Boustani and Nhangumele wanted to say here, I'm very sorry, I cannot comment on it. I was not part of it. They should be asked.

Mr Adkin KC: And I am going to suggest to you, Mr Safa, that Mr Boustani was not on a frolic of his own and that you were fully aware of the discussions going on between Mr Boustani and Mr Nhangumele and indeed were giving directions to Mr Boustani about them?

...

Mr Safa: No, I don't agree with what you believe. I was not directing Boustani on how to handle Teo and Mulepe and I was not the one who was saying to him do this or do that. So your suggestion is wrong.”

58. Mr Nhangumele visited the Privinvest Group shipyard in Kiel, Germany in late December 2011. With him was Mr do Rosário (the senior official at SISE), together with Mr Ndambi Guebuza, and a Mr Bruno Langa. Following the visit, on 28 December 2011 Mr Nhangumele wrote to Mr Boustani:

“Fine brother. I have consulted and please put 50 million chickens. Whatever numbers you have on your poultry I will add 50 million of my breed”.

Mr Boustani responded:

“LOL// I love your chicken bro. // Done”.

59. The reference to chickens was to US dollars. When these emails were put to Mr Boustani in cross examination, there was this exchange, which I should not abbreviate:

“Mr Adkin KC: Let's go up to the response. You have told -- just to reorientate ourselves. You have told Mr Nhangumele that you need a percentage or a figure and you can't push your board to publish any figure without adding, to use, your words, the stakeholder's portion. Then Mr Nhangumele responds to you: "Fine brother. I have consulted and please put 50 million chickens. Whatever numbers you have on your poultry I will add 50 million of my breed." And what he meant by that, as you understood it, was that he had consulted with the Mozambican officials and their representatives and that the result of that consultation was that the total cut from which the bribes would have to be paid was \$50 million, didn't he?

Mr Boustani: So Mr Adkin, since, as you have said, this email is extremely famous and I'm very familiar with it, so again, answering again with the context of this email. So first of all, you see that I have put "LOL" in -- sorry, I was sending it first to Ms Basetsana Thokoane and saying "LOL". Now, what is the context of this email? So here we are at the visit of Kiel, and I met the son of the President of the Republic and the official SISE officer who was later on then officially tasked and ordered by the President of the Republic to be the focal point for these projects, and I mean here António Carlos do Rosário, I meet these two gentlemen in Kiel. We spend two or three days. We exchange numbers and emails. Nobody mentions anything to me. Nobody from these two people.

By the way also, there was a huge incident before that -- this trip to Kiel which also is very important to mention for the course of the truth. So Mr -- and this is that cemented in my mind, that Mr Nhangumele is like a total liar and even I would say a charlatan, and that's why eventually he was completely knocked out of this project in January 2013 and he totally disappeared after. They even -- Mr Nhangumele wanted me to pay for the travel tickets of even the whole delegation coming. And I remember at that time I spoke about this with Mr Boulos Hankach and as I recall also maybe, maybe, even Mr Safa, like he's -- like this remark came to him from Boulos Hankach. And the issue was like saying this guy, I'm talking about Teofilo Nhangumele, is like a total joke, you know. So these guys are not serious. This man is not serious, okay. This man is definitely lying. So fine. I mean, he's coming on this trip. Let's see what will happen. We don't believe anything will happen, okay, especially with this such kind of conduct. But anyway, you want to keep liaising with him, keep doing it and good luck, Mr Boustani, because nobody believes, nobody from Privinvest, nobody, starting from Boulos Hankach up to the whole board, up to the chairman, nobody believed that these projects would ever happen. And that's why they have allocated or asked me to liaise with an outside consultant and this was Mr David Harpazi and his son, Mr Moran Harpazi. So all this context come to again to -- I described all this context -- to come to the spirit of this email where at the end he is saying, okay, I consulted again with we don't know who, the stakeholders, and we want 50 million. So I've said "LOL" and I said fine, you know, without any kind of belief in this man. Because we were really certain, I -- I mean I am talking Privinvest, but me, I was definitely doing my best and utmost and I was desperate for the project, myself, me, personally, but Privinvest never believed in the project."

60. Having heard Mr Boustani give his evidence, I do not accept his suggestion that he did not take Mr Nhangumele seriously. Mr Nhangumele was talking about corrupt payments and Mr Boustani well understood that.
61. Mr Safa said in his evidence that he was not aware of the emails to which I have referred. He added that:

“... this will not happen...because my policy and the way we work, we don't work like that. If this means that we are talking about bribery”.

I accept he may not have been aware of the particular emails. Given the way he carried out his role in the Privinvest Group it is impossible to accept that he was not aware, at least through Mr Boustani, of the fact and purpose of a proposed component figure of the size of US\$50 million.

62. In January 2012 Mr Nhangumele, Mr Ndambi Guebuza, Mr do Rosário, Mr Langa and Ms Thokoane (referred to by Mr Boustani above) visited Abu Dhabi, where the Privinvest Group had facilities. The agenda included meeting Mr Safa. Shortly afterwards Mr Nhangumele reported to Mr Boustani that President Guebuza:

“... approved the deal and sent it down to the joint command forces for input”.

63. On 20 February 2012 Mr Boustani contacted Mr Said Freiha of the Credit Suisse group about the parameters of the First Project including its proposed financing. Mr Boustani noted that he was “dealing directly” with the Office of the President and that the Ministry of Defence had been appointed as the “focal point” for the project.

64. Mozambique was in a voluntary International Monetary Fund (IMF) programme at the time and in receipt of donor support. A 3-year Policy Support Instrument was in place and there were agreed limits on what was known as non-concessional external borrowing.

65. Mr Surjan Singh, the Third Defendant in the Republic Claim, a member of Credit Suisse’s Emerging Markets Financing team based in London, and of what became known as the Credit Suisse Deal Team, became involved. He mentioned the relevance of the IMF right away, observing that if Mozambique did not have “major IMF restrictions that we are aware of” then they should mark up a term sheet to ascertain if Mozambique was interested. On 7 March 2012 Mr Singh reported to Mr Andrew Pearse (the Fourth Defendant in the Republic Claim and another member of Credit Suisse’s Emerging Markets Financing team and the Credit Suisse Deal Team) that he had spoken to Mr Nhangumele who had told him that the project would be presented to the IMF by the Government of the Republic of Mozambique.

66. It was common ground between the banking experts who gave evidence at the trial that reports by Transparency International were the “gold standard” for assessing the risk of financial crime in a particular country. Transparency International published a report on 5 March 2012 entitled “Overview of corruption and anti-corruption in Mozambique”.

67. The report stated:

“In Mozambique prevalence of corruption remains an area of concern for both the public as well as donors, who support almost half of the state’s budget. Corruption manifests itself through various forms, including political, petty and grand corruption, embezzlement of public funds, and a deeply embedded patronage system. Corruption also affects several sectors in the country, such as the police, public administration, judiciary, and public financial management ...

...

The Mozambican procurement system is also considered a high risk area for investors. Procurement laws are not fully enforced, creating many opportunities for abuse (Global Integrity Report, 2007). Common corruption schemes in public procurement are: gifts and kickbacks, conflicts of interest, collusion bidding, false or duplicate invoices by contractors, manipulation of bidding process by public officials, purchase of personal use, among others (USAID, 2005) ...”

68. On 27 February 2012 Credit Suisse had sent a letter of interest in relation to financing to Mr Ndambi Guebuza, but at the “Office of HE the President”. This showed indicative terms. In

April 2012 Mr Nhangumele confirmed that President Guebuza had communicated that he was very happy with a feasibility study and “the project must go ahead”.

69. In the meantime, on 9 March 2012 Mr Freiha had followed up with a question to Mr Boustani whether there had been a bidding process on the EEZ project. If there had been, he asked Mr Boustani to provide the background. Mr Boustani confirmed that no public tender process had in fact been carried out. He said:

“The EEZ project in Mozambique was "created" by Abu Dhabi MAR [of the Privinvest Group]. Meaning that through our high level connections we managed to persuade the authorities to protect their EEZ and their natural resources”.

70. Alongside the First Project, the Privinvest Group, through Mr Boustani, were also pursuing other opportunities in Mozambique. The subject of tender came up there too. On 30 April 2012 Mr Nhangumele and Mr Boustani exchanged emails about an opportunity in the oil and gas sector involving the Government of Mozambique. Mr Nhangumele wrote:

“1. In relation to our franco-russian friends, I would like to share and have your insight on our mode operandi. Our critical success factor in the gas and oil deals is Junior, who talks directly to senior for a decision. All oil and gas deals take place at the highest level.

2. What I have seen so far is that in order for the companies to win the tender there is some money changing hands at some stage. And, it is invariably big money e.g. I am talking about hundreds of millions of dollars. Well, this is a sector which involves a lot of money, so I am not surprised that such monies are involved.

3. However, it is important for us (you and me) to ascertain what is the practice our friends are used to. In line with that, it is important you also know when such monies change hands e.g. at the beginning of the process, during or at the end, as a success fee.

4. Junior will not be in a position to discuss any partnership ..., that is not his spirit. He might take partnership, but above all he will want cash into his pocket as well. I fully understand their position since they in power for a certain amount of time, and once [out] of power they will have not other chance of doing this kind of deals. If they partner with a foreign investor, they might be invited to "sell" their shareholding by the incumbent in the state house. So, my brother this is the real world politics. ...”

As Mr Boustani confirmed in cross examination, the references to “Junior” were to Mr Ndambi Guebuza and the reference to “Senior” was to President Guebuza.

71. Mr Boustani responded to Mr Nhangumele as follows:

“... Whether it is the Franco Russians, or us ([Abu Dhabi Mar] / [Mr Safa] / our [Head of State] ... etc...) we are used to these kind of deals and businesses. And we understand very very well.

We have done mega deals in many continents. We have not been lucky yet in Africa because of incidents which I have told you earlier. But we are looking forward to go full throttle in Mozambique and subsequently in Africa with you guys.

Brother, cash success fee is basic. We will need to discuss how much, when and how. But the concept is basic. No worries.

Also, I have a message to pass to [President Guebuza] (through you and [Mr Ndambi Guebuza] / or if you see it proper that I meet him for 5 min) that our [Head of State] is ready for MEGA projects in Mozambique ASAP. Also, political & strategic ties.

EEZ [the First Project] is the start. It is a cash cow in time (I believe you have the numbers by heart) + there is a hefty "down payment" which we are both aware of (the 50 chickens). [Smiling face].”

72. In cross-examination Mr Boustani said this of these emails:

“Mr Adkin KC: ... You say, don't you, that you at [Abu Dhabi Mar] and your boss are used to the kind of transactions that Mr Nhangumele has been talking about, yes?

Mr Boustani: Mr Adkin, what I was saying here, the oil and gas sector and other big projects and investments, we are used to it, yes, so he's trying to preach me about hundreds of millions of dollars and money changing hands in all these matters so I was trying to answer him again raw. Like please, Mr Nhangumele, don't lecture me about these things. We know how to do projects.

Mr Adkin KC: No, Mr Boustani, he is asking you whether your Franco-Russian friends would be surprised to hear that it was necessary to pay bribes in order to win concessions in Mozambique and you were telling him that both you and they understood that very, very well. That's the position, isn't it?

Mr Boustani: No, no, no, Mr Adkin, with all due respect, not at all. Again, the bribe is never mentioned in this email or in general at all. We never pay bribes. We never talk about bribes, I never meant this and it was never ever part of any kind of discussion.”

73. Mr Adkin KC asked about the reference to a “down payment”:

“Mr Adkin KC: When you referred to the 50 chickens as a "down payment", you see in ... your email, what you meant and what Mr Nhangumele will have understood is that that money was hoped to purchase not only the Mozambican officials' loyalty for the initial transaction but also for future transactions, didn't you?

Mr Boustani: Not at all, Mr Adkin. I want to mention that I put the 50 chickens and then I'm putting this smiling face like I was being sarcastic at that time and not at all I was mentioning or meaning or thinking about paying or buying any kind of public officials, as you were saying. Not at all, Mr Adkin, not at all.”

74. Credit Suisse made financing proposals for the First Project on 12 and 25 June 2012. Between those dates, on 21 June 2012, Mr Nhangumele wrote to Mr Boustani asking for US\$3 million, stating that:

“... there are some “palms that need to be greased” as we move along, in order to secure expedite processing of paperwork and decision making”.

Mr Boustani agreed that the Privinvest Group would pay. In cross-examination, Mr Boustani suggested that the context was that he thought Mr Nhangumele was acting as a “consultant” and was lying.

75. Again, I will not abbreviate what Mr Boustani said on this at this point in his evidence:

“Mr Adkin KC: You say: "We could add the extra chickens in the contract [with Abu Dhabi Mar]." "And meanwhile, Jr could confirm to the new comers that their chunk is secured." What you meant there is that President Guebuza's son, Junior, could tell the people who were now holding their hands out to have their palms greased that their chunk was secured. That is right, isn't it?"

Mr Boustani: Mr Adkin, I thank you for this and yes, I was answering Mr Nhangumele with the manoeuvre. And for information and for the truth and for the fact, Mr Armando Ndambi Guebuza, I was in constant communication with him. And even on that purpose I remember so well I called him, I told him, Armando, this is -- I am bringing with me like a potential group who wants to invest in oil and gas, okay. So any particular things, ideas, etc, so I was even calling him for me to see if any kind of word will be mentioned by him even related to payment of a lunch, and this never ever happened. Okay? So what I'm trying to say, this man for me in my mind, okay, this man is continuing to be involved in this project, I don't know why, I don't know how, but fine, he's still in communicating -- in communication. I'm in contact with the son of the President and the official from SISE. None of them is mentioning absolutely nothing about what this guy is claiming. So for me he's lying, he's manoeuvring, I will keep the manoeuvre, let's see where it will reach. And the course of events, and here if we go up to January 2013, proved me right and the truth right.

Mr Adkin KC: If you were in direct contact with the son of the President, what are you doing having continuing email communications with somebody you regarded as a liar and a cheat?

Mr Boustani: Because, Mr Adkin, because the son of the President did not tell me do not communicate with Nhangumele. I didn't ask him about him. He didn't tell me about him. Mr Nhangumele was, when the two visits occurred of due diligence, one in Kiel in Germany and the other one in Abu Dhabi, United Arab Emirates, in the beginning of 2012 Mr Nhangumele was part of the delegation, okay, as a consultant. So for me it was confusing what I was saying to myself, and again, this is part of call it manoeuvring. If I cut him off today, okay, and stopped communicating with him, okay, so what do I do now in terms of seeing where do we reach with this project? What I'm saying to myself is like, okay, keep communicating with this guy, let's see what we will reach.”

76. In response to Credit Suisse’s financing proposal of 25 June 2012, Mr Boustani’s feedback was provided the next day and was said to be from President Guebuza. Two points made were that the pricing was considered “heavy”, and “IMF parameters for commercial loans”. In response to the first, Mr Singh of the Credit Suisse Deal Team proposed the use of what was termed a subvention fee, described by him as “where the contractor [Prinvest] pays a fee in return for which [Credit Suisse] will reduce the financing cost for [the Ministry of Finance]”.
77. On 26 June 2012, Mr Boustani sent a price breakdown for the proposed First Project. He stated that he had added in the US\$50 million (a reference to the sum discussed in the earlier exchanges above) “for them”. This email and attachment were sent to Mr Safa’s secretary, Ms Pinet “Attn: Mr Safa”, with copy to another of his email addresses. On 9 July 2012, Mr Boustani told Mr David Harpazi:

“IS [Mr Safa] needs a complete breakdown of the costs and revenues of each and every item of the EEZ project”.

78. Mr Harpazi sent an updated proposal to Mr Safa on 11 July 2012 with matters expressly highlighted for Mr Safa in the covering email. Although Mr Safa’s recollection when giving his evidence at trial was that he never saw the proposal, I am satisfied Mr Safa was fully informed of its contents one way or another. It contained information that he wanted to see. Had he not received that information he would have chased for it, and there is no sign that he did.
79. The next month, in August 2012 Mr Freiha of Credit Suisse wrote to Mr Boustani “in anticipation of the potential financing” with a list of questions that the Legal and Compliance functions at Credit Suisse would need answers to. Mr Boustani confirmed that neither Abu Dhabi Mar nor Mozambique had approached any other lender except Credit Suisse for the project.
80. As already recorded, the Minister of Finance in the Government of Mozambique at the time was Mr Manuel Chang. Minister Chang is the First Third Party in the Republic Claim. On 3 September 2012, Mr Nhangumele emailed to Mr Boustani a letter signed by Minister Chang and addressed to Mr Safa. This stated that the proposal for the First Project had been approved, but that the “formal letter of award for the project shall be subject to securing the financing”.
81. Ten days later, on 13 September 2012, Mr Pearse of Credit Suisse met with Mr Safa and Mr Boustani of the Prinvest Group, Mr Nhangumele, and Mr Ndambi Guebuza, at the offices of the Prinvest Group in the UAE. Mr Freiha of Credit Suisse also attended. After that, on 19 September 2012, Mr Boustani sent Ms Pinet a spreadsheet to print for Mr Safa. This showed the costing of the project, a costing that included US\$56 million for “Partners”.
82. In September and October 2012 revised term sheets were provided. After discussion with Minister Chang, Mr Nhangumele emailed Mr Boustani on 9 October 2012 to explain that the Ministry of Finance could not sign a loan agreement with Credit Suisse to borrow directly, but was prepared to issue a sovereign guarantee for a loan to an SPV. In cross-examination, Mr Boustani suggested that the structure was so that the First Project could be run “in a revenue-generating way” and with “private sector mentality”.
83. The true reason was to attempt to circumvent the limit on state borrowing that Mozambique had agreed with the IMF. As Minister Chang wrote at the time to Mr Safa:

“As you are already aware, the financing of this project is still constrained by the IMF imposed limitation on the Government of Mozambique to accept commercial credit for commercial projects. Therefore, we have devised an alternative solution whereby an SPV, duly and specifically established to handle this project will be formed, and the Government of Mozambique will rightfully provide the guarantees required for the project to be financed”.
84. On 29 December 2012, Mr Peter Kuhn of the Prinvest Group sent to Mr Pearse of Credit Suisse draft supply contract documents for the First Project. He said to Mr Pearse that these:

“... haven’t been negotiated with the customer [i.e Mozambique], but at least internally we agreed on them, except the maintenance contract, which we haven’t agreed upon with Mr. Safa”.

85. The proposed state-owned enterprise or SPV for the First Project was Proindicus SA. Proindicus was incorporated on 21 December 2012, as a company jointly owned by two entities that were themselves ultimately owned and controlled by the Ministry of Defence of Mozambique and by SISE. The meeting to incorporate Proindicus was hosted by Minister Filipe Nyusi (now President Nyusi) at the Ministry of Defence and attended by Mr do Rosário and Mr Gregório Leão of SISE, among others among others.

86. On 4 January 2013, Mr Singh emailed Mr Pearse and Ms Detelina Subeva (the Fifth Defendant in the Republic Claim and the third member of the Credit Suisse Deal Team) enquiring about a requirement of the Privinvest Group that Credit Suisse disburse the full loan amount up front. Mr Singh observed:

“Seems odd that they wanted help with cash management - maybe worth checking, such a large payment upfront would be quite unique”.

87. On 9 January 2013, Mr Boustani emailed to Mr Safa a term sheet that he had signed with Mr Pearse of Credit Suisse for a US\$372 million loan to Proindicus, backed by a sovereign guarantee from Mozambique. Mr Boustani suggested in cross examination he was not sending the email to Mr Safa but I do not accept that. Mr Boustani used an email address that was generally used to reach Mr Safa, and in respect of this specific communication, Mr Boustani corrected an error in it subsequently by way of text message to Mr Safa on 21 January 2013. Mr Safa did not recall receiving this, but I consider it more probable that he did, given the significance of the First Project to the Privinvest Group and that he was “hands on” in his approach.

88. Mr Boustani’s covering email identified that from the total of US\$372 million to be received from Credit Suisse (lent to Proindicus, but paid in full up front to the Privinvest Group), the Privinvest Group was to pay:

“49M\$, 13M\$ to SPV, and 56M\$ to the people = 118M\$”.

US\$49 million was the amount which the Privinvest Group was at that stage to pay as a subvention fee to Credit Suisse (and thus, the source of the “subvention fee” would in fact be borrowing by Proindicus guaranteed by Mozambique.) It is clear that US\$56 million “to the people” comprised the US\$50 million of payments of “chickens” together with a “commission” of US\$6 million to Ms Thokoane. The later correcting text from Mr Boustani to Mr Safa of 21 January 2013 also deducted a US\$6 million “arranger fee” payable to Credit Suisse.

89. In the meantime, a request was sent from Minister of Defence Nyusi to Minister of Finance Chang on 14 January 2013 to ask that Minister Chang sign the financing term sheet as “representative of the Government”. In the event the term sheet was signed by Ms Lucas. The supply contract with Proindicus was signed on 18 January 2013 with “Privinvest Shipbuilding SAL” from the Privinvest Group (“the Proindicus Supply Contract”).

90. The Proindicus Supply Contract was subject to receipt of the total ex works price, of US\$366 million. A preamble read:

“For the purpose of enhancing the capabilities of the Government of Mozambique to monitor and protect the Exclusive Economic Zone as prescribed by the United Nations Convention on the Law of the Sea, the Republic of Mozambique decided to enter through Proindicus SA, a state owned company incorporated by various public entities of the Republic of Mozambique ... and established for the purpose of the acquisition and operation of the Project ... into this contract with Privinvest Shipbuilding ...”.

91. Mr Safa had met with Mr Afiouni and Mr Freiha of Credit Suisse in Abu Dhabi a few days before. At around this time President Guebuza also met Mr Safa and Mr Boustani in Mozambique, and he expressed his support for the First Project when they did. Mr Ndambi Guebuza, Mr Nhangumele and Mr Langa flew to Abu Dhabi on 21 January 2013 to meet Mr Boustani.

92. Mr Boustani was to give this evidence:

“Mr Adkin KC: Mr Boustani, by this date, 21 January [2013], the term sheet with Credit Suisse had been signed, the supply contract between Proindicus and Privinvest had been signed, .... Is it your evidence that all of that happened without the involvement or knowledge of Mr Safa?

Mr Boustani: Mr Adkin, my evidence is very simple, as I have said it before and I'm saying it again. Mr Safa, I kept him aware about the general, the general high level figures of the project. The issue of 50 million I have never discussed with him. The only thing eventually I discussed with him, I'm saying okay, there is now a consultancy fee that we need to pay, okay. And at the end of the day this is where the figure of 5% of the total contract value of 372 which came to 18 million was at the end paid, half of it to Teofilo Nhangumele and half of it to Bruno Langa. So I kept Mr Safa informed of the general, general very high level parameters of the project but this project is mine. I was handling it. I was on the ground. I was the one they called me, in the United States they called me the mastermind, so I, if you want to call me the mastermind I am the mastermind and this project, practically the whole details and everything was mine.”

I have commented earlier on the last sentences. I reject Mr Boustani's evidence that he never discussed the US\$50 million with Mr Safa.

93. As to the reference to payments to Mr Nhangumele and Mr Langa, an instruction dated 23 January 2013 provided for them to be paid US\$8.5 million (a total of US\$17 million) each by one of the Privinvest Companies, split into three tranches of US\$5.1 million, US\$1.7 million and US\$1.7 million (60%, 20% and 20%), A document entitled ‘Consultancy Agreement’ exists. This referred to services Mr Nhangumele and Mr Langa were to perform for the money. There is no documentary evidence to suggest they provided the services.

94. A draft letter addressed to Mr Ndambi Guebuza was sent by Mr Boustani to Mr Safa on 24 January 2013. The draft letter provided that once the Privinvest Group received payment of the sums that Proindicus was borrowing, it:

“... or [Mr Safa] personally will be holding for [Ndambi Guebuza], in trust, the sum of 33,000,000 US\$ (thirty three million US\$).”

The US\$33 million was also split into three tranches (US\$20 million, US\$6.5 million, US\$6.5 million; 60%, 20% and 20%). It was the remaining part of the US\$50 million or “50 million chickens”.

95. In cross-examination Mr Boustani claimed that the letter had been typed on his (Mr Boustani’s) laptop by Mr Nhangumele, but was “a total absolute draft that went to the bin”. He said that US\$33 million was not asked for by Mr Ndambi Guebuza and that bank accounts did not show its receipt. He said, “there was not a single penny paid to [Ndambi Guebuza] in connection with the projects” and that “... all this was a complete last-minute continuation of the manoeuvre of Teofil[o] Nhangumele to pocket more money”.
96. Mr Adkin KC put to him in cross-examination:

“Mr Adkin KC: ... Mr Boustani, you sent from your email address this document to Mr Safa in order to be able to satisfy Mr Armando Guebuza and the other Mozambican officials that you had promised to bribe that they would get the monies when the Proindicus contract monies hit Privinvest and that is the truth, isn't it?”

Mr Boustani: No, Mr Adkin, not at all. I have just answered the whole truth and facts around this document. Typed on my laptop by Teofile Nhangumele, sent to Logistics, printed there. I have explained the whole context of it.”

Mr Boustani’s statement that he had explained “the whole context of it” and “the whole truth and facts around this document” was false and dishonest. This was a draft intended to be used by Mr Safa, and the Privinvest Group, to reassure Mr (Armando) Ndambi Guebuza that payments would be made. Mr Boustani says that bank accounts did not show receipt of US\$33 million, but at this stage it is what was intended and planned that is important. Later in this Judgment, I deal with what happened.

97. In cross-examination, Mr Safa had this to say about the communication from Mr Boustani:

“Mr Safa: ... I don’t know what this document is but it is a phoney document, because first of all, it is Jean Boustani sending it to Logistics. Why he’s addressing Mr Guebuza? And there is my name in it, and nobody puts my name in a letter if it’s not me. So all of this, all of this for me, this is phoney, Mr Adkin.

Yes, so I'm hearing, I don't know what this email is and it's a phoney email. And moreover, it's Boustani to Logistics. Why it is addressed to Mr Armando Guebuza and my name is put as signatory? In a normal email, if it is me writing to Guebuza I should write to Guebuza, not Boustani writing to me for Guebuza. I don't know, it is a phoney email.

Mr Adkin KC: Mr Safa, I suggest to you it is perfectly obvious what this is. This is a draft of a letter that you were to send to Mr Guebuza which Mr Guebuza was to countersign, promising Mr Armando Guebuza that Privinvest or you would hold and then pay a \$33 million cut of the monies Privinvest was to receive under the Proindicus transaction to him if and when they were received. That is obvious and that is the truth, isn't it?

Mr Safa: No, it's obvious to you. I never signed letters of that sort. Never. In my 33 years, 34 years of shipbuilding never signed a letter of that sort. Number two, I don't

need anybody to write a letter for me. I know how to write letters and I can assure you my English is at least as good as Boustani's English.”

I find myself unable to accept Mr Safa’s claim to have had no involvement with the email and draft letter. He took that position to try to hide the truth which is that he did know about them and about the content summarised by Mr Adkin KC.

98. From 24 to 25 February 2013, Mr Pearse visited Mozambique’s capital, Maputo. On 28 February 2013 the related facility agreement for the First Project (“the Proindicus Facility Agreement”) was executed. To enable the First Project, Minister Chang executed a guarantee on behalf of Mozambique of borrowing by Proindicus under the Proindicus Facility Agreement (“the Proindicus Guarantee”). Recital (A) to the Proindicus Guarantee recorded that under the Proindicus Facility Agreement the provision of the Guarantee was a condition precedent to the delivery of a utilisation request in respect of the borrowing.
99. The Bank of Mozambique, the Central Bank, gave its authorisation for the borrowing on 14 March 2013. On 21 March 2013, Mr Pearse emailed Mr Boustani, stating that all the conditions precedent in the Proindicus Facility Agreement had been satisfied. The loan was advanced on 21 March 2013. A Swift payment of US\$327.9 million was made by Credit Suisse to the Privinvest Group that day.
100. The State Budget Law 2013 (Law No 1/2013 of 7 January 2013) provided, in Article 11, that the Government was “authorised to issue guarantees and sureties up to a maximum amount of 183,500.00 thousand Meticaís”. In US\$, that maximum was equivalent to US\$6.2 million. It was Mozambique’s case that the Guarantee also breached the Mozambican Constitution, because it exceeded the limits of state guarantees that the Constitution reserved to Parliament, and also breached Mozambican Law 9/2002 (the “SISTAFE Law”), because Minister Chang acted without parliamentary authority; and breached the requirement for approval by a “*visto*” from the Administrative Court.
101. The financing documentation for the First Project also included a representation that Mozambique was “in compliance in all respects with its obligations to the IMF and the World Bank”. On 4 February 2013 Minister Chang and Ms Lucas confirmed that the IMF had been informed of the guarantee. There is however no sign of the IMF being informed, or of the reaction that could be expected from the IMF had it in truth been informed. The IMF’s Country Report on Mozambique, No. 13/1, published on 3 January 2013, had reported that the cumulative Non-Concessional Borrowing Limit for Mozambique was proposed to be raised to US\$1.6 billion from end-December 2012 through to end-December 2013. But of this, US\$1.379 billion had already been utilised as at end-September 2012, leaving US\$221 million available, well less than the amount of the borrowing to which the Proindicus Guarantee extended.
102. Minister Nyusi was later to state on 8 August 2018, by which point he was President, that he “never participated in and never had knowledge of an act that supposedly authorized [Proindicus] to assume debt backed by the State” and did not know “how the process was initiated for the financing” of Proindicus with Credit Suisse. These statements were made in writing in connection with the criminal proceedings in Mozambique (see section 2 of the Appendix). I have not had the advantage of hearing President Nyusi give evidence.
103. Mr Peter Kuhn who started at Privinvest Group in September 2012, cross examined by Mr Adkin KC, gave evidence that prior to execution of the supply contract, no one had

considered at all what assets would be appropriate given the length of the coastline. The following exchange in cross-examination gives an illustration:

“Mr Adkin KC: ... I think we are agreed, aren't we, the EEZ didn't change, the size and shape of the EEZ didn't change?

Mr Kuhn: That's correct.

Mr Adkin KC: So, did you then when you got on the ground in Mozambique realise that you had been proceeding on a misapprehension as to the size and shape of the EEZ, is that what happened?

Mr Kuhn: That is what I wanted to express, I think.

Mr Adkin KC: And is that because you had failed to take account of Europa Island?

Mr Kuhn: Yes.

Mr Adkin KC: Because I am curious, if we just have a look there is a reference to Europa Island and had that -- that had just been overlooked, had it, in the original supply contract negotiation?

Mr Kuhn: I think so. The EEZ normally is defined as a line or an area stretching 200 nautical miles out of the coastline of a country. If you see the distance between Madagascar and Mozambique, the distance is less than 400 nautical miles. And especially that there is Europa Island in the middle and France is taking advantage of that and giving an own EEZ around that, so the EEZ of Mozambique is a little bit less than 200 miles in these areas.”

104. It will be recalled that the size of the subvention fee had been US\$49 million. The subvention fee was reduced by US\$11 million to US\$38 million, and Mr Pearse was paid US\$5.5 million in four instalments: US\$2.5 million in April 2013 and US\$1 million in each of May, June and July 2013. In cross-examination, Mr Boustani denied that there was a transaction with Mr Pearse and which Mozambique describes as bribery (although not of an agent of Mozambique). Mr Safa denied any knowledge of it. The case of the Prinvest Companies and Mr Safa is that sums were paid to Mr Pearse to compensate for his departure from Credit Suisse, referred to below. Mr Pearse did not in the event give evidence in this litigation and on which he could be cross examined. He has given evidence in New York but I treat the position of what was said in the New York proceedings with real caution. It is at least not clear that his evidence was accepted in the New York proceedings, and it is possible that it was coloured by hopes on the part of Mr Pearse of leniency in his own treatment in return. I do not make any finding adverse to Mr Safa or the Prinvest Companies (or Mr Boustani, who was acquitted in New York) over this alleged episode concerning the subvention fee and a payment to Mr Pearse.

### **Payments to Minister Chang**

105. US\$2 million was paid on 4 August 2013 and 4 September 2013 by Prinvest Shipbuilding SAL to an account in the name of Genoa SA at Barclays Bank plc, New York in relation to Minister Chang. This is accepted by the Prinvest Companies and Mr Safa.

106. On 29 March 2013, Mr Boustani had sent a spreadsheet to Mr Safa's secretary, Ms Pinet, entitled "MOZ Costing". This showed sums payable to "Partners" of US\$74.5 million. The US\$74.5 million was calculated to include a sum of US\$56 million. There was this exchange in cross-examination of Mr Boustani by Mr Adkin KC:

"Mr Boustani: No, Mr Adkin. Again, you're asking me about an Excel sheet and a theoretical model, and this is completely different to what effectively happened. So I'm very happy to answer on actual facts and payments and not on a theoretical Excel sheet that I was printing myself for myself.

Mr Adkin KC: Mr Boustani, this is the document that was produced after the supply contract had been signed, the financing agreement and guarantee has been signed and the conditions precedent had all been fulfilled. So this is after the deal is all done, the money has come in, the thing is executed. And let's just keep focused on that 56 million figure. 6 of it was to Ms Thokoane. 17 million, you told us, was to Mr Nhangumele and Mr Langa, 8.5 each, yes?

Mr Boustani: Correct, Mr Adkin.

Mr Adkin KC: So 56 minus 6 is 50 million, 50 million minus 17 is 33 million, and the 33 million was what we saw in the email that you sent to the Logistics address, what was secured by a promise to pay Mr Armando Guebuza, yes?

Mr Boustani: No, Mr Adkin. Again, so the 33 million alleged payment to [Mr Ndambi Guebuza] never ever happened and never was the 33 million paid to [Mr Ndambi Guebuza] and we did not bribe anybody. Again, this is a theoretical Excel sheet that I made for myself and after the signature of the procurement contract whereby the scope of supply of the procurement contract is completely different, completely, to [an earlier proposal of 2011].

Mr Adkin KC: And that 33 million was the figure out of which the Mozambican officials to whom you promised to pay bribes were to be paid, yes?

Mr Boustani: No, Mr Adkin. Again, we did not pay any Mozambican official. We did not bribe any Mozambican official. And the 33 million itself, Mr Adkin, were never paid. So I'm saying -- yes, excuse me sir?

Mr Adkin KC: I was going to ask you a further question. I was going to ask, you have no other explanation as to where the 33 million that adds to the 17 million to Nhangumele and Langa and the 6 million to Thokoane, where that comes from in this spreadsheet?

Mr Boustani: But Mr Adkin, this is a spreadsheet, an Excel spreadsheet which I sent to myself to be printed. So this is not a document I'm communicating with anybody. So I was myself doing a spreadsheet because I was, let's say in a way, putting all -- doing all my files, putting the whole train of the story from A to Z. The 33 million never ever had been paid. Nothing has been paid out of this 33 million to [Mr Ndambi Guebuza]. And again, I say it again, the proof on his trial personally in Mozambique where your client was prosecuting him, the fundamental part of his indictment in Mozambique was he received 33 million and in specific bank accounts. These bank accounts, when his lawyer produced these bank accounts, it was the balance zero from inception. The result, his

lawyer, he was then persecuted and threatened with his life and he run away in the middle of the trial. So Mr Adkin, this is a theory, this is a spreadsheet, nothing of that happened. I'm very happy to answer facts and actual payments but not the spreadsheet.”

107. As Mr Safa and the Prinvest Companies emphasise, on 29 October 2020 Mr Ndambi Guebuza wrote to Mr Boustani to set out that he had received his bank statements from Abu Dhabi Commercial Bank, showing that there had been no activity on the account to which Mozambique alleges US\$33 million was received by him, since that account was opened. This Court has not had the benefit of access to the bank statements although they are or are likely to have been on the Main Criminal File in the Mozambique proceedings. In the circumstances I propose to accept, in favour of Mr Safa and the Prinvest Companies, that the statements show what Mr Ndambi Guebuza wrote that they showed.
108. An internal accounting spreadsheet (“the Allam Spreadsheet”), of which there are two versions, was prepared by Mr Naji Allam, a Chief Financial Officer within the Prinvest Group with control over bank accounts. These are dated 18 and 22 August 2013, entitled “PISB/LI Accounts Position”, and record US\$33 million as being set aside. The earlier version of the Allam Spreadsheet provides next to the word “Armando”, “\$33,000,000”, and then shows a series of payments (both ‘budgeted’ and actually paid) to various officials, including: “CH”, a reference to Minister Chang. There is also “DG”, a reference to Mr Leão, Director General of SISE at the time, and “Esalt”, a reference to Ms Lucas. The later version includes further officials (and payments to them): “ROS1” (Mr do Rosário), “ROS2” (Mr Mutota, another senior official within SISE).
109. A Prinvest Group accounting journal for 2013 includes a statement of account labelled “Li – Ar Ge – Swift141”. I am satisfied “Ar Ge” is a reference to Mr (Armando) Ndambi Guebuza. Payments to Mr Nhangumele, Mr Langa and Mr Pearse are detailed elsewhere in the journal. The statement of account sets out twenty-five “debits” from June to December 2013, totalling US\$13.6 million. Among a number of references is “AG-CH-Genoa1”. I am satisfied “AG” refers to Mr Ndambi Guebuza and “CH” refers to Minister Chang.
110. The two payments to Minister Chang, in August and September 2013 and totalling US\$2 million, were also discussed between Mr Boustani and Mr Allam alongside payments to a number of other Mozambican officials. Mr Boustani wrote:

“Just to remind you please of the payments this month: // [Mr Matusse]: 450K\$ as per attached document. Last month we did 450K\$ to the wrong account (attached slip). // [Mr Leão]: 1 million \$ to the same account as last time (I guess we corrected the IBAN) // [Minister Chang]: 1 million \$ to the same account number// [Ms Lucas]: 750K\$ (to reach the balance of 1 million\$ to the same account number. Last month we did 250K\$ I guess) Thanks”.

Further email correspondence between Mr Allam and Mr Boustani identified sums which were payable to Minister Chang and other officials as being “for Proindicus” or (concerning the Second Project, discussed below) “for EMATUM”.

### **“Upsizing” the First Project**

111. It was not long before steps were taken to increase what was to be supplied under the Proindicus Supply Contract, and “upsized” the finance ultimately by US\$250 million, with US\$132 million drawn initially.

112. An increase in the number of boats was proposed. This was not because Credit Suisse or the Privinvest Group had a basis for confidence that Mozambique was any more ready to use more boats successfully than it was to use the boats and other supplies for which it had already contracted. Rather, it was because more finance gave more room for payments to the individuals driving the project, and more financial return to Credit Suisse and to the Privinvest Group.
113. On 27 March 2013, at Barbossi, at a meeting between Mr Safa, Mr Boustani and Mr Pearse, it was agreed to try to increase the finance to Proindicus. Although he was still working for Credit Suisse, it was also agreed that Mr Pearse would be paid, personally, 2.5% of any increase in the financing.
114. Mr Boustani emailed Mr do Rosário saying that Credit Suisse wished to increase by US\$200 million and urging that advantage be taken of this. Mr do Rosário agreed. On 4 April 2013, Mr Boustani informed Mr Afiouni and Mr Pearse that they should “officially now start the extension process”, but for US\$250 million rather than US\$200 million. On 10 April 2013, Ms Subeva sent Mr Boustani the draft transaction documents for a US\$200 million “upsized” to the facility granted to Proindicus. Execution versions were sent to Mr Boustani by 20 April 2013. In these the “upsized” was now US\$250 million, as Mr Boustani had requested.
115. On 25 April 2013 at a meeting in Mozambique, attended by, amongst others, Mr Boustani, Mr Kuhn and Mr do Rosário, amendments to the Proindicus Supply Contract were proposed and discussed. A slideshow from the meeting identified two changed parameters said to justify the changes. The first was the availability of more money. The second was “long but narrow EEZ”.
116. I have referred to Mr Kuhn’s evidence in cross-examination already. He suggested that the original proposal was “outdated”. But I accept Mozambique’s point that, in the context, a genuine original proposal would not be outdated so quickly. The truth is that no-one was considering the interests of Mozambique. On 13 May 2013 Mr Pearse was to write to Mr Boustani:
- “Eez – biggest issue is that model doesn’t support 250. My advice, do 100 now ... and then do 150 later in year”.
117. Mr Singh’s testimony in New York proceedings was that he:
- “... made significant efforts to aid in closing the Proindicus upsizes and EMATUM loan [discussed below] because I had agreed with Boustani that Privinvest would pay me a substantial sum of money for helping close those transactions.”
- In cross-examination, these matters were put to Mr Boustani. He denied that the Privinvest Group bribed Mr Singh or Mr Pearse.
118. Three “Change Orders” were signed by Proindicus dated 29 April 2013, 15 May 2013 and 17 May 2013 ultimately to increase the content and price under the Proindicus Supply Contract for the First Project to US\$616 million. The Proindicus Facility Agreement was then amended on 14 June 2013 to provide for lending of an additional US\$250 million to a total now of US\$622 million.

119. A guarantee confirmation (“the Proindicus First Guarantee Confirmation”) was executed by Minister Chang on behalf of Mozambique, to agree and confirm that the Proindicus Guarantee remained in full force and effect and extended to the increased lending for the First Project under the amended Proindicus Facility Agreement.
120. There followed utilisation requests for a total of US\$132 million of the further finance on 25 June (US\$100 million) and 12 August 2013 (US\$32 million), leaving US\$118 million undrawn. Payment of US\$90.19 million by SWIFT was made by Credit Suisse to the Privinvest Group on 25 June 2013 and of US\$28,860,800 on 14 August 2013.
121. On 28 June 2013 a further (fourth) Change Order was executed by Proindicus and Privinvest Shipbuilding SAL (Holding) to the Privinvest Supply Contract.
122. Mr Pearse’s 2.5% of any increase in the Proindicus transaction was to be worth US\$6.25 million (US\$2.5 million in respect of a first “upsize” of US\$100 million; US\$0.8 million in respect of a second upsize (of US\$32 million) and US\$2.95 million of the VTBC Proindicus Upsize (discussed below, of US\$118 million)).
123. The Proindicus 2013 Accounting Journal identified these three sums as three ‘credits’, marked “Consultancy on Phase 2”, “PH3 comm” and “Additional works on Phase4”. The credits were dated 28 July 2013 (just over a month after the first upsize sums were disbursed); 15 August 2013 (a day after the second upsize sums were disbursed to the Privinvest Group); and 26 November 2013 (around ten days after the VTBC Proindicus Upsize sums were disbursed). The payments of individual tranches were recorded as ‘debits’ with references to “JVMOZ PH2”, “JV Ups3 comm” and “JVConsProI Ph 4”.
124. On 27 October 2013 Mr Eugenio Matlaba, a defence official made chairman of Proindicus, circulated a draft Proindicus financial model, including estimates of revenue and costs for 2013-2019, to Ms Subeva, Mr Boustani and Mr do Rosário. The estimates it contained were said to “support the viability of the project” and positive results were anticipated to arise “from 2014 onwards, when the Monitoring System is expected to be in full operation”.

### **The advent of Palomar**

125. On 22 April 2013, Mr Pearse had proposed to Mr Boustani that they should purchase a company named Palomar Capital, then owned by a friend of his. On 21 May 2013, Palomar Capital was purchased with Mr Pearse and Mr Safa each as ultimate beneficial owners.
126. Mr Pearse went on leave from Credit Suisse from June 2013, and left Credit Suisse’s employment on 13 September 2013. Ms Subeva went on leave from Credit Suisse from 22 July 2013. She finished her employment with Credit Suisse in August 2013, but had begun working in conjunction with Mr Pearse and Mr Singh and not for Credit Suisse before that date.

### **Towards the Third Project: MAM**

127. MAM was to show greed taking yet further grip, and things getting further out of control.
128. Mr Boustani had also been in touch with Mr Matusse, adviser to President Guebuza, on 23 March 2013 to suggest further projects including a shipyard in the harbour area of Maputo. This would, it was suggested, be operated by Mozambique’s National Maritime Administration and Inspection Service (INAMAR). Mr Boustani said:

“... our role will be to bring the financing and the technical expertise + management to Mozambique.”

129. Whatever the theoretical attraction, Mozambique was no more ready for this Third Project than for the First. The evidence at trial made me sure that Mozambique, by its Government, did not, by any measure, have the experience or expertise to put successfully to work what was to be supplied. No scoping or preparation by Mozambique worth the name was established by the Privinvest Group. But more finance would give more room for payments to the individuals driving the project, and greater financial return to the Privinvest Group.
130. Mr Matusse put Mr Boustani in touch with the Minister of Transport and Communication, Mr Paulo Zucula, on 12 April 2013 and they met on 24 April 2013. The agenda included “Shipyard in INAMAR” and “Proposal to build cargo & passengers fleet for the [Ministry]”. As discussion continued in the weeks that followed, the possible development or upgrade of a coal export terminal at Beira in order to produce a fleet of coal transport vessels featured.
131. Mr Boustani told Mr Pearse that a shipyard was wanted as soon as possible. A meeting in Maputo on 7 June 2013 was attended by, among others, Mr Safa, Mr Boustani, Mr Pearse and Mr Matusse. The meeting resolved to proceed with “INAMAR shipyard in Maputo asap”. The Privinvest Group prepared a document entitled “Proindicus Maritime Services Centre”. This was sent by Mr Boustani to Mr Ndambi Guebuza with a request that it was passed to President Guebuza, and to Mr Matusse.
132. It suggested that Proindicus had been set up in order, among other reasons, to:

“... manage and or oversee all shipyards as needed in Maputo and in other locations to be determined”.

There was reference to “shipyards to build vessels for local use such as patrol boats, fishing vessels, oil and gas rigs and supply vessels”, “build vessels for export to friendly nations and trading partners such as China, Angola and others”, “repair and maintain local vessels for Navy, Coast Guard and others” and “set up and manage maritime education and training centres to train the local population in shipbuilding trade, ships crewing, ILS (Integrated Logistical Support system) maintenance support and operations.” This was all easily written. There was no sign of checks by the Privinvest Group whether it bore any relation to practicality or reality at the time, which it did not.

133. Yet the Third Project was discussed at a meeting attended by President Guebuza, Mr Leão and Mr Boustani on 9 July 2013. After this Mr Boustani confirmed to Mr Leão and Mr do Rosário that the Privinvest Group was ready to take control of the INAMAR facilities “immediately” and that the “vision” was to transform INAMAR’s facilities into a “cluster for naval & security technologies (shipbuilding, training, integration, cyber security ... etc ...)”.
134. Mr Boustani described SISE and Proindicus as “the natural partners” of the Privinvest Group for this project. Although it was considered that the Project, which was to become the third in sequence, could be incorporated within Proindicus, in the event MAM, a new state-owned entity, was used.

## **The Second Project: EMATUM**

135. Mozambique joined the Indian Ocean Tuna Commission (“IOTC”) in 2012. A letter dated 28 March 2013 from the Minister of Fisheries of Mozambique to the IOTC Secretariat submitted Mozambique’s “tuna fleet replacement and development plan for the next 15 years”. This short document began with this summary:

“Mozambique does not have a long history of fishing tuna as a directed offshore commercial fishery. Consequently, Mozambique has relied on foreign fleets to harvest this fishery for the last two decades or more and has benefitted from the license fees recovered from this activity. In recent years, Mozambique has become very interested in redirecting the benefits of this fishery to Mozambique and its socio-economy. This was one of the reasons for its decision to become a member of IOTC in 2012. The first industrial tuna fishing vessel flagged to Mozambique entered the fishery for its new flag State in 2011.”

136. The document went on to provide this summary:

“In summary, without prejudice to Mozambique’s Coastal State Rights *“for exploring, exploiting, conserving and managing the living resources, including the highly migratory species, within a zone of up to 200 nautical miles under its jurisdiction ”*, Mozambique’s tuna fleet development plan includes:

1. as a first step, a phased replacement of current foreign tuna fishing capacity with Mozambican capacity;
2. enhanced tuna data collection mechanisms to better organize and equip the small scale tuna fishers;
3. enhanced infrastructure to address both the industrial and small scale tuna fleets operating in Mozambique’s Fisheries Waters; and
4. expansion of its national fishing capacity in accordance with the opportunities available to it under sustainable limits.

The first step of the Fleet Development Plan for the Industrial Fishery for the next fifteen years is the replacement of the current tuna fishing fleet with vessels fishing directly for Mozambique, either under charter, or re-flagged, noting that for this first phase the target of 130 vessels, and without prejudice to further fleet expansion, is as follows: [the figures for 2014, 2015 and 2016 were 15, 15 and 10.]”

137. The document added:

“Mozambique’s goal is to regain the control of the tuna fishery in its waters and maximize the socio-economic benefits from this fishery, consequently subsequent phases will include better data and development of a small scale fishery, and where appropriate and scientific advice supports, expansion of its tuna fishery and issuance of further licenses in future years.”

138. A Strategic Plan for the Development of the Tuna Fishery in Mozambique, also dated 9 July 2013, noted the “enormous potential” of tuna fishing. It was suggested that Mozambique might be benefitting from less than 4% of the value of the tuna sold. Ideas for the development of tuna fishing were presented to the Council of Ministers.

139. The month before, on 13 June 2013, Mr Boustani had emailed Mr do Rosário about potential new ventures, highlighting a project for the construction of a fishing fleet for Mozambique for US\$500 million. On 4 July 2013 Mr Pearse emailed Mr Boustani explaining that Palomar's objective was to have a model and financing business case ready by the end of the week of 15 July.

140. Mr Boustani responded to Mr Pearse. His focus was on maximizing the size of the funding because that would increase the number or scale of ships and size of the sale. On the same day Mr Boustani wrote to Mr David Langford, the Privinvest Group's in-house lawyer:

“It seems we can reach a volume of 750 million USD. So kindly adjust the number of trawlers to 45 instead of 30”.

Things were getting further and further out of control.

141. The two sentences from Mr Boustani just quoted graphically illustrate the approach to drive up finance and volume rather than consider need or sustainability. Mr Safa was to suggest this in his evidence at one point:

“The approach of saying how much money you have and let me or let us try to fill this amount with boats is not our approach.”

His suggestion was not convincing. In the course of his evidence he gave examples of a low budget causing a reduction in supply amount, but that of course is quite different.

142. Mr Pearse began to explore financing the transactions with a number of banks, including Credit Suisse but also including VTB Capital plc (“VTBC”), of the VTB banking group. Ms Subeva specifically worked on making the “costing less transparent”. On 20 July 2013, Mr Pearse informed Mr Boustani of interest in financing the proposed project. Credit Suisse was in due course selected.

143. The next day there was this exchange by email between Mr Pearse and Mr Boustani:

Mr Pearse: “My only concern is too many trawlers. No problem at all if we limit to 25 tuna boats of 23m and spend rest on patrol boats, barges etc. We will struggle to make the feasibility study self sustaining but we knew that anyway and we can probably fudge that.

I have been thinking also about the structure and we shld include a reserve to pay interest for the first 18 months. This will take circa 50mn from the bond, so suggest we raise a 800mn bond, 750 for boats and 50 to pay interest. Ok with you habibi?”

Mr Boustani: “Let me discuss it with [Mr Safa] and the frogs today.

The issue is that we have is already designed. So manufacturing will be swift and easy.

The 33 [metre] is designed for other operations. Can be surely modelled for fishing, but we will need time.

How about a "marine industry bond"??

Chang asked for transportation vessels. Plus there is the INAMAR dimension.

Maybe talking also about the ENH Logistics?

I am just throwing ideas bro.”

Mr Pearse: “Probably worth a discussion bro as 45 trawlers is too many. At the max there were 100 ships fishing tuna off moz. Now the number is 50. So we will be doubling the fleet. Wld look odd. Can we make fewer bigger ones? A few 33m is definite non?”

144. Mr Boustani did then consult with Mr Safa. He came back to Mr Pearse after that:

“Mr Boustani: “Bro

Just had a long chat with [Mr Safa].

Best is to keep the 45 trawlers for 750 and not complicate our lives at this stage.

Will prepare extra docs and annexes for "tuna capabilities".

Once we finish, we can make amendments and put other vessels.

Are you ok with that?”

145. Also on 21 July 2013, Ms Subeva drafted a timetable for the proposed project which Mr Boustani forwarded to Mr do Rosário, explaining: “We will go for 800 million\$ so we keep a cushion for Proindicus interest payment next year”. Mr do Rosário agreed with this.

146. Mr Boustani then proposed selling 25 trawlers, together with three larger 45-metre offshore patrol vessels, or “OPVs” to “protect” the trawlers. Mr Pearse was in support. The plan became: “21 trawlers + three 45 metre vessels for 800 million\$”.

147. There was a feasibility study, but it was undertaken by Palomar, where it was prepared by Ms Subeva. Neither had expertise in fishing and specifically of the tuna fishing industry. Ms Subeva did have access to a report of the IOTC which included a development plan for Mozambique’s tuna fishing industry. She wrote to Mr Boustani and Mr Pearse:

“It says Moz wants to reach up to 130 vessels from 2014 to 2028... assuming a mix of purse seiners (very big vessels) and longliners ... I am sure since we can only finance longliners ... clearly we have room to increase the ship numbers!!!”

148. Her focus, as with Mr Pearse, Mr Boustani and Mr Safa, was on pushing the supply of vessels towards the highest level of finance available. It had no regard to the 14-year period mentioned in the IOTC report. The terms of the responses she received to what she had written is illuminating. Mr Boustani said:

“And we need the [OPVs] for protection and surveillance. Story makes perfect sense.”

Mr Pearse wrote:

“What a great find! All we need now is tuna prices at \$15 per kg and it all works!”.

149. Mr Boustani identified the difficulty with this: “Frogs said average price is 5\$ per kg !!!!”. Mr Pearse wrote: “We will only catch yellow fin and sell to Nobu!”. Ms Subeva suggested to Mr Pearse that they only show a “summary price table”, rather than a “detailed price average”.
150. By 26 July 2013 Mr Singh sent a draft facility agreement, fee letters and guarantee for the proposed Second Project to Mr Boustani who forwarded them to Mr do Rosário. On 31 July 2013, Mr Pearse asked Mr Singh by email to add US\$25 million to the initial proposal of US\$800 million as “CAPEX for Ematum locally so they are ready for operations”. The request, coming at this point, illustrated the fact that EMATUM’s ability to use the vessels had not been properly considered. Even then the addition was directed to capital expenditure alone, while a true, credible, project would require major operational expenditure.
151. On the same day, Mr Pearse sent Mr Boustani an email in which he suggested claiming that proposals for the Second Project had been sought from four shipyards. He said “we need to have names” of the yards and asked if price comparisons with other yards could be shown. Mr Boustani’s idea was:
- “Let’s say they contacted South African yards and Spanish and Portuguese. Without naming.”
- Three names of shipyards in Holland, Italy and Spain were given.
152. Mr Pearse also asked Mr Boustani for a cost breakdown and a profitability analysis. A “cost structure” showed the cost of 24 fishing vessels, along with all other associated goods and services, including IP licence and technology transfer, spare parts and training, in respect of those vessels was around EUR76.8 million under what was known as the Longliner Subcontract. As Mozambique points out, this would imply a cost per vessel to the Privinvest Group, inclusive of the associated goods and services just referred to, of EUR3.2 million. A figure of EUR11.8 million per vessel was proposed to be charged to Mozambique, as estimated by Mr Boustani. Mr Boustani asserted the margin the Privinvest Group were making was 36%. It was in fact far more.
153. Under what was known as the Ocean Eagle Subcontract, the cost was around EUR52.5 million although there were differences in the items to be supplied. Notwithstanding, the pricing again compared starkly with the higher prices being charged to Mozambique.
154. By 1 August 2013 the proposed loan had increased to US\$850 million. Credit Suisse’s Credit Risk Management (“CRM”) Department received a ‘heads up’ memorandum in that figure. The proposal was for a loan that would then be repackaged and sold as a bond. In the event, Credit Suisse declined to underwrite more than US\$500 million.
155. EMATUM itself was incorporated on 2 August 2013. Its board included Mr do Rosário and Ms Lucas. SISE had a 33% interest, the Ministry of Finance 34% indirectly, and the national fisheries company 33%. The supply contract was entered into the same day with the Privinvest Group company Abu Dhabi Mar (signing by Mr Allam as Chief Financial Officer) and by Mr do Rosário and another for EMATUM at a total ex works price of US\$785.4 million (“the EMATUM Supply Contract”).
156. The Preamble read:

“The Republic of Mozambique has identified the need to develop a modern and efficient fishing industry as a critical step in the social and economic development of the country. [EMATUM], wholly owned by relevant ministries within the Republic of Mozambique, has been granted authority to acquire and operate:

- a) A land operations coordination center;
- b) 3 Trimarans;
- c) 21 longliners; and
- d) 3 bait fishing trawlers.

For the benefit of the Republic of Mozambique.

Abu Dhabi Mar LLC ... is willing to supply the required vessels (and defined equipment for the coordination center) and to provide basic operators training and support to [EMATUM] to help further develop the fishing industry in the Republic of Mozambique.”

157. Clause II provided as follows, and its limits from the vantage point of Mozambique’s interests should be noted:

“[Abu Dhabi Mar] shall ... subject to due compliance with all applicable laws, grant or procure the grant to [EMATUM] of a non-exclusive, non-transferable and royalty free licence to [EMATUM] to use relevant intellectual property related to the Vessels.

This licence will incorporate terms pursuant to which the prior consent of [Abu Dhabi Mar] will be required if products, utilizing the intellectual property, are to be supplied (directly, or indirectly) to countries other than the Republic of Mozambique (“Licence”).

The associated technology transfer related to the Vessels will be provided. This technology transfer will be structured and designed so as to enable [EMATUM] to have the capability to build the same vessels at an agreed site within Mozambique (which [Abu Dhabi Mar], in its absolute discretion, deems appropriate).

The technology transfer will include start up – on-site (including from engineers from or on behalf of [Abu Dhabi Mar] support in Mozambique during initial ship-building, “on-the-job” training for appropriately qualified and key (and to be determined) Mozambique engineers at the site where the Vessels the subject of this contract will be made and support for procurement and contract and equipment management and acquisition.

The last sentences of Clause II read:

“As part of this process [Abu Dhabi Mar] will provide technical data packages but will not provide any equipment or infrastructure.

Each of the Vessels will be supplied with such on-board base spare parts as [Abu Dhabi Mar] deems appropriate.”

158. Clause VIII(E) of the EMATUM Supply Contract then provided for Abu Dhabi Mar to invoice the full amount of the purchase price to EMATUM on or about the day of the

contract. By Clause V the contract became effective on signature and receipt of the total invoice price by Abu Dhabi Mar in its bank account.

159. Mr Pearse asked if the Deputy Director of Fisheries, and Ms Lucas were up to speed on the Second Project. Mr Boustani replied: “I am sure they are not”. He continued that they had just signed the EMATUM papers. Mr Pearse responded that he had explained to Mr Singh how questions should be asked to ensure that lack of knowledge of the project on the part of Mozambican officials would not be exposed.

160. On 4 August 2013, Ms Subeva reported:

“Just spoke with Antonio [do Rosário] on the financial model and overview of all the points in my email so he should be in a good shape. Told him again if too specific, to write down the question and revert.”

The next day she drafted answers to due diligence questions received from Credit Suisse and sent these to Mr do Rosário and to Mr Singh. Mr Singh then sent Mr Boustani some further due diligence questions again to enable Mr do Rosário to prepare.

161. On 9 August 2013, Palomar was appointed by Abu Dhabi Mar as “Arranger and Financer” in relation to EMATUM. Palomar was to receive 10% of the purchase price that Mozambique would be paying under the EMATUM contract. It was duly paid US\$49.2 million in September 2013 and US\$27.64 million in October 2013.

162. Central Bank approval for the borrowing was given on 21 August 2013. On 30 August a Facility Agreement for a 7-year term was signed between Credit Suisse, (by Mr Singh and another) and EMATUM (by Mr do Rosário and another) (“the EMATUM Facility Agreement”). On the same day, and to enable the Second Project, Minister Chang executed a guarantee on behalf of Mozambique and in favour of Credit Suisse of borrowing by EMATUM under the EMATUM Facility Agreement (“the EMATUM Guarantee”).

163. It was Mozambique’s case that the EMATUM Guarantee again breached the State Budget Law, the Mozambican Constitution, the SISTAFE Law and the requirement for a “*visto*” from the Administrative Court. As noted below, the Government was later to state that it had obtained authorisation from Mozambique’s Assembly, or parliament, for an increase of US\$500 million on the limit on guarantees under the Budget Law.

164. Credit Suisse then entered into a US\$500 million Loan Participation Note programme. Its rights under the EMATUM Facility Agreement and the EMATUM Guarantee were transferred to EMATUM Finance 2020 BV, a Dutch special purpose vehicle, and thence to a trustee for the benefit of holders of the Loan Participation Notes. US\$500 million in Notes were then issued. The Prinvest Group paid Credit Suisse US\$41,710,882 in “Contractor Fees”. A SWIFT payment of US\$446.9 million was made by Credit Suisse to the Prinvest Group on 11 September 2013.

165. The Second Project was the subject of a press conference at the Prinvest Group’s shipyard in Cherbourg on 5 September 2013 attended by Minister Chang, Mr Safa, Ms Lucas, Mr do Rosário and by Ministers from the French Government. News coverage followed. The Seychelles Fishing Authority and the Korean Tuna Fishing Association were approached by Mozambique to discuss possible collaboration.

166. At one earlier point President Guebuza had described the Second Project as “a nationally critical project”. He joined President Hollande of France at the end of September to announce it. On 27 November 2013 the then Prime Minister of Mozambique was reported as describing the Second Project as part of a “development strategy based on the integrated and balanced exploitation of our natural resources.”
167. The reality was that, among others, Mr Safa and the Privinvest Companies had no basis for thinking that the Second Project had been properly scoped and prepared and was sustainable. In fact through Mr Boustani the Privinvest Group knew that it had not and was not, as did Mr Pearse, Mr Singh and Ms Subeva.

### **The Second Project, continued: the EMATUM “Tap”**

168. A lender for the US\$350 million balance of the US\$850 million lending on the Second Project was required after Credit Suisse limited its involvement in the project to US\$500 million.
169. Mr Makram Abboud of VTBC was sent an offering circular for EMATUM by Credit Suisse. On 16 September 2013 Mr Abboud met Mr Pearse in Dubai. Emails and a call followed over pricing.
170. What became known as the “EMATUM Tap” transaction was discussed in a meeting of VTBC’s Global Engagement Committee on 18 September 2013. Mr Abboud, a Mr Hamilton, a Mr Berliner and Mr Oliver Cox, among others, attended. Mr Cox, of VTBC’s compliance function, gave evidence at the trial.
171. At the meeting, Mr Abboud described “Privinvest”, not EMATUM or Mozambique, as “the end client” and “our client”. Mr Cox intervened, asking:
- “who is this company, what are they doing; how much we know about them; how much we know about Mozambique. I don’t know anything about anything about this. Have we KYC’d something we know nothing about [inaudible]”.
172. In cross-examination, Mr Cox accepted that the transaction, as presented at this meeting, required due diligence on the transaction and the borrower and that VTBC needed to “understand the broader picture”. Mozambique suggested that the transcript of the Global Engagement Committee meeting recorded other members of the Global Engagement Committee treating Mr Cox as an obstacle to the bank’s commercial objectives and his concerns as a matter of ‘tick box’ compliance. I think that summary goes too far.
173. The Global Engagement Committee approved the proposed participation subject to approval from the compliance function and VTBC’s Credit & Investment Committee. Mr Abboud called Mr Cox later the same day, advising that it would be difficult for Credit Suisse to give any more information than in the Offering Circular. He stated that the Offering Circular was:
- “... all I can get for now without triggering a further fight with [Credit Suisse] and getting the end client more frustrated and then them choosing the easier option which is sticking to [Credit Suisse]”.
174. There was no sign that “sticking to Credit Suisse” was in fact an option, as it had limited its involvement to US\$500 million. Mr Abboud went on to explain the business of the Privinvest Group by reference to “their website” and the “long history” of the Safa family. Mr Cox

confirmed in cross-examination that this was the entirety of the information on Mr Safa and the Privinvest Group that was provided to the compliance function by Mr Abboud and VTBC's deal team.

175. At a joint meeting of the Global Engagement Committee and the Credit & Investment Committee on 19 September 2013 Mr Cox said that "KYC was in train and no problems or showstoppers were expected".
176. Mr Abboud (alone from VTBC) attended a meeting at the Privinvest Group's offices in Barbossi, France with at least Mr Boustani, Mr Pearse and (I am satisfied) Ms Subeva. Mr Abboud provided no record to VTBC of what was discussed at this meeting or on this visit. The visit was also omitted from chronologies that VTBC later provided to the Financial Conduct Authority in London and which were described as a "Due Diligence Narrative".
177. Mozambique regards each step as suspicious, and they do require pause. So too when Mr Richard Snookes (MLRO and Global Head of Financial Crime at VTBC) raised some questions and the answer provided as "from the client" was from Mr Boustani of the Privinvest Group and followed a call with Mr Boustani. And when Mr Aguemon of VTBC asked for KYC documents, Mr Abboud asked him to email Mr Boustani, adding "and I will call him". The interaction was not with Mozambique or EMATUM.
178. VTBC's compliance function produced what was termed a "High Risk Relationship Business Rationale" document. Mr Cox explained that this mapped out the information that the compliance function had at the time with respect to financial crime, and he was cross-examined on it. It recorded Mozambique's Transparency International 2013 Corruption Index ranking, which was then 123 out of 174 countries. Mr Cox agreed that this rating meant Mozambique was a "country with a corruption problem".
179. The documents recorded that: "The contract with EMATUM was already in place prior to VTBC Capital's proposed involvement in the transaction." The documents also recorded that the compliance function at VTBC saw the EMATUM Supply Contract. There is, however, no record of any individual at VTBC turning their mind to the process by which that contract was obtained by the Privinvest Group, or to its terms.
180. Mr Cox accepted in cross-examination that the process by which the contractor had obtained a supply contract could be relevant from a financial crime perspective. He also accepted that it would be important to find out whether there had been a public tender process (a 'risk additive' factor) and that if there had not been a public tender process it was all the more important to understand how the contract had been obtained. If there was no visibility on this, he accepted that the risk that the contract had been obtained corruptly would be an "important matter".
181. Mr Hamilton of VTBC at an earlier stage had volunteered that the "IMF is on top of" the use of proceeds, but his basis for saying this was simply that otherwise Mozambique "wouldn't have been able to do it". The "High Risk Relationship Business Rationale" document did not record the existence of the Proindicus Supply Contract or the subsequent change orders, or any due diligence on Mr Safa.
182. Notwithstanding these circumstances, on 27 September 2013 at a joint meeting of the Global Engagement Committee and the Credit & Investment Committee, with Mr Abboud in attendance, VTBC's participation was approved subject to conditions. It was awarded a

mandate to arrange and manage the further issue and offering of US\$350 million of Loan Participation Notes, signed by Mr do Rosário for EMATUM and by Mr Abboud and another for VTBC. The Subscription Agreement for the related Notes was executed on 7 October 2013, and again was signed by Mr Abboud and another for VTBC.

183. By a letter dated 27 September 2013 between Abu Dhabi Mar and EMATUM (signed by Mr do Rosário) it was recorded that Abu Dhabi Mar had to date received US\$492 million under the EMATUM Supply Contract and that the parties “now agreed” that the total contract price was US\$836.3 million with a balance due of US\$334.3 million.
184. US\$31.5 million of the additional US\$350 million lending was applied as a fee directly to VTBC. On 11 October 2013 VTBC was instructed to pay US\$314,738,958.33 in respect of the Notes. By letter dated 11 October 2013 between EMATUM, Credit Suisse and VTBC it was agreed and acknowledged that a payment of US\$312.9 million would mean the principal amount outstanding of the lending would be US\$850 million.
185. The IMF does appear to have had greater visibility over EMATUM as compared with Proindicus. On 30 October 2013 the IMF recommended, after a visit to Mozambique, that “possible non-commercial activities associated with” EMATUM “be included in the 2014 budget and transparently reflected in the fiscal accounts”. The Government stated that, to support EMATUM’s “commercial activities” it had obtained authorisation from Mozambique’s Assembly, or parliament, for an increase of US\$500 million on the limit on guarantees under the Budget Law.
186. On 20 December 2013 the Government informed the IMF in a “Memorandum of Economic and Financial Policies” that it had incorporated in a revised budget US\$350 million of EMATUM non-commercial activities “as part of the appropriations for the Ministry of Defense”. A letter from the Minister of Finance National Budget Directorate dated 14 July 2014 states that part of the debt contracted by EMATUM and equivalent to US\$350 million was assumed by the Government “since it concerns the assumption of public utility equipment that aims to advance the Public Interest”. (Later, in June 2015, by which point Minister Nyusi had become President of Mozambique, the then Minister of Finance Mr Adriano Maleaine, announced to the Assembly that after “a more exhaustive survey” the Government had decided that US\$350 million of the loan should be EMATUM’s responsibility and US\$500 million the State’s.)

### **Further payment to Minister Chang**

187. A further US\$5 million was paid to the benefit of Minister Chang on or about 21 October 2013, 12 November 2013 and 4 December 2013 by Privinvest Group. Mr Safa and the Privinvest Companies accept that the Privinvest Group company Logistics International SAL (Offshore) made payments of this total on these dates to an account in the name of Thyse International Incorporation (“Thyse”) at Banco Espirito Santo S.A. Madrid.
188. A spreadsheet (“the Senanyake Spreadsheet”) was drafted by a Privinvest Group employee named Ms Ayomin Senanyake. Ms Senanyake worked with Mr Allam. This recorded payments for Minister Chang totalling US\$5 million and split as US\$3 million as “Ph1 Ematum” and US\$2 million as “Ematum upsize 350Mio”. The third of the three sheets at rows 22, 24 and 25 shows, as “debits”, disbursement to Minister Chang of the US\$5 million in three payments of US\$1.5m, US\$1.5m and US\$2m made respectively in September, October and December 2013 to the account in the name of Thyse.

189. When Mr Safa was asked about this by Mr Adkin KC there was this exchange:

“Mr Adkin KC: Now, just sticking with Mr Chang. The reason these credits are shown in this EMATUM spreadsheet and the reason the first is described as “Ph 1 EMATUM” and the second one is described as ”EMATUM upsize 350Mio” is because these were bribe payments which you had promised to pay to Mr Chang, firstly in relation to the initial 500 million for EMATUM and secondly in relation to the upsize, the tap, yes?”

Mr Safa: No, there were no bribes and I didn’t promise anything to Mr Chang in terms of bribes. So this we have said it all along. But I haven’t understand, Mr Adkin. My question was, why do we have debit and credit? For me to understand the paper.

Mr Adkin KC: I am going to suggest to you –

Mr Safa: I understand credit is when somebody pays.

Mr Adkin KC: I am going to suggest to you, Mr Safa, that it is quite obvious why one has credit and debit. Credits record the promises that had been made in relation to the EMATUM first phase and the EMATUM upsize to pay Mr Chang these amounts, and the debits reflect the dates on which he was paid or when the instructions to pay him were given those amounts.

Mr Safa: No, if it’s a bank transcript, Mr Adkin, and trust me, I know how to read bank transcripts, when they put credit, it means it’s money they have received. When it is debit it is money that went out. So I don’t know this document. I told you this, but I don’t need to repeat it. But if it is a bank transcript, that’s what it means. So ... obviously I didn’t see it. I cannot comment on it. And the author of this document, is it the assistant of Mr Allam or is it a bank that sent it to her? I don’t know.

Mr Adkin KC: It is not a bank. It is the assistant of Mr Allam. You decided who would get bribed and how much they would be bribed in relation to EMATUM 2 and you gave instructions to Mr Boustani and Mr Allam in relation to that, didn’t you?

Mr Safa: No, Mr Adkin, I did not.

Mr Adkin KC: And you gave strict instructions as to how the payments were to be made and Mr Allam would not depart from those instructions without checking with you beforehand, would he?

Mr Safa: Mr Adkin, I didn’t give instructions, neither strict or less strict, to Mr Allam to pay bribes to anybody.”

190. The Senanyake Spreadsheet also shows sums for Mr Leão (labelled “DG”, the initials of his post as Director General of SISE) totalling US\$8 million, split US\$4.7 million as “Ph1 Ematum” and US\$3.3 million as “Ematum upsize 350Mio”, and for Mr do Rosário (labelled “Rosario”) totalling US\$8.7 million, split US\$5 million as “Ph1 Ematum” and US\$3.7 million as “Ematum upsize 350Mio”. Sums are also shown to Mr Ndambi Guebuza (labelled “ArGe”) totalling US\$20 million, split US\$11.8 million and US\$8.2 million against the same rubric, to Mr Singh (US\$4.5 million) as “Ematum upsize 350Mio”, and to Mr Boustani (labelled “JB”), split US\$5 million as “Ph1 Ematum” and US\$3 million as “Ematum upsize 350Mio”.

191. Each of these sums was given a reference (in column J) of “Em-Cons” or “EmatumConsUp2”. The reference included an abbreviation of the word “consultancy”, a

term that did not reflect the reality. The same approach is taken to other recipients: by way of example, 16 sums in respect of a variety of recipients are recorded as ‘debits’ ultimately for Mr do Rosário totalling US\$10.43 million. 7 sums totalling US\$7.53m to a variety of recipients are recorded as ‘debits’ ultimately for Mr Leão. This sheet also records a US\$0.5m payment to a Mr Antanas Petrosius, marked “EMATUM SS AP 4524”.

192. The Allam Spreadsheet further references these matters. The file name for the document is “EMATUM Group Cash Position”. Under a tab labelled “EMATUM”, rows 29 – 36 detail payments, including US\$3 million and US\$2 million to Minister Chang.

193. Referring to the payments, Mr Allam said to Mr Boustani at one point that Mr Safa was:

“... insisting on having the invoices (previous and future) Try to convince them to do so”.

Mr Boustani said he would do his best, but added:

“But we can’t stop the transfers till then. We need the[m] hap[p]y clap[p]y :-)”.

For Mr do Rosário, Mr Boustani said “ok for everything future.” However, for Minister Chang, Mr Boustani said: “[f]or Chopstick he said no.”

194. On 7 October 2013 there was this exchange between Mr Boustani and Mr Allam. (Despite the transmission time shown, the content in my judgment suggests the sequence is as I here set out):

“Mr Boustani to Mr Allam:

Hi

I guess we did another: 1 million to DG?

So total is 3 now?

Please let’s stop now, because he wants to change the "address".

For Chopsticks, please let’s do 1.5 today. It is very important.

Chopstick total will be all in all 7 (2 for ProIndicus and 5 for Ematum).

FYI, inchalla by Friday we will receive the remaining 350 million of Ematum.

Last: please can you send me a full statement of Rosário up to date (date and amount of each transfer)?

Thanks m3alem.”

Mr Allam to Mr Boustani:

Hi For DG (proindicus) we did in total 2 (1 in Aug and 1 in Sep)

1.5 for CH (ematum) done today.

For Rosário (ROS1) i cannot track early payments (before i received the breakdown by name) we have in total

for ProIndicus 5.32 Mio and for Ematum 840k”.

195. In the exchange “DG” is again Mr Leão, “Chopstick” “Chopsticks” and “CH” are each Minister Chang. The figures are in millions of dollars. In the case of Minister Chang, the US\$2 million is associated with Proindicus and the US\$5 million with EMATUM. Mr Safa and the Proindicus Companies referred to the exchange as an example of a communication that was a reflection of “Prinvest’s genuine intention to invest in Mozambique”. I do not agree.

### **The First Project: the “VTBC Proindicus Upsize”**

196. On 30 September 2013, Mr Pearse wrote to Mr Boustani and Ms Subeva stating:

“I expected ematum 2 to fund next week. Once that is done, can we schedule a trip to moz?”

He set out a series of next steps which included “push Proindicus revenues”, before saying:

“I suggest we invite Uncle [Mr Singh] and Makram [Abboud] and take them to the north for a couple of days to bond and strategise.”.

197. No response to this email has been disclosed. It was suggested to Mr Boustani by Mozambique in the course of his cross-examination that the reason for the invitation was because Mr Singh and Mr Abboud were part of an inner circle of people that had been corrupted. Mr Boustani’s response was that they were too junior within Credit Suisse and VTBC to be worth corrupting. I agree with Mozambique that that answer was not an honest answer. However, the dishonesty of Mr Boustani’s answer is not enough to prove the allegation about Mr Singh and Mr Abboud made within the question put by Mozambique.
198. On 12 October 2013, Mr Abboud had lunch with Mr Safa and Mr Boustani in Abu Dhabi. A few days later, on 16 October 2013, Mr Abboud shared details of a potential “upsized” of the Proindicus loan with Mr George Biddulph of VTBC, attaching a memorandum prepared by Credit Suisse and asking him confidentially and urgently to sound out insurance appetite.
199. The memorandum was in fact from February 2013 and projected US\$700 million of revenue to Proindicus from the First Project in the first five years. It set out that this was sufficient to:
- “i) cover the operating expenses of the Project, ii) service the financing related thereto, and iii) generate additional funds for the Government.”
- Management’s estimate of revenues was stated as US\$121,803,620 in Year 1, and US\$60,901,810 even in a “more conservative scenario allowing for some delays in delivery or ability to ramp up revenue receipts”.
200. On 23 October 2013, Mr Abboud again had lunch with Mr Safa in Abu Dhabi. Details of the proposed upsized, at US\$118 million, were shared with VTBC in an email from Ms Subeva to

Mr Abboud on 29 October 2013. The email attached an “information package”, including a ‘latest financial model’.

201. Mr Abboud forwarded Ms Subeva’s email to members of the VTBC team the next day, on 30 October 2013, writing:

“... [w]e need a very quick turnaround on this. [Credit Suisse] is trying to do it but if we quick like last time it is ours.”

Mr Biddulph explained in evidence that at the time VTBC was seeking to establish itself as a serious player in sub-Saharan Africa, including Mozambique. Mr Javier Caldeiro of VTBC also gave evidence but he had limited involvement at the material time given holiday arrangements. In cross-examination, Mr Cox explained that his understanding was that the urgency in relation to this and “all of the transactions” arose because this was an opportunity for VTBC “to win a transaction from a much larger, much more well established global investment bank” and thus to “punch above its weight”.

202. Mr Abboud noted to senior management on 3 November 2013 that:

“The transaction is very similar in nature to the last one, in the sense that we would join an existing transaction rather than lend the funds independently. Also, like last time, it consists of a 100% State owned Mozambican company ... benefiting from an explicit irrevocable and unconditional guarantee from the Ministry of Finance.”

203. A joint Global Engagement Committee and Credit & Investment Committee meeting on 5 November 2013 approved the transaction subject to conditions. The only conditions imposed by VTBC’s Credit & Investment Committee related to the existence of insurance hedges at the date of execution, receipt of a legal opinion, circulation and review of the contracts, and legal review.

204. The Credit & Investment Committee Memorandum prepared for the meeting on 5 November 2013 recorded that “The Borrower expects to service debt out of own cash flows”. In cross-examination by Mr Ciaran Keller, for Mozambique, Mr Biddulph explained that the fact that the borrower expected to service its debt out of its own cash flows was “a key part” of the project, including for insurers. In that regard, the ‘latest financial model’ in the information package attached to Ms Subeva’s email to Mr Abboud of 29 October 2013 had represented an anticipated US\$20 million of revenue to December 2013, followed by revenues of US\$121 million in 2014 and US\$165 million in 2015. The differences between these figures and those in the February 2013 memorandum stand out.

205. Mr Biddulph accepted that there were obvious questions on the face of the documents as to whether the First Project would really be self-funding. The banking experts agree that the documents would have appeared superficial to the reasonable banker. The expert evidence of Mr Berman was that a lack of commerciality of a business plan would be a ‘red flag’ for financial crime. As Mozambique points out, VTBC also did not once query why the First Project had expanded and changed so dramatically, from a US\$366m contract to a US\$616m contract in the space of 9 months. The banking experts agree that the speed and quantum of increase in project value on the Proindicus transaction was a ‘red flag’. Mr Cox explained in cross-examination that he did not have a contemporaneous understanding of why Proindicus wanted to expand the project.

206. A “contractor fee” was proposed to be paid by the Privinvest Group, and the banking experts agreed that a reasonable banker should also have sought an explanation as to why contractor fees were being paid. The banker would want to understand whether the contractor’s ability to pay contractor fees reflected a large profit margin on the underlying contract, which could point to the risk of bribery and corruption. As Mozambique points out there is no record of anyone at VTBC properly discussing the contractor fee with Mr Abboud or considering the related risk. No third-party due diligence was carried out on the Privinvest Group or Mr Safa.
207. Nor, points out Mozambique, was any explanation obtained as to why the Proindicus Supply Contract provided for the entire purchase price to be paid upfront, without stages, not linked to performance or milestones. In cross-examination by Mr Keller for Mozambique, Mr Biddulph accepted that was unusual in his experience, and he could not recall having seen an explanation for it at the time.
208. Mr Cox, of VTBC’s compliance function, acknowledged that:

“looking at it from compliance perspective it was straightforward that the client here, for VTB Capital Plc is Proindicus as the borrower”.

However, KYC requests were directed towards Ms Subeva and Mr Boustani (that is Palomar and the Privinvest Group). Mr Cox could not explain in cross-examination:

“... the precise nature of how the interaction was between Mr Abboud and Proindicus and Mr Abboud and Privinvest”.

As with the EMATUM Tap, there appears to have been no direct communication between Mr Abboud and Mr do Rosário (or anyone else at Proindicus) without Mr Boustani’s intermediation. The banking experts agreed that the use of an intermediary between the borrower/guarantor and the bank, particularly during risk assessment and detailed negotiations, would be a ‘red flag’.

209. In addition, at no point during the due diligence process, such as it was, did VTBC investigate the project’s compliance with the IMF’s Non-Concessional Borrowing Limits. Mr Berman’s expert evidence confirmed the evident:

“Mr Smouha KC: “Let me try and put the question slightly differently. If in the course of doing basic due diligence on credit risk issues in relation to IMF restrictions the reasonable banker obtained information that raised questions, suspicions about whether the proposed additional debt was being concealed from the IMF, that would be suspicious and would be a financial crime concern as well?”

Mr Berman: Absolutely. Any intention to conceal the IMF, conceal anything from the IMF, whether the country is inside or outside its limits, would be very suspicious, yes.”

210. The banking experts also agreed that a reasonable banker would investigate what the required budget approval within Mozambique was for a transaction. Yet there was also no documented investigation by VTBC of the position. Inquiries would have yielded answers which raised further questions: as set out above, Mozambique’s Assembly had in the State Budget for 2013 authorised a maximum of the equivalent of c.US\$6 million of State guarantees, in circumstances where the VTBC Proindicus Upsize would take the sum guaranteed in respect

of Proindicus alone to US\$622 million in 2013, and there had been no rectification of the budget or proposal to do so.

211. On the same day as the joint Global Engagement Committee and Credit & Investment Committee approved the transaction subject to conditions, at 8.45am (London time) 5 November 2013, a phone call took place between Mr Abboud and Mr Agumon in which Mr Abboud tackled Mr Agumon for “re-sending” to Mr Abboud’s office account an email sent to Mr Abboud’s private account.
212. Mr Abboud demanded Mr Agumon erase the email, which Mr Agumon duly did. This can only have been, said Mozambique, because Mr Abboud was concerned that its contents might compromise his ability to push the transaction through the Global Engagement Committee. It might have raised suspicions about his own conduct, his involvement with Mr Safa and the Privinvest Group, and knowledge of what the transactions were really about.
213. And, still on the same day, 5 November 2013, VTBC had received what Mr Agumon (in an email to Mr Soloviev, the Chairman of VTBC and Chairman of VTBC’s Management Board) was to describe as a:

“compromising email from the Mozambique contractor with reference to the use of proceeds which brought into question our integrity toward the clients of the firm and this is something I was not comfortable with.”

214. On 13 November 2013, Mr Raza Agha (Chief Economist of VTBC) circulated a ‘Mozambique Update’ internally within VTBC. The update extracted a press report in relation to EMATUM titled ‘\$850 million bond issue threat to budget support’ and noted that similar reports of donors’ concerns about the “lack of transparency surrounding the issue” were on Bloomberg. The press report stated:

“Indeed, it appears that most of the government was caught by surprise by the bond issue. And in a surprisingly pointed interview in the Notícias economic supplement Friday 8 November, the Bank of Mozambique administrator Waldemar de Sousa warns that debt service payments have risen 25% in the past year. Mozambique must be careful to only take loans for projects which will generate enough profit to repay the debt, he cautions. ... Donors argue that such a large government guarantee given without parliamentary discussion and inclusion in the budget violates the budget law. Donors are also appalled at the total lack of transparency; even the IMF was not informed before its recent visit, and only discovered through its banking contacts.”

215. The next day, Mr Nick Joseph (Global Chief Risk Officer for VTB) emailed Mr Abboud and another referring to the press report, asking about the total value of some of the vessels and whether they are “supplied with the standard weaponry etc.” Mr Abboud responded that the transaction was for the sale of search and rescue boats.
216. On 15 November 2013, Mr Agha, as Chief Economist, circulated a further ‘Mozambique Update’ within VTBC. This noted public concerns expressed by the G19 group of bilateral donors regarding the use of proceeds on EMATUM and press reports suggesting that only US\$270 million of the US\$850 million EMATUM proceeds was being used for the purchase of tuna fishing and patrol vessels and that it was unclear what the remaining US\$580 million was being used for.

217. The VTBC Proindicus Upsize was executed the same day, on 15 November 2013. Mr Abboud was a signatory on each of the transaction documents on behalf of VTBC. A SWIFT payment of US\$100,512,400 from VTBC (as increase lender) was made by Credit Suisse International (as arranger) to the Privinvest Group that day.
218. That evening, Mr Abboud emailed Mr Boustani and Mr Pearse, without his VTBC colleagues in copy. The subject line read: “Call me the Miracle Worker” and attached the instructions for the payment by Swift of the sums to the Privinvest Group. Mr Boustani forwarded the email to Mr Safa.

### **Further payment, including to Minister Chang**

219. In one sheet within the Allam Spreadsheet labelled “Conso Bank Position”, under the heading “Proindicus”, sums are shown as due to “Consultants Bal Ph 1, 2, 3”, signifying payments against the original transaction with Proindicus (“Ph 1”), and the first two Proindicus Upsizes (“Ph 2” and “Ph 3”).
220. Beneath that a further sum is recorded as payable to “Consultants Ph4” in respect of the VTBC Proindicus Upsize. A further sheet labelled “New Conso” sets out to whom those sums were payable. It shows “Balances as at Nov 5, 2013...w/Proindicus Phase 4”. It then records, under the heading “Partners”, alongside sums payable against EMATUM, sums payable against “Proindicus Ph 4”, in a set of cells coloured purple. These include US\$400,000 for Minister Chang (“CH”).
221. Other sums included are US\$500,000 for Mr do Rosário (“Ros”), Euro1 million and US\$1.5 million for Mr Leão (“DG Ph4”), US\$1 million for Mr Matusse (“Prof”) and US\$100,000 for Ms Thokoane (“Bassy”), US\$100,000 for Mr Langa (“Bruno”) and US\$5.12 million for Mr Ndambi Guebuza (“ArGe”). The Allam Spreadsheet includes sums payable to Mr Boustani (“JB”) for “Ph4” of US\$2 million. US\$2.25 million and Euro 700,000 is shown as payable in relation to Mr Pearse (“AP”).
222. Two payments were made by Mr Pearse to Mr Singh on 16 September 2013 and 27 October 2013, in the sum of US\$1 million, each from an account of Mr Pearse. US\$3.7 million was paid by the Privinvest Group to Mr Singh between October 2013 and February 2014 (in four tranches of US\$0.8 million and one of US\$0.5 million). On 20 October 2013, Mr Pearse provided bank details of Mr Singh (“Uncle”) to Mr Boustani for payments to be made.
223. On 12 November 2013, Mr Pearse emailed Mr Boustani about a payment to be paid to Mr Antanas Petrosius (codename “Radar”) for the “EMATUM project”. After Mr Allam explained that this payment had been not budgeted with him, Mr Boustani requested that US\$0.5 million from the US\$4.5 million previously allocated to Mr Singh be diverted to Mr Petrosius. On 17 November 2013, Mr Boustani emailed Mr Allam with instructions to transfer additional sums “[s]ince we completed Proindicus”. Mr Boustani went on to write that: “[Mr Singh] is now 4.5m\$ after we completed the last 118m\$ [the VTBC Proindicus Upsize, received by the Privinvest Group on 15 November 2013]. But Iskandar will confirm to you anyways.”
224. On 20 November 2013 an email was sent by Mr Allam to Mr Safa’s secretary with the subject line (in French in the original) “to Mr Safa”. Attached was a breakdown of what were termed “consultants”. Sums totalling US\$79.57 million for Proindicus (“P”) and EMATUM (“E”) were listed with sums against references indicating Mr Ndambi Guebuza (US\$48.37

million), Mr do Rosário (US\$2.5 million), Minister Chang (US\$1.78 million), Mr Leão (US\$7.78 million), Mr Pearse (US\$ 2.41 million) and Mr Singh (US\$2.74 million).

225. It is convenient to note here that as for the payments to Mr Singh, the Privinvest Companies and Mr Safa contend that they were told by Mr Pearse that Mr Singh should be persuaded to join Palomar and that these payments were ‘advances’ deductible from future sums payable when (as then contemplated) Mr Singh joined Palomar, and, when in the end he did not, they were repayable.

### **Further towards the Third Project: MAM**

226. The path towards the Third Project had begun in early 2013, as described earlier.
227. On New Year’s Eve 2013, Decree 91/2013 was issued by the Council of Ministers of Mozambique, a Council that included President Guebuza and Minister Nyusi. The Decree concerned the creation of an “Integrated Monitoring and Protection System” (also known as “SIMP”). The Decree was considered within the Government over some months before it was issued. Minister Nyusi himself had presented the draft Decree to the Council of Ministers on 26 November 2013. At a meeting on 16 December 2013 attended by Minister Nyusi there had been a discussion of the “operationalisation” of the “System”.
228. Mr Matthews KC noted the involvement of Prime Minister Vaquina at the time for what he terms “the overarching project”, and that Mozambique did not call on him as a source of evidence now, or explain his absence.
229. A Concession Agreement was concluded in early 2014 under which Proindicus was granted a concession regarding the management and implementation of the SIMP. There is no evidence to show that the SIMP Concession Agreement was published or gazetted or the concession utilised. It received a “*visto*” from the Administrative Court on 12 November 2014.
230. In the first month of 2014 the IMF published a report in relation to EMATUM. It noted:

“In light of the scale of this borrowing (\$850 million or 6 percent of GDP), the authorities intend to delay the contracting of other non-concessional debt in the pipeline to remain within the PSI external debt ceiling (US\$1.2 billion).”

The report pointed out the consequences in terms of other projects likely to be “delayed somewhat” as a result. These included a new road, the development of a free trade zone, and the Moamba Major dam.

231. The IMF observed that the medium-term economic impact of delaying these projects due to the EMATUM activities was “unclear”. However, it observed, the debt sustainability outlook was not significantly affected by the extension of the guarantee for EMATUM:

“... as long as some other non-concessional debt in the pipeline for 2013-14 is delayed”.

The report noted that the response of the donor community was unclear, and that this added uncertainty on the level of budget support in 2013-14. It added:

“... staff noted concerns, shared in the donor community, about the lack of transparency regarding the use of the funds and the secretive manner in which the project was

evaluated, selected, and implemented outside the government's macro-economic strategy and PARP [Poverty Reduction Strategy] priorities. ...”

232. The IMF’s NCBL or non-concessional borrowing limit for Mozambique was now US\$1.2 billion from end-June 2013 to end-December 2014. Of that amount, US\$895 million had already been utilised as at end-September 2013, leaving US\$305 million of headroom until end-December 2014. This meant that after US\$118 million for the VTBC Proindicus Upsize in November 2013 the headroom for new projects in 2014 was US\$187 million.

233. Meanwhile, as 2014 began, the first interest payment in respect of the First Project was due from Proindicus on 21 March 2014. The amount was around US\$19.8 million. The first interest payment would be due from EMATUM in respect of the Second Project on 11 March 2014. That was for around US\$25.1 million.

234. On 27 January 2014 Mr Boustani informed Mr Pearse and Ms Subeva, both now of Palomar, that it was “all set for 500m\$ in Moz.” Mr Pearse responded that he was reviewing a “final draft guarantee today”. On 29 January 2014, Ms Subeva asked Mr Abboud and Mr Berliner of VTBC to review a draft facility agreement and draft guarantee and requested that they:

“... send through any key changes or, alternatively, a confirmation you are happy with the docs ideally today or by mid-day tomorrow.”

235. Two days later, Mr Mammadov of VTBC emailed Mr Biddulph, copying Mr Caldeiro, saying: “as you may have heard, Moz is back...” Mr Mammadov outlined the project as “up to \$500m” with a 5-year maturity and “[f]ully guaranteed as before”, and with a use of proceeds that was “a bit murky at this point”. He asked for an indication of insurance appetite assuming use of proceeds to be “similar to Proindicus”.

236. There were further exchanges on use of proceeds. Mr Biddulph asked:

“\$500m for servicing some boats? Can we look into it a bit more at this stage?”.

Mr Mammadov replied, “Yep, that is the plan”, to which Mr Biddulph responded: “We will need the wind behind us”.

237. Ms Subeva produced a “business plan” for the Third Project. She had no experience or knowledge of shipbuilding or ship maintenance. MAM, the State-owned enterprise or SPV to be used in the Third Project, was incorporated, as a company 90% owned indirectly by SISE and with the balance owned by Proindicus and EMATUM. Three SISE officials were appointed to its Board including Mr do Rosário.

238. On 4 February 2014, Mr Caldeiro and Mr Mammadov of VTBC were provided with a “summary of the two main issues for Mozambique”, in the form of extracts of public reporting. These included this passage, reflecting on EMATUM and the Second Project:

“In addition to concerns that funds are going to be used for military purposes, budget support donors are appalled that Mozambique is borrowing such a large amount of money with no apparent plans as to how it is to be used, and in semi-secrecy. Donors argue that such a large government guarantee given without parliamentary discussion and inclusion in the budget violates the budget law. Donors are also appalled at the total lack of transparency; even the IMF was not informed before its recent visit, and only discovered through its banking contacts.”

239. The rating agency S&P downgraded Mozambique’s sovereign credit rating in mid-February 2014. On 10 February, Mr Biddulph wrote to VTBC’s insurance broker, BPL, informing them that VTBC was “putting the brakes” on, whilst the Government “engages in discussion on the EMATUM trade with the IMF and donor community to a more satisfactory conclusion”. He said that they had:

“... explained to the contractor and the Govt that we just see too much correlation amongst the trades to pay no attention to the comments that have been made recently (most particularly by the IMF last month)”.

### **The campaign for Presidency**

240. Minister Nyusi began to focus his campaign for the Presidency of Mozambique, as the FRELIMO party candidate.

241. On 7 March 2014 he attended a demonstration in Pemba of vessels supplied by the Privinvest Group and met and discussed the Third Project with Mr Boustani.

242. Four days later, on 11 March 2014, and also on 9 April 2014, Mr do Rosário (as “Manuel Jorge”) sent to Mr Boustani an invoice in the amount of US\$1 million addressed to “Logistics International Abu Dhabi” and with bank account details for beneficiary “Sunflower International Coop. FZE” at a bank in Dubai. Each invoice was stated to be in respect of “Real Estate Project Purchase in Mozambique”. Mr do Rosário stated that this was for “the future man” or “the new man”, a reference to Minister Nyusi.

243. In his statement in the Mozambican criminal proceedings (set out in the Appendix to this judgment) President Nyusi was to say that while he was Minister of National Defence he never knew of the existence of EMATUM or MAM and “had no authority or control over the extent to which those companies could be considered to have been connected to Defence and Security matters”. He was to say that in this regard he knew nothing about the processes for their organization, financing and operation and that he became aware of the existence of EMATUM and MAM “only when the matter of the so-called hidden debt came out publicly”, at which time he was no longer Minister of National Defence. His statement has not been tested in cross-examination.

### **The Third Project: MAM, continued**

244. On 27 March 2014, by email to Mr Abboud, Mr Pearse proposed that VTBC participate in the Third Project as lead manager and as co-arranger with Palomar. On 4 April 2014 Ms Subeva provided Mr Abboud and Mr Berliner with a draft updated facility and guarantee.

245. On 4 April 2014, Mr Abboud asked for “the detailed use of funds as soon as possible”. Mr Pearse wrote to Ms Subeva, without VTBC in copy, stating:

“[t]his lack of any technical scope is worrying me. It will not fly for the financing.”

246. Mr Abboud worked closely with Mr Safa and Mr Boustani in relation to the Third Project. On 15 April 2014, a call took place between Mr Abboud and Ms Daria Pavylcheva, Chief of Staff to Mr Yuri Soloviev, the Chairman of VTBC. The transcript of the call records Mr Abboud reporting to Ms Pavylcheva:

“...we are now working on a new Mozambique deal. 750m [sic], and we did the two last year. This is the new one. And again the main client there, who's behind all of this, who controls the president, again, lives half his time in France, in South of France. So I want him to meet with Yuri in May as well, so I will only need Yuri for two meetings”.

247. Cross-examined by Mr Joe Smouha KC for Mozambique, Mr Berman’s expert banking evidence was as follows:

Mr Smouha KC: And if he said "I was referring to the then President of Mozambique", that would be for the same reason of very serious concern?

Mr Berman: Yes.

Mr Smouha KC: You would agree that these are matters which at least raise questions as to whether Mr Safa was corrupt and as to whether he had obtained the contracts corruptly?

Mr Berman: Yes.

Mr Smouha KC: The fact that this information was coming from the Deal Team leader, the front line of defence against financial crime, would of course be significant?

Mr Berman: Yes.

Mr Smouha KC: And you would agree that without more, the suspicion or even belief of the Deal Team leader that the President of Mozambique was in Mr Safa's pocket, that Mr Safa controlled the President, would you agree as a reasonable banker would be very difficult to say that you could proceed with the transaction without more?

Mr Berman. Yes.”

248. I consider it likely that a meeting did take place between Mr Abboud, Mr Safa and Mr Soloviev, and find that it did. It was important in Mr Abboud’s mind. Mr Caldeiro recalled (and I accept) that Mr Abboud mentioned to him that Mr Soloviev and Mr Safa had met. Mozambique points out that VTBC has never referred to nor offered any evidence about this meeting.

249. On 16 April 2014, Mr Caldeiro reported to Roman Nagaev, the Global Head of Investment Credit and Project Finance at VTB Moscow, and to Mr Bouzoveria, on the transaction. His email records that the project “has been upsized to \$750mio”. He was prepared to describe the project as a:

“... hybrid credit, ie revenue generating project (supposedly self-funding)”.

250. On 19 April 2014 Ms Subeva had “joked”, with obvious disregard for the actual needs of Mozambique:

“I think we should make the contract for \$850mn! Wait, \$1.0 billion is better! And I think we should give them some more DV 15s because they don't have enough! (I just made myself laugh to tears [smiley face]”.

251. Mr Pearse provided Mr Abboud with a business plan for MAM on 21 April 2014. It indicated that MAM had asked the Privinvest Group to:

“... design a commercially viable proposal that encompasses the required infrastructure to meet the needs of the Mozambican Government”

The ‘Summary Project Economics’ stated that the Contractor:

“... has focused on designing a Project that addresses the immediate requirements of the Government of Mozambique, but importantly in a financially profitable way that allows MAM to repay the financing and generate meaningful profit for the Government once the financing is repaid”.

It was stated that the MAM project “aims to be an economically viable, self - financing enterprise”.

252. Three sources of revenue were listed. First, “Maintenance of Government Fleet”, a reference to the Proindicus and EMATUM vessels. Second, “Construction of Vessels per Transfer of Technology from Privinvest group”. Third, “Maintenance and Steelworks / construction for offshore gas development at Pemba”.

253. As Mozambique notes, the first depended on Proindicus and EMATUM being operational and able to pay, but there were delays on both and neither had generated any profits. As to the second, the draft supply contract indicated that assets “Making operational of Shipyard Facilities” would not be delivered for 6 to 18 months. The third listed source of revenue depended on contracts being agreed between MAM and offshore gas companies and this would (at least) take time.

254. Yet the plan projected, assuming a loan of US\$750 million, revenues within the first year of US\$63,650,000, at which point it was “expected to be nearly fully operational”, after which revenue would, it was suggested, rise to US\$422,775,000 in Year 2. When presented with those figures in cross-examination by Mr Keller, Mr Biddulph of VTBC accepted that they raised the question:

“... how do you get to that? That is great growth. How do you get there?”

255. VTBC then received an updated business plan which assumed a loan of US\$525 million. Projected revenues were now US\$69,850,000 in Year 1 and US\$400,500,000 in Year 2, with c. US\$1 billion of cash on hand by Year 8 of the project. Cross-examined by Mr Smouha KC, Mr Caldeiro candidly admitted that his assumption was that MAM would not generate sufficient revenue to service its debt, which would largely have to be serviced through the guarantees.

256. In May 2014 Mr Caldeiro of VTBC was to report:

“[T]he projects are regarded by government as self-funding through their own revenue generation potential. Some of the business plans while having sensible economic and commercial objectives (increasing local economic content in key industries), look ambitious, especially MAM’s. No comprehensive third party feasibility analysis has been conducted. Whilst I have no doubts about the level of support for and ownership of these projects by the government, I would have preferred to see less ambitious financial targets

that make it more explicit that government support might be required. I think there is a material chance that the Min Fin guarantees are called at least partially.”.

257. There was this exchange between Mr Smouha KC and Mr Caldeiro in Mr Caldeiro’s cross-examination at trial:

Mr Smouha KC: And you were sceptical, I would suggest, about - rightly sceptical about the self-funding nature of the projects but your concern was here was that a large part of that debt would have to be borne by Mozambique, by the Republic. It is not going to come from the SPVs and the project?

Mr Caldeiro: Well, that was not exactly my concern. That was my assumption that the loan would have to be largely serviced through the guarantees. That was my starting assumption. From the loan we would do the rest of the analysis, but the assumption is that the guarantees would be called.

Mr Smouha KC: So you are saying whatever was being said by Prinvest and was being said through the business plans and the proposals your assumption was that actually the loans would have to be serviced through the guarantee?

Mr Caldeiro: Yes.

Mr Smouha KC: The SPVs effectively would default?

Mr Caldeiro: Yes, but I didn't call it the SPVs but that is an aside, yes. Yes, I thought that the involvement of the Ministry of Finance would require to service the debt.”

258. As Mozambique point out there is no record that the absence of grounding for the figures was considered as a risk in relation to the procurement process, or that investigations were carried out into the circumstances in which the contract was to be obtained.

259. Mr Berman, the banking expert called by VTBC, agreed that, if the Government was in practice very likely to have to fund the project, that would raise a question why the loan was not being made to the Government directly, that a reasonable banker would want to and need to understand that, and that without a legitimate answer it would be suspicious. However, he disagreed that a reasonable banker would review the commerciality of the Business Plans or terms of the Supply Contracts in detail. This reflected the fact that the Transactions were not in his view project finance deals, but rather sovereign lending, and the banks were not therefore reliant on cash flow from the projects for repayment.

260. In a telling passage Mr Berman said:

“I just want to emphasise again that in some cases with a government guarantee on offer and a 100% state-owned entity the banker would not investigate the commercial aspects for the lack of credibility in great detail. They might roll their eyes, they might say this is a great shame, we wish state-owned entities were properly managed and were financially viable, it would be a good thing for the country if they were, but we operate in a commercial reality, we are just going to accept the Government guarantee.”

261. In late April a request for a guarantee from Mozambique, at this point said to be in favour of Palomar, was received by the Ministry of Finance. Minister Chang’s response was to order that other forms of financing should be explored that did not have an impact on public debt.

Emphasis was placed by Mr do Rosário. on national security interests requiring confidentiality.

262. On 1 May 2014, the supply contract to MAM was executed between MAM (signing by Mr do Rosário) and Prinvest Shipbuilding Investments LLC (signing by Mr Boustani) (“the MAM Supply Contract”).

263. The Preamble recorded as follows:

“WHEREAS:

(1) Certain entities owned by the Government of the Republic of Mozambique („GoM“) are contracted to acquire, inter alia, the Government Vessels (as defined below). Such vessels are being built for [Proindicus] and [Ematum].

(2) The Government Vessels require regular maintenance and servicing to remain operational and to meet the financial business plans of each of Proindicus and Ematum

(3) The Rovuma Basin and the ports of Pemba and Palma (the „Rovuma Infrastructure“) are undergoing significant capital investment to exploit the off-shore gas reserves.

(4) The policy of the GoM is to encourage the use of Mozambican companies and resources in the development of the Rovuma Infrastructure.

(5) [MAM] (the "Customer"), a company wholly owned by the GoM, has been granted authority to acquire appropriate land and infrastructure in Pemba to construct a shipyard (the „Shipyard“) at which certain vessels can be made locally using Intellectual Property licenced to the Customer as well as other equipment for the off-shore oil and gas industry and to offer maintenance and servicing of the Government Vessels and certain supply and support vessels associated with the offshore oil and gas industry in Mozambique ("O&G Vessels").

(6) Prinvest Shipbuilding Investments LLC, of Abu Dhabi ... (the "Contractor") is willing to supply or procure the supply of the Shipyard, the Local Vessels (as defined below) and the associated onboard base spare parts and to provide or procure basic training to train Mozambique nationals to undertake the necessary maintenance and servicing of the Government Vessels and O&G Vessels.

(7) To contribute to the maintenance and servicing of the Government Vessels the Contractor will make available to the Customer the Dual Purpose Vessel, and will provide the Dual Purpose Vessel Services on the terms set out in this agreement.”

264. The MAM Supply Contract again provided for full payment upfront of the purchase price of US\$500 million. Clause C of the MAM Supply Contract was headed “Indicative Delivery schedules” and provided for periods of 6 to 18 months before Shipyard Facilities would be made available and 6 to 24 months for (manufacture and) delivery of vessels (with 6 months for the making available of a Dual Purpose Vessel for 24 months). These indicative delivery times were subject to this provision:

“Delivery times (of [Prinvest Group]) are indicative only and are not of the essence of the Contract. Notwithstanding the generality of the foregoing [MAM] acknowledges that there being an appropriate number and quality of local workers, site preparation (paving,

access, security, connection to utilities etc. is its sole responsibility and any delay in such matters will cause substantial delay in the Project. Further, [MAM] acknowledges and agrees that the order in which the Shipyard becomes operational is in the sole discretion of [Prinvest Group]). ... .”

265. Between 7 and 8 May 2014 Mr Abboud and Mr Caldeiro undertook a trip to Maputo, accompanied by Mr Boustani and Mr Pearse, and with meetings including with Minister Chang, Ms Lucas and Mr do Rosário.

266. Mr Caldeiro’s “key findings” from the trip were set out in an email to VTBC’s senior management on 9 May 2014. He reported that “the government is firmly behind these projects (Ematum, Proindicus and MAM) and the financing packages supporting them” and that “the original idea behind these projects came from the office of the president with involvement of the security services following security incidents at sea”. Mr Caldeiro found “these projects fall within the sphere of the Presidential office, intelligen[ce] services and Ministry of Defence” and “whilst government didn’t run a public tender process because there was a security component to the original purpose, they checked out several potential suppliers for Proindicus”.

267. Mr Caldeiro reported that Minister Chang showed “not only knowledge of the projects” but “confirmed these projects are government priorities”, and that “by presidential decree the Min Fin is authorised to issue guarantees for commercial projects”. He was later to expand in these terms:

“Meeting with the Minister of Finance; main take away is that the Minister confirmed that the projects (Proindicus/ Ematum /MAM) were consistent with the Government’s economic objectives of creating local added value in key industries and this underpins the provision of financial support for the project. One of the main purposes of the trip was to establish that there is involvement, acknowledge and ownership of the projects by senior government officials besides those directly involved in the projects. This was ascertained during the meetings.”

268. In other places Mr Caldeiro’s report states:

“The [Ministry of Finance] is very relaxed about both donors and the IMF with whom there have been some public controversies in the past. Whilst they want to keep good relationships with both they don’t really think they are going to need them for long because they see themselves as fiscally independent in a few years when offshore LNG takes off”.

“The approval and disclosure process whilst in compliance with local regulations is not as transparent as it could have been (neither the expenditure on the new project nor the guarantee will be included in the budget because these are regarded as commercial rather than fiscal operations and by presidential decree the Min Fin is authorised to issue guarantees for commercial projects).”

269. As Mozambique points out:

“The supposed reason for non-inclusion in the budget was that this was a commercial rather than a fiscal operation. However, if it would not in fact be self-funding, and the

debt would in fact have to be serviced and repaid by the government, it would have fiscal implications, for which there was no budgetary provision.”

270. Mr Berliner had previously advised Ms Subeva that:

“We would like to include the obligation to formally notify the IMF about the Project and the proposed financing prior to disbursement with sufficient time for IMF to manifest any concerns.”

The draft updated documents did not incorporate this and Mr Berliner raised the issue again, in these terms:

“Have you considered any notification to the IMF or do you know of plans to increase the current cap on non-concessional loans? Need to understand the previous comment on the call that IMF limits would be raised. Also, is there a plan to include the liability of the Guarantee in the Government’s budget?”

The response he received was that the draft documents had been approved by Mozambique in their current form, and that save for minor changes to the loan nothing could be changed.

271. By May 2014 Mr Caldeiro and Mr Mammadov provided the following answers to the Credit & Investment Committee of VTBC, reflecting also a response by Mr Mammadov to a question from the Ms Oxana Kozliouk (VTB Global Head of Credit Risk Management):

“[D]uring due diligence meeting in Mozambique, the National Director of Treasury confirmed that there is very frequent contact with the local IMF representative and that the MAM project has been explicitly discussed with the IMF representative”.

272. On 12 May 2014, the transaction was discussed at a meeting of the Global Engagement Committee of VTBC. An ‘Engagement Approval Form’ was produced for that meeting, which identified the following “rationale for the transaction”, emphasising VTBC’s ability to make a quick return, de-risk substantially from the outset and exit entirely after 12 months:

“- Attractive deal economics for a sovereign transaction // - Follow-on transaction to Ematum and Proindicus which were 100% and 90% distributed, respectively // Ability to distribute a large part of the credit risk through unfunded instruments on Day 1 and exit the position at expiry of the lock-up period”.

273. The minutes of the Global Engagement Committee meeting recorded two concerns around Palomar. The first was that Palomar and the Contractor were “partially owned by the same shareholders”, with the result that “the beneficiary of the loan was also arranging the loan”. The second was Palomar’s fees, which VTBC’s team “assumed ... would be market standard” but “would not have full transparency on”.

274. On 20 May 2014, Andrew Wade (Head of Client Adoption Unit, VTBC) requested that enquiries be made as to the payments to be made to Palomar:

“Please can you make enquires as to the payments that will be made to Palomar. // Two of the UBO's Iskandar Safa (33%) and Akram Safa (33%) own Privinvest, who are the shipbuilders in the previous Loan Transaction. Why are they being paid a fee and what is it for? In view of the Mozambique Government Involvement we need to obtain some comfort that any fees being paid are not used in any potential corruption or as bribes. //

This is obviously very delicate and would suggest we discuss this rather than put anything in writing to the front office. Happy to be involved if required.”

In fact, Palomar was to be paid by the Privinvest Group, 15% of the contract price under the MAM Supply Contract, being US\$75 million.

275. The minutes of the 20 May 2014 Credit & Investment Committee meeting record the committee’s decision to fund “up to the value of the insurance contracts signed” with up to US\$100 million of initial participation, to be reduced to US\$50 million within 3 months.
276. Approval from the Bank of Mozambique in relation to borrowing of US\$540 million was given on 20 May 2014. Mr Abboud was a signatory for VTBC and Mr do Rosário for MAM on the facility agreement (“the MAM Facility Agreement”), with a facility limit of US\$540 million. On 20 May 2014 and to enable the Third Project, Minister Chang executed a guarantee on behalf of Mozambique of borrowing by MAM for the Third Project (“the MAM Guarantee”).
277. VTBC received legal opinions from CGA and Clifford Chance confirming that there were no issues with the enforceability of the Guarantee. It obtained written confirmation that Palomar complied with all applicable anti-bribery and corruption laws.
278. On 23 May 2014, pursuant to an increase notice and utilisation request VTBC funded US\$435 million of the MAM loan by an advance to the Privinvest Group. A payment of US\$406,542,056.07 million was made by SWIFT from VTBC to the Privinvest Group that day.
279. Thereafter on 9 June 2014 VTBC entered into a funded participation transaction with BCP pursuant to which BCP sub-funded a further US\$100 million taking the total to US\$535 million.

### **Payments to FRELIMO**

280. On 3 July 2014 four invoices were sent by Mr do Rosário to Mr Boustani for payments to Minister Nyusi. “Party” was shown as another “consultant” with payments recorded of US\$3 million, US\$2.5 million and US\$2.5 million in May, June and July 2014. Swift receipts show these payments as made on 29 May, 19 June and 3 July to the General Committee of the FRELIMO Party. A further payment of US\$2 million had been made on 31 March 2014.
281. Mr Boustani gave this evidence:

“Mr Howe KC: You considered that you were paying these amounts to Mr Nyusi as campaign contributions?”

Mr Boustani: Yes, he has requested from me a campaign contribution.

Mr Howe KC: But for his benefit personally rather than to the party account?

Mr Boustani: So Mr Howe, what happened is like he -- there was the party who was conducting the campaign and he's the candidate of the party, and then he has requested also the ability himself to have also campaign contributions outside the control of I would say the whole administration of the party that was running the campaign.”

### **Further or further proposed payment, including to Minister Chang**

282. In the Allam Spreadsheet in a series of separate sheets updated from June 2014 to October 2014, Mr Allam recorded payments due to a number of Mozambican officials and Mr Ndambi Guebuza, described as “Consultants” under the heading “MAM” and with entries “CF”.
283. These included sums, whether ultimately paid or not, to Minister Chang (as “Chang”) of US\$5 million or Euro 3,703,704. Also shown were payments to Mr Leão (as “DG”) of US\$7m, Mr do Rosário (as “Rosário”) of US\$13 million, and Mr Ndambi Guebuza (as “ArGe”) of US\$1 million.
284. As regards sums due to Minister Chang in particular, on 3 July 2014 Mr do Rosário sent a number of invoices to Mr Boustani including “For Pantero”. In late 2014, by request of Mr Boustani to Mr Akram Safa (Mr Safa’s brother and a Privinvest Group executive), a bank account in Beirut was opened by the Privinvest Group in the name Manuela Chang.

### **Restructuring the First Project**

285. On 10 March 2014 the interest payment of US\$25.1 million due from EMATUM in respect of the Second Project was paid. It was funded by SISE. On 21 March 2014 the interest payment of US\$19.8 million due from Proindicus in respect of the First Project was paid, funded with a loan from BIM. A further interest payment of US\$26.8 million due from EMATUM was made on 11 September 2014, ultimately from a SISE bank account.
286. On or around 16 May 2014, on the instructions of President Guebuza, Proindicus concluded a Framework Agreement with Aegis so as to allow Proindicus to rely on Aegis’ expertise in providing security and risk management services in the EEZ. It was signed by Mr do Rosário and another on behalf of Proindicus.
287. A further supply agreement between Proindicus and Privinvest Shipbuilding Investments LLC is dated 23 October 2014. The Preamble refers to supplies to enhance Mozambique’s surveillance operations including two 42 metre vessels (with a computerized integrated logistics support package), surveillance balloons and unarmoured off road vehicles, associated onboard base spare parts and “basic training to train Mozambique nationals to undertake the necessary operation” of vessels, vehicles and balloons.
288. As 2014 drew to a close, an interest payment in March 2015 approached. By letter dated 13 November 2014 Mr Leão wrote to Minister Chang stating that Proindicus had not yet started to generate revenues. He said this was for “reasons of a bureaucratic nature” and requested that Minister Chang execute a guarantee that would cover the amount of a further “upsized”.
289. Within VTBC an ‘Engagement Approval Form’ dated 28 November 2014 summarised the proposal, listing Mr Abboud as directing. Mr Mammadov reported within VTBC that “the MOF reiterated its support of the deal and confirmed it would honour its guarantee” and “the MOF also confirmed that the debt is included in the numbers submitted to the IMF, who has confirmed that this debt does not need to be publicised”.
290. On 5 December 2014 the Bank of Mozambique approved an amendment proposed to the financing of the First Project. A meeting of the Credit & Investment Committee of VTBC did the same. On 8 December 2014, Mr Pearse provided Mr Abboud with a memorandum setting

out an updated financial projection for Proindicus. After no revenues in 2014, revenues in 2015 were projected to be US\$81.95 million, for 2016 US\$197.235 million, and in excess of US\$1.6 billion over the next 7 years. It would have been obvious to Mr Pearse and Mr Abboud that these projections were not credible.

291. The financing of the First Project was formally restructured on 17 December 2014 to accommodate borrowing increased to US\$900 million. This was by way of a re-amended facility agreement (“the Re-Amended Proindicus Facility Agreement”). A second guarantee confirmation was executed by Minister Chang on behalf of Mozambique and in respect of the Proindicus Guarantee (“the Proindicus Second Guarantee Confirmation”), to extend that guarantee to the lending for the First Project under the then Re-Amended Proindicus Facility Agreement.
292. By a Running Fee Letter of the same date, Proindicus agreed to pay Palomar an amount equal to 1.25% per annum on the aggregate amount of the outstanding Proindicus loan.

### **Changing the Third Project**

293. In relation to the Third Project, by a letter agreement entitled “Variation of contract” and dated 22 December 2014 MAM (signing by Mr do Rosário) and Privinvest Shipbuilding Investments LLC agreed a change order to the MAM Supply Contract.

294. The circumstances were stated as follows:

“ Following the correspondence and meeting between us and given the obvious need for naval teaching, your acknowledged inability to provide the envisaged land and infrastructure at the agreed location and of the agreed size and given your inability to procure appropriate alternative land and infrastructure for the commissioning of a shipyard we, as Contractor, without any obligation to do so (and without prejudice to our rights) on our part have investigated with you ways in which the original project, as set out in the Agreement, could be varied by way of change order so as to contribute to the operational, training and maintenance needs of the growing fleet of vessels owned and to be owned by entities under the ownership of the Government of the Republic of Mozambique whilst looking to maintain your ability to exploit the “local” shipbuilding market.”

295. The agreed change order provided:

“As a result of such investigation we have ... agreed to replace the shipyard and vessels previously envisaged with, inter alia, bases ... of which will be capable of assembling a vessel and undertaking minor steel works) and with the creation of a Mozambique Naval Institute to train your employees/government employees. Such Naval Institute being a pre-requisite to the due operation of the naval assets of corporations owned by the Government of the Republic of Mozambique.”

### **Secondary participation for VTBE in the First Project**

296. In 2015 VTB Bank (Austria) AG (“VTBA”, later merged into VTBE) was to acquire a US\$48 million participation from VTBC of VTBC’s position in the First Project.
297. Originally VTBA was a local corporate bank in Austria also operating in France, Germany and the CIS region. As part of the VTB Group’s strategy to establish itself as an emerging

market investment banking group, VTBA moved from the corporate banking division in the VTB Group to the investment banking division. There, VTBA was to focus on larger, higher yielding and riskier lending business originated either by VTBA itself or by other parts of the group. It obtained internal approval to book insurance-backed lending transactions. On 21 December 2014 it had participated in its first insured lending to a sovereign, Angola.

298. A transaction in relation to the First Project would be only the second such transaction for VTBA. Mr Ulrich Vukovich was at the time the senior banker within VTBA's credit department responsible for African counterparties. His role involved carrying out due diligence over lending opportunities. Assessment of credit risk was his focus. He recognised that VTBA's limited experience meant that this its next transaction "definitely required very careful scrutiny and due diligence".

299. On 13 January 2015, Mr Mammadov of VTBC provided Mr Vukovich of VTBA with details of the transaction and a memorandum prepared by VTBC. On 3 March 2015, Mr Vukovich told Mr Mammadov that for the purpose of preparing a 'Credit Approval memo' VTBA needed the following information:

"1. Detailed description of the business and the business plan // 2. Audited historical financials // 3. Model with projections and assumptions, covering at least the next 6 years // 4. Detailed debt breakdown // 5. CapEx & WC information // 6. Any (if available) valuation reports & commercial DD // 7. Information on management"

300. Mr Mammadov's response was that valuation and commercial due diligence reports did not exist, and that information on management was "also fairly limited". Mr Vukovich's evidence in chief included the following, which I accept:

"29. Specifically, I was told by my VTBC colleagues that VTBC had (a) completed its own due diligence exercise; (b) travelled to Mozambique several times; (c) met with all stakeholders; (d) extensively worked with legal counsel in Mozambique and England in structuring the transaction; (e) seen some of the equipment that had been purchased and delivered; and (f) that they and the management of the VTB Group in Moscow thought the project was acceptable.

30. We were not given direct access to the borrower, but that was not uncommon, especially in a 'hot' (i.e., competitive and borrower-friendly) credit market or where a lender is only taking a minor participation in a secondary sale, as was the case with the Proindicus Transaction. Other banks in the market would not have given us access to their clients in such a secondary sale and so this approach was acceptable from my perspective. We similarly did not have direct access to the MoF but that was also not uncommon, especially in circumstances where you are dealing with a sovereign guarantor, as was the case here.

31. Considerable reliance by VTB Austria on other parts of the VTB Group (including VTBC) for due diligence was fairly common in my experience, especially in relation to Russian, CIS, Asian and African transactions, which were outside VTB Austria's historical area of geographical expertise (as I have described above) and where the VTB Group had teams with strong local expertise.

301. He referred to the email which he sent to Mr Mammadov on 3 March 2015, asking for seven categories of information and continued:

32. ... I see that Mr Mammadov replied saying that he would send over most of the categories. He said that there were no valuation and due diligence reports, and that information on management was also fairly limited. He said that this would be “fundamental” if we were looking at a corporate loan, but that in this deal, the emphasis should be on the guarantee being given by the MoF (the “Guarantee”).

33. I can see that I replied saying that I understood his point about reliance on the Guarantee, but I noted that Proindicus was “still the borrower though and the “first way out””. That comment is indicative of VTB Austria’s approach to financings at the time: not only was VTB Austria a retail deposit-taking bank, but from a regulatory perspective in Austria and Germany you cannot lend to an entity that is incapable of servicing its debt, even if you enhance the credit arrangement with a guarantee or insurance. It is in that context that we (VTB Austria) felt as though we need to satisfy ourselves that we properly understood the position of the borrower, which we did through our conversations with VTBC and by reviewing the financial documents that VTBC sent us.”

302. Mr Vukovich’s manager, Mr Andrey Girichev, told him that the VTB Group had “institutionally signed-off” on VTBA’s acquisition of part of the Proindicus debt from VTBC, and that VTBA could rely on work already completed by VTBC. The materials and information provided by VTBC included legal opinions as to the validity and enforceability of the Proindicus Guarantee.
303. Mr Vukovich did not recall obtaining the Transparency International Reports from 2012 or 2014 and was not aware of the position with the IMF, although he said VTBA considered IMF reports. He was not aware of the limit on guarantees authorised by Parliament in the Annual State Budget for 2013. Mr Vukovich did not know who the relevant individuals were within the legal and compliance departments responsible, including for investigating financial crime ‘red flags’. He saw that as the role of his colleagues in the coverage department. His evidence was that there was “a sort of Chinese wall between compliance and us” and he “wouldn’t know what happens on the other side of the Chinese wall”. On his evidence the question whether to obtain an external due diligence report on the Privinvest Group and Mr Safa would have been a matter for the compliance people on the other side of the “Chinese wall”.
304. A ‘Credit Approval memo’ was produced by VTBA’s Credit Department and submitted to VTBA’s Credit Committee on 7 April 2015, alongside a CRM Report dated 25 March 2015. Credit Committee approval was provided on 16 April 2015 for a hold of US\$10 million and US\$38 million insured. Senior management at VTBA signed off on the Proindicus transaction on 6 May 2015.
305. The transaction documents were executed on 19 June 2015. VTBC transferred US\$48 million of its commitment on the First Project to VTBA on 19 June 2015 by novation constituting VTBA a lender and finance party with VTBC’s guarantee rights against Mozambique.

### **The initial aftermath**

306. Minister Nyusi was successful in his campaign and was elected President of the Republic of Mozambique on 15 October 2014. He replaced President Guebuza on 15 January 2015 after a transition that saw the departure of Minister Chang and the appointment of Mr Maleiane as Minister of Finance.

307. Ms Lucas remained as National Director of Treasury. She later became Permanent Secretary to the Minister of Finance and then Deputy Minister of Finance. Across the three Projects Ms Lucas sent Minister Maleiane a paper on 11 March 2015 entitled “Projects developed by SISE with Government Guarantee”, describing these in her covering email as “the projects developed by Dr Roserio’s area”.

308. The paper stated in respect of the First Project (“Coastal Protection Project”):

“... in December 2014, SISE requested additional financing of USD 278.0 million, with the aim of rescheduling the debt ... and expanding protection to on-shore.”

The paper continued:

“... It should be noted that this debt process has always been treated as highly confidential, given that any default would put the country’s credibility at risk, as well as leading to a situation where disbursements from partners could be suspended. Given the confidentiality of the matter, it should also be pointed out that the IMF was not informed, and therefore it can be considered that the government provided false information over time, resulting in the suspension of the program and negative consequences for the country’s entire economy (it should be noted that, in addition to the donors, all creditors and private investors use the IMF’s opinions to assess their relationship with the country).”

309. The paper summarised the three Projects, under the headings “Project objective”, “Project assumptions” and “Current status of the project”. For the First Project, the objective was described as “Acquisition of equipment and technology for monitoring the Exclusive Economic Zone”. The “Project assumptions” were described as:

“... according to the feasibility study, income generation through the provision of services to companies carrying out off-shore activities, particularly gas concession holders. In this context, in 2014 the government approved and signed a concession contract with the company for it to provide security services to gas concession holders and others on an exclusive basis.”

The “Current status of the project” was summarised in this way:

“Two years on, the project is not generating any income, which is why it constitutes a major fiscal risk. It should be noted that, according to the company, no service contract has yet been signed, although advanced negotiations are taking place with ENI. ...”

310. For the Second Project the “Project Objective” was described as: “Tuna fishing, using a fleet of 24 boats”. The “Project assumptions” were described simply as “income generation through tuna fishing”. The “Current status of the Second Project was summarised in these terms:

“The company is not generating any revenue because it only started fishing at the end of last year. At the moment it only has 5 fishing boats, compared to 9 that are already in the country. ...”

311. The Third Project had as “Project objective”, the paper said: “Construction of a shipyard for the construction and maintenance of boats”. The “Project assumptions” were “income

generation through the provision of services and construction.” Against “Current status of the project” was the sentence: “We have no information.”

312. In relation to the First Project Mr Peter Kuhn of the Privinvest Group spoke in his evidence at trial of failures to prepare foundations and power supply for radar stations, of delays and unsuitable choice of location for a training centre, of failure to provide mooring and storage facilities for vessels and aircraft, and transportation in-country for radar, and of problems from short term visas to security to the provision of trainees.
313. All these failures were laid at the door of Proindicus – for example that it was to procure radar sites, prepare foundations and ensure power supply. But the underlying point was that the Projects had been embarked upon when this type of contribution had not been planned or prepared, and was always simply beyond Proindicus. At one point in his evidence Mr Kuhn said:

“... Proindicus as a company only consisted of, I think, just five to ten people on the Mozambique side. They were very seldomly all present in the offices save for on special occasions. It was obviously not possible for Proindicus to have delivered this project without the direct involvement of the government, and particularly the Navy who we dealt with frequently.”

There appear to have been a far larger number of employees at EMATUM and MAM, as Mr Matthews KC highlighted. But provision by EMATUM and MAM of access, resources, storage, transport and suitable trainees were among the initial basic problems seen across the EMATUM and MAM Supply Contracts too.

314. Mr Kuhn described one training session that was achieved and its context:

“... we demonstrated, based on real time data how to track at sea the illegal transfer of fish caught by an internationally registered fishing vessel to another unregistered vessel. This type of illegal fishing was and is a big problem in Mozambique and counts for billions of dollars of losses. This was a huge opportunity that we presented to Mozambique to deal with this problem but they did not take this up and we were not given the necessary proper access to the Ministry of Fisheries to be able to progress this further. I was surprised by this and did not know why the different government organisations in Mozambique did not try to cooperate to take advantage of these opportunities ...”

315. Two further interest payments were made in March 2015. A US\$26.8 million interest instalment due from EMATUM in respect of the Second Project was funded from the Ministry of Finance and also from a loan to IGEPE (a Ministry of Finance entity and shareholder in EMATUM) from Mozambique’s state development bank, Banco Nacional de Investimento (BNI). On 23 March 2015 SISE indirectly resourced a US\$23.8 million interest instalment due from Proindicus in respect of the First Project.
316. As regards the Third Project, in about May 2015 Mr do Rosário signed a letter from MAM to Palomar that referred to an agreement by MAM with the Privinvest Group that “the first interest would be settled (at least in part) by the Contractor on MAM’s behalf”. On 27 May 2015 an interest payment of US\$40.8 million due on the Third Project was made.

317. A payment of as much as US\$103.30 million of capital and interest from EMATUM lay ahead in respect of the Second Project and was due on 11 September 2015. Mr Boustani said that he was:

“... taking appointments with the President/ MOF starting the first week of April to discuss the restructuring & consolidation of MAM/ Proindicus/ Ematum”.

BNI and Ernst & Young Lda were appointed by EMATUM on 24 April 2015 to advise on a restructuring of EMATUM. Mr Schultens met Minister Maleiane on 12 May 2015 to deliver a full presentation on the subject. Minister Maleiane proposed to discuss this with officials and advisers.

318. On 21 May 2015 Mr do Rosário (signing as Chairman of the Board of Directors of Proindicus) also requested that Minister Maleiane grant an exemption from custom duties and customs fees. Under the heading “Request for Tax Benefits” Mr do Rosário described the position in these terms:

“In the context of strengthening the surveillance and defense capacity of the Mozambican coast and other situations that threaten the security of the State, [Proindicus] a partner of the Mozambican Defence and Security Forces ... imported, for the exclusive use of the Mozambican Navy, various strategic military equipment consisting of patrol and interception boats, maritime surveillance radars, towers to support radars, among others, which entered through the ports and airports of Pemba, Nacala and Maputo, according to the list of processes attached ....

...

In this context, as it is exclusively military material, we hereby request Your Excellency, under Decree No 34/2009, of 6 June, Article 21, Table V, No. 11, authorization for exemption from Duties and other Customs Fees due for the important of these means in accordance with the attached Proforma and Final Invoices”.

319. On 6 May 2015, Ms Subeva shared with VTBC, MAM’s 2015 first half unaudited Interim Financial Statements. These reported zero sales and losses for 2014 and in the first half of 2015.

320. The MAM Supply Contract was amended on 15 June 2015. On 18 June 2015, Minister Maleiane announced that the facility to EMATUM needed to be restructured. When news of the intention to restructure the EMATUM facility became public, Standard & Poor’s downgraded Mozambique’s credit rating on 6 July 2015. This triggered a right under the facility to MAM for lenders to demand repayment from MAM within 60 business days.

### **The EMATUM Exchange**

321. The eventual restructuring choice for EMATUM involved exchanging the state-guaranteed Loan Participation Notes for a direct sovereign obligation to creditors by way of Eurobonds issued by Mozambique repayable in a single bullet payment in 2023. Credit Suisse was appointed to arrange the exchange. The Eurobonds were later refinanced.

322. Mozambique also requested Credit Suisse to arrange a bridge loan to Mozambique for the US\$103.3 million that EMATUM was due to pay on 11 September 2015. VTBC obtained a

mandate for the EMATUM Exchange, initially as an adviser but later securing an expanded role as Joint Dealer Manager together with Credit Suisse.

323. On 12 August 2015, Mr Roberto Petz and Mr Caldeiro met the IMF representative in Maputo, Mr Segura-Ubiergo. Mr Petz's evidence was that Mr Segura-Ubiergo asked them if VTBC had done transactions other than with EMATUM in Mozambique and did not seem to be aware of VTBC's involvement with Proindicus or MAM.

324. Mr Petz and Mr Caldeiro chose not to tell Mr Segura-Ubiergo about Proindicus or MAM. Mr Petz met Ms Lucas at the Ministry of Finance on 17 August 2015. In an email to Mr Abboud and Mr Caldeiro reporting on the meeting he recorded that Ms Lucas confirmed that the IMF was not aware of either the First or the Third Project (Proindicus or MAM). Mr Abboud, Mr Caldeiro and Mr Petz also met Mr do Rosário and Minister Maleiane (Ms Lucas was there too). Mr Caldiero reported to colleagues at VTBC from that meeting that Minister Maleiane had confirmed that the Government would stand behind its guarantees.

325. Mr Adriano Ubisse became National Director of Treasury in August 2015. Employees of Credit Suisse visited Maputo on 1-2 September 2015, meeting Minister Maleiane, Ms Lucas and Mr Ubisse. Credit Suisse's note of the meeting recorded that:

“the Minister of Finance repeatedly stated that the government will honour its obligations”.

326. On 10 September 2015 Mr Felix Simione, an economist at the IMF, asked Mr Petz if he could let him know whether VTBC had provided loans to Mozambique in the recent past and, if so, the loan amount and the associated project. VTBC still did not inform the IMF of the Proindicus or MAM lending.

327. In the event on 10 or 11 September 2015 Mozambique through the Ministry of Finance funded payment of the US\$103.3 million due to Credit Suisse, without a bridging loan. Mr Ubisse's evidence was that Treasury Bills were issued through the Bank of Mozambique to enable this. He said in his witness statement:

“... This was not an easy thing to do given the very significant sum involved, but it was considered necessary to avoid the risk of a default and the loss of the EMATUM process. ... At the time, I did not think that this payment was being made by the Republic in fulfilment of a guarantee. ...”

328. Cross-examined on this by Mr Timothy Howe KC, for VTBC, there was the following exchange:

“Mr Howe KC: ... We say, Mr Ubisse, the reality that is staring you in the face from these documents is that the Republic had to help because it was the guarantor under the guarantees of these obligations. That is correct, isn't it?”

Mr Ubisse: Regarding EMATUM, that is correct.

Mr Howe KC: Not just EMATUM but Proindicus as well, Mr Ubisse. There is no relevant distinction there, is there, and there wasn't at the time?

Mr Ubisse: For Proindicus I think the context is very important. The context in which the Government became aware and the context of the exchange and the issue raised by the

banks of the [cross] default that would not allow that exchange to conclude, that's the context in which the payments for Proindicus was made, and other payments, as I did mention."

The restructuring for EMATUM by exchanging the Loan Participation Notes remained to be achieved. Another US\$100 million would become due in respect of EMATUM in February 2016.

329. In late 2015, the opposition political parties in Mozambique (MDM and RENAMO) called for investigations into EMATUM and for those involved to face charges. Press reports were shared within VTBC in August and October 2015.

330. On 4 November 2015 the Attorney General, Ms Beatriz Buchili wrote to Mr do Rosário with a request for information by the Public Prosecutor's Office on "the entire process relating to the [i]ncorporation and financing of the company EMATUM".

331. Mr do Rosário contacted Mr Pearse in December 2015. Mr Schultens commented to Mr Pearse that Mr do Rosário said the Attorney General's letter:

"also has Nyusi's handwriting in it who (according to Rosário) just wants this shit deaded ...".

Mr Pearse responded:

"Ok. Rosário asked for a letter from us explaining the transaction. May not be a good idea as palomar wasn't involved. Let me think".

332. Mr Schultens added the view:

"that Moz itself (MinFin included) has done everything wrong when it comes to this trade (eg fishing licenses, stupidity on restruc., etc)".

He wrote a little later that if all the letter was asking for was specified project documents:

"... they have all this ... locally. So if that's all the letter asks for then no help required and no need for us (Palomar) to get involved. Palomar offered to help. It got shot down. Rosário should make it an Isaltina [Ms Lucas]/Cristina problem."

Mr Pearse replied on 18 December 2015 to Mr Schultens, copied to Ms Subeva: "Agreed. We do nothing."

333. There had been an IMF mission to Maputo from 14 to 28 October 2015. In December 2015, and in the context of deep declines in commodity prices, the IMF granted a request by Mozambique for a Standby Credit Facility for US\$282.9 million.

334. On 14 January 2016 Mr Petz of VTBC received an email from Mr Ernesto Come at Ernst & Young Mozambique. This made clear that liabilities under the First and Third Projects in respect of Proindicus and MAM were not included in the Government's figures for guaranteed public debt. As it happens this was a week after Country Report No 16/9 on Mozambique was published by the IMF.

335. This exchange followed within VTBC between Mr Petz and Mr Mammadov across 28 January 2016:

Mr Mammadov to Mr Petz: (subject line) “how are things in Moz going?”

Mr Petz to Mr Mammadov: “Not good”

Mr Mammadov to Mr Petz: “On ematum or on mam/proind?”

Mr Petz to Mr Mammadov: “Ematum. Total govt debt does not include the two facilities. Govt does not wish to disclose for National Security reasons. [Credit Suisse] and Linklaters are discussing internally.”

Mr Mammadov to Mr Petz: “Has this become a sticking point?”

Mr Petz to Mr Mammadov: “Yes. The amount may be too high not to disclose it, even as NatSec.”

Mr Mammadov to Mr Petz: “Hard to argue shipyard has much to do with national security. Are they admitting that these have not been disclosed to IMF? Also are they saying anything about including the debt service for the two facilities in the budget? Or does SISE have its own budget...?”

Mr Petz to Mr Mammadov: “Shipyards will also serve Proindicus and Ematum, so there may be an argument. Minister (we spent two hours with him) said that Govt will honour its Guarantees, but nothing had been budgeted.”

Mr Mammadov to Mr Petz: “On the budget, if nothing is budgeted for MAM and Proind, how do they plan to pay? Will they amend the budget between now and the payment date?”

Mr Petz to Mr Mammadov: “They’ll do creative budgeting. What is the possibility to restructure Proindicus again?”

Mr Mammadov to Mr Petz: “I am scared to ask what that means. Restructuring Proind will be next to impossible, especially before next payment in March. [Credit Suisse] is the Agent, there are 10 + banks in the loan and many more hedge providers. They need to pay this payment in March in full with no questions asked otherwise they risk completely crushing their credibility.”

336. Mr Petz wrote to Mr do Rosário the next day under the subject line “EMATUM”:

“As discussed, we understand from the Minister of Finance that the two Debt facilities signed by MAM and Proindicus have not been accounted for in the country’s total debt figure. If this is the case, a public bond transaction for the restructuring "Exchange Offer" of EMATUM’s debt will not be possible.

A full and transparent disclosure of material information to the markets is a legal requirement and if not done it can turn into a criminal offence. No bank or law firm would ever sign on a transaction without full disclosure of the total amount.

Full disclosure does not mean necessarily that Govt has to disclose the names of the projects, but only the amount. In Moz case, the amount of the two project is so material that you cannot hide it, as suggested, as a matter of National Security.

To proceed with the transaction, lawyers and banks would need to have full immediate evidence of the disclosure. By disclosure I mean that we will need to know the full amount of the Govt debt figure item by item and have evidence where the two projects are. The total figure will then be disclosed to the investors, but in a legal way that MAM and Proindicus are not mentioned with their names. To be clearer, investors do not need to know that Proindicus and MAM exists, but they will want to know what is the total real debt of the country. In the prospectus to be given to investors, the latter will only see that the Gov has direct obligations for x amount split into broad categories.

Timing is against us and if we want to issue the bond before next EMATUM's payment (USD 100 on 11th Feb 16), we need to act now. Should the above not been done, Mozambique will alienate the international financial community and not be able to come to the markets for many years. All this confusion could have been avoided if the letters confirming the honouring of this debt had been signed by the new Minister of Finance when the new Cabinet was sworn in."

337. Three days later, VTBC advised that:

"... it would appear to us that the Total Public Debt figures published by the IMF already include [the Proindicus and MAM] Guarantees".

On that basis, suggested VTBC, it would be sufficient to disclose the total debt numbers reported by the IMF. The advice by VTBC was based on what Mozambique calls "some reverse engineered calculations" produced by Mr Mammadov based on various assumptions. Mr Petz accepted in cross-examination by Mr Keller for Mozambique:

Mr Keller: ... you knew, is this right, from speaking to Mr Mammadov and Mr Abboud that Mr Mammadov was not confident that the IMF numbers included Proindicus and MAM?

Mr Petz: I knew that and we were still analysing and we were still trying to get full information and disclosure from the Government."

In an email to E&Y Mozambique a few days later Mr Petz described Mr Mammadov's calculations as "rudimentary". The truth was they were badly wrong.

338. However, Mr Ubisse in due course signed a letter from "The Republic of Mozambique, acting through its Ministry of Finance" to Credit Suisse Securities (Europe) Limited and VTBC in which it was stated:

"a) the total public and private sector external debt of the Republic of Mozambique amounted to 70.9% of GDP in 2012 (nominal GDP of USD 15.2 billion), 78.3% of GDP in 2013 (nominal GDP of USD 16.0 billion) and 84.5% of GDP in 2014 (nominal GDP of USD 17.0 billion) with the amount projected to increase to 106.3% of GDP in 2015 (projected nominal GDP of USD 15.2 billion);

b) of the total external debt, public and publicly guaranteed external debt amounted to 34.5% of GDP in 2012, 42.4% of GDP in 2013 and 48.1% of GDP in 2014 with the amount projected to increase to 63.4% of GDP in 2015; and

c) total nominal public and publicly guaranteed domestic debt amounted to 5.4% of GDP in 2012, 8.5% of GDP in 2013 and 8.5% of GDP in 2014 with the amount projected to increase to 10.0% of GDP in 2015.

The above debt statistics reflect fully the debt position of the Republic of Mozambique as at October 2015 including, without limitation, all debt obligations guaranteed by the Republic of Mozambique, acting by and through its Ministry of Finance. This confirmation is being provided to you solely in connection with your ongoing due diligence and you may not disclose the contents of this letter to any other party.

We further write to request that the information set out in the January 2016 IMF Country Report form the basis of the debt disclosures to be contained in the prospectus.

We further confirm that as at the date of this letter no events have occurred that would materially change the historical debt figures set out in the January 2016 IMF Country Report.”

339. This letter followed a number of exchanges. Mr Schultens of Palomar reported back to Mr do Rosário on the outcome:

“So anyway gents here's where we are at end of play today:  
- we persuaded the minister to agree to issue a letter to CS and VTB confirming that the numbers set out in the IMF report are true and accurate in all respects

- we have sent the draft unsigned version of this letter to CS and VTB and asked both banks to confirm by tomorrow am that this letter is acceptable as presented (VTB is already working on it, I am chasing CS)

- so effort is now to push banks to finish prospectus and get to marketing  
- part of strategy is to weed out CS who we don't think can deliver anyway  
- I told minister that 1) he will have to find an internal solution for the 21 March Proindicus payment (he agreed but I need to confirm exact amount due in March as I think his number (55) was low) and 2) if we go through March unscathed that we will push to restructure MAM

- minister seemed to invite us to prepare a comprehensive restructuring plan / roadmap and also provide thoughts on how each of the business can be made into the revenue generating businesses they were designed to be

- [] was helpful during the meeting and helped put things in a language minister can understand

- BNI absolutely useless ...

- I interpret above to mean that Palomar is informally engaged by both minister and BNI to try and sort this out”

340. Mr Ubisse was cross-examined by Mr Howe KC about the letter he had signed:

“Mr Howe KC: ... I asked you that the -- simply to confirm your agreement that the reason why the MAM and Proindicus guaranteed – state guaranteed debts were included in the prospectus figures for total public debt of the Republic is because the prospectus

had to give an accurate, complete and true picture of the Republic's actual total debt obligations at the time of the prospectus and that is correct, isn't it?

Mr Ubisse: That's correct.

Mr Howe KC: Thank you. Your letter of 9 March 2016 that we looked at before ... we looked at that and we looked at in particular at the fact that you were signing this letter, the letter refers to the January 2016 IMF Country Report and by reference to that report ... you confirmed that the debt statistics in it: "... reflect fully the debt position of the Republic of Mozambique as at October 2015 including, without limitation, all debt obligations guaranteed by the Republic of Mozambique, acting by and through its Ministry of Finance." That confirmation that you gave was untrue and you knew at the time that you gave it that it was untrue because Minister Maleiane had told you on 2 February 2016 that the MAM and Proindicus state guarantees were not included in the IMF debt statistics in that country report?

Mr Ubisse: It is not correct, sir, because I don't have the date of this letter and as stated the banks were providing us with a lot of documents to be signed in procurement of the requisites of the prospectus.

...

Mr Howe KC: Assume the date of this letter was 9 March 2016, Mr Ubisse. I am putting it to you so you have an opportunity to comment that the confirmation you gave in that letter was not true and at the time you gave it you knew that it was not true?

Mr Ubisse: I didn't mention that, that's not correct. The letters were being processed by the bank. As the report says, the prospectus in accordance with the requisite process. So we were not very familiar with the issue. Thank you.

Mr Howe KC: I have given you that opportunity. Now I am going to move on. ...”

341. Meanwhile on 25 February 2016 a resignation letter from Palomar was sent by Mr Schultens to Minister Maleiane and Mr Ubisse and others including a copy to Mr Pearse and Mr do Rosário. Mr do Rosário wrote to President Nyusi and received this reply by email on 25 February 2016:

“We must give an end to these companies [an apparent reference to the state-owned enterprises of SPVs] because they prove technical and practically unsustainable. We’ll talk with Maleiane.”

There was an echo of 3 months before when, in response to an email by Mr do Rosário and referring to the three Projects President Nyusi stated: “Let’s change the road for this truck”.

342. The Exchange (restructuring EMATUM by replacing the state-guaranteed Loan Participation Notes with a direct sovereign obligation to creditors), was announced on 9 March 2016. Between 14 and 16 March 2016 there was a roadshow with investor meetings in London and New York during which Mr Maleiane presented the Exchange to investors.
343. Meanwhile payments were made by Mozambique in respect of Proindicus on 21 March 2016 and EMATUM on 11 March 2016, in sums US\$67,514,720.40 in respect of the Proindicus

comprising (i) a payment of principal of US\$24,880,000 to CSAG on 21 March 2016; (ii) a payment of US\$33,878,498.19 to CSAG on 21 March 2016 on account of interest and on account of ‘running fees’; (iii) a payment of US\$894,833.33 to VTBC on 21 March 2016 on account of ‘running fees’; and (iv) a payment of US\$7,861,388.89 to Palomar Capital on 21 March 2016 on account of ‘running fees’.

344. Minister Maleiane signed a letter dated 4 April 2016 to Credit Suisse Securities (Europe) Limited and VTBC certifying that the economic, market and statistical data relating to Mozambique as Offeror (to the holders of the outstanding US\$697 million Loan Participation Notes issued by Mozambique EMATUM Finance 2020 BV) contained in the Information Memorandum and other specified materials had been correctly taken from official or published data and had been presented in a manner that was not misleading.
345. The EMATUM Exchange was formally approved by Mozambique’s Council of Ministers on 5 April 2016 and closed on 6 April 2016.

### **A collapse of confidence internationally**

346. On 3 April 2016, just before the EMATUM Exchange was approved by the Council of Ministers, the Wall Street Journal published an article titled:

“Tuna and Gunships: How \$850 Million in Bonds Went Bad in Mozambique”.

The article reported that Credit Suisse and VTBC had failed to disclose the Proindicus lending to holders of EMATUM Loan Participation Notes.

347. Mr Howe KC fairly described what happened next as “a domino effect”. The IMF publicly suspended its funding on 15 April 2016. The World Bank followed suit on 27 April with a suspension of its budget support, the UK Government on 28 April indicated its suspension of the budget support, and on 4 or 5 May the G14 donors or budget support partners followed suit.
348. Mr Howe KC put to Mr Ubisse:

“So it is no exaggeration to say, is it, Mr Ubisse, that this was one of the most massive failures to report under an IMF supported programme in the history of the IMF with African countries?”

Mr Ubisse’s response was:

“It was a major issue for Mozambique in relation with – it was very damaging to them, the question of the plan, or course.”

349. The IMF and EU pushed for an international independent forensic audit of the transactions. Minister Maleiane and Mr Ubisse travelled to Washington from 15 to 17 April 2016 for annual spring meetings of the IMF and the World Bank. Minister Maleiane said that the non-disclosure of Proindicus and MAM had been motivated by the fact that they related to matters of security and that Mozambique was “committed to fiscal consolidation incorporating all these debts into the budget”.
350. Prime Minister do Rosário and Ms Lucas visited Washington from 19 to 22 April 2016. Prime Minister do Rosário explained to IMF’s Africa Department and to Ms Christine

Lagarde (Managing Director of the IMF) that he “recognised and confirmed the existence of the State guarantees”.

351. The IMF publicly announced that:

“... the authorities acknowledged that an amount in excess of \$1 billion of external debt guaranteed by the government had not previously been disclosed to the Fund”.

At a press conference at Maputo on 28 April Prime Minister do Rosário indicated that the Government had issued guarantees and that information concerning the transactions should have been shared with the IMF. Minister Maleiane stated that:

“The State has issued guarantees and these are to be honoured if the companies cannot honour their payments”.

352. On 14 May 2016 President Nyusi wrote to Ms Lagarde:

“As you are aware of Mozambique is in a process of strengthening its fiscal transparency and Public Financial Management System. In this context, I have requested the Prime Minister to share with the IMF/ World Bank all the relevant information related to Mozambique’s external debt position, including the guarantees issued to the public entities related to maritime and coastal security, namely, Proindicus and MAM – two entities linked to the Mozambique’s Security Services.”

353. US\$175.5 million was due from MAM on 23 May 2016. The Ministry of Finance, by Mr Ubisse, sought a restructuring of the facilities to Proindicus and to MAM, describing Mozambique as the Guarantor of both facilities. Efforts were made but not concluded.

354. Two days after the date for payment, on 25 May 2016 Minister Maleiane personally informed VTBC that the Government was not in a position to pay the interest due on 23 May. He added that he hoped a solution could be found by sending a joint team from the government as guarantor and for senior company representatives to meet VTBC.

355. VTBC threatened to issue a demand under the MAM Guarantee. In cross-examination of Mr Ubisse:

“Mr Howe KC: ... there was going to be a threat of a call on the guarantee against the Republic?”

Mr Ubisse: I think the letter is very explicit, sir.

Mr Howe KC: At that time, the Republic did not in any way disavow the guarantee obligation that it owed, did it?

Mr Ubisse: At that time, the Republic did not challenge the guarantees.

Mr Howe KC: No.

Mr Ubisse: I think it is important to have the context of those two debts, [inaudible] the Republic, and the work that the Government was doing there to the IMF the Government was doing there to iron out, to correct and to better understand the position of the Republic and how those two events affected the discussions ongoing with VTBC.

Mr Howe KC: Yes, quite the contrary, far from disavowing the guarantee, in fact Minister Maleiane was in communication with VTBC at this time and notwithstanding the default to propose pursuing further discussions for a long-term solution, a restructuring with VTBC by a team including the Government as guarantor as well as representatives of the borrower; wasn't that right?

Mr Ubisse: Discussions with the VTB happened during the 2016.”

## Investigation

356. On 8 June 2016 Prime Minister do Rosário made an address to the Assembly. He referred to “the issue of debts contracted by the companies EMATUM, Proindicus and MAM, with the State as a guarantor” and to cases opened by the Office of the Attorney General in August 2015 in respect of the Second Project and April 2016 in respect of the Third Project to assess the legality of the incorporation and financing of the SOEs. In a letter to the IMF of 14 June 2016 he referred to his address as one of a number of steps:

“... to widely inform and clarify to the people of Mozambique and international community the matters arising from the debts contracted with Government guarantees during the period 2013-14.”

357. Meanwhile on 20 April 2016 the Public Prosecutor’s investigation into EMATUM had been formally extended to include both Proindicus and MAM. Additionally, Resolution No. 16/2016 was passed in August 2016 creating a ‘Parliamentary Inquiry Commission’. The scope of the Commission’s work was to assess various matters relating to the three Projects including:

“the act of the Council of Ministers or of the competent agency that approved the incorporation of the companies, the contracting of the loans and the issuance of the guarantees of the State”.

358. The report of the Parliamentary Inquiry Commission was published on 30 November 2016 under the title ‘Report of the Parliamentary Inquiry Commission to Ascertain the Status of the Public Debt’. It included the conclusion that Article 179(2)(p) of the Constitution and State budget laws for 2013 and 2014 had been violated. It referenced the lack of disclosure to the IMF, and the absence of authorisation from the Assembly.

359. In September 2016, at the request of the IMF, Mozambique agreed to carry out an independent international forensic audit of Proindicus, EMATUM and MAM. The firm Kroll was appointed as independent auditor by the Office of the Public Prosecutor of Mozambique in November 2016. Kroll’s terms of reference included the objectives of a review of “the use of funds obtained from the loans” and:

“... an assessment of the possibility of misallocation of the funds, mismanagement or illicit activity within these companies and/or any related parties”.

360. Kroll released an interim report to the PGR on 6 January 2017. But on 23 June 2017 Kroll published its final report, entitled “Independent audit related to loans contracted by [Proindicus, EMATUM and MAM]”.

361. The Kroll report suffered from a lack of access to information. Kroll reported in relation to the Second Project and EMATUM:

... The Ministry of Finance has not been able to confirm to Kroll any details of the maritime security equipment that was effectively included in the USD 500 million [EMATUM] allocation, nor if the transfer of responsibility has actually been completed.

Separately, Rosário stated to Kroll that USD 500 million of the loan proceeds were used to purchase military equipment and provided an unsigned letter purportedly from the Minister of Defence to support this statement. The Minister of Defence refused to sign this letter and denied having any knowledge of the military equipment purchased.

The Contractor has categorically stated to Kroll that the assets delivered to EMATUM were per the agreed supply contract and specifically that no weapons were provided.

In order to verify how the USD 500 million loan proceeds were actually allocated, a framework that preserves the confidentiality of restricted information contained in the relevant documents needs to be agreed, or for those involved to waive the confidentiality of such information. This will enable Kroll to be provided with further documentation from the Contractor explaining the pricing structure of the EMATUM contract, without breaching the terms of the supply contract.

Until the inconsistencies are resolved, and satisfactory documentation is provided, at least USD 500 million of expenditure of a potentially sensitive nature remains unaudited and unexplained.”

362. At 3.9.1, Kroll reported:

... the Mozambique Companies were unable to provide a large proportion of the financial information and supporting documentation necessary to complete the Independent Audit.

Specifically, the Mozambique Companies could not provide Kroll with complete and up-to-date copies of the loan agreements and supply contracts. Invoices provided to Kroll by the Mozambique Companies did not include sufficient detail to provide comfort that the documents accurately reflect the true price of the assets and services. Further, certain assets are not recorded in the accounting records, for example, the Ocean Eagle vessels under the EMATUM Supply Contract.

363. But revealing, and not readily available in some of its details from other sources, was what Kroll reported on planning and management:

“3.2.7 Evidence of management failings

The Independent Audit identified what appear to be considerable management failings in meeting contractual obligations and in establishing the local infrastructure required to enable the Contractor to deliver the intended assets and services, as well as a failure to undertake the required actions necessary to ensure the Mozambique Projects could operate as planned.

The Mozambique Companies lack some of the basic infrastructure to enable operations to commence: Proindicus does not have an operational satellite package; EMATUM does not currently have permits for the fishing vessels; and MAM has only recently obtained

access to a shipyard in Maputo that is undergoing an upgrade to enable the maintenance of vessels.

The Contractor has provided Kroll with several hundred documents including emails and meeting minutes to demonstrate the challenges encountered in delivering the Mozambique Project. The documents show repeated efforts by the Contractor to obtain responses from Rosário for project management issues. The documents also provide an insight to the issues faced by the Contractor in delivering the contracted assets and services for the Mozambique Companies.

For example, according to the documentation, for Proindicus the trainees provided by the company did not have the necessary pre-course skills and qualifications or appropriate technical knowledge to be able to undertake the HSI32 courses; trainees did not have the appropriate clothing for training; representatives for Proindicus were not present at the handover for the DV15 vessels and employees trained to operate the Control and Command System were subsequently called for military training. For EMATUM, the company has not secured the required land and buildings to equip a coordination centre.

The failure of management to secure an appropriate shipyard base at Maputo in a timely manner (approximately eighteen months later than planned) means that the MAM Project remains a work in progress. It is not possible to establish the stage of completion of the project, nor the funds remaining to be spent from the total contract price of USD500 million.

The apparent mismanagement by Rosário and other senior members of the Mozambique Companies appear to have contributed to significant delays in the delivery of the Mozambique Project. Kroll cannot ascertain the impact of these delays on the overall pricing of the project without further information from the Contractor.”

### “3.9.2 Key findings relating to project planning and management

The documentation reviewed during the Independent Audit points towards a small group of SISE and government officials, led by Rosário, exercising control over the planning of the Mozambique Project.

The infrastructure necessary to enable the successful implementation of the Mozambique Project was not established prior to the agreement of each supply contract. Specifically, it appears that: insufficient port facilities were available for the appropriate mooring, maintenance or repair of the vessels acquired by Proindicus and EMATUM; there were no plans to construct a dry land processing and storage facility for EMATUM, and land required for the construction of the shipyards as envisaged by the MAM supply contract had not been secured in a timely manner.

Further, there appears to be several issues that have prevented the acquired assets being operationalised, for example:

Training of crew: Kroll was informed by the Contractor that insufficient personnel were provided for training for vessels owned by both Proindicus and EMATUM.

Permits for fishing vessels: Kroll was informed that the fishing vessels are currently unable to operate due to permits not being reissued; and,

Expired satellite package: A satellite package, agreed for the first three years of the project, has expired, with no evidence that negotiations for a new package have commenced. As a result, the radar systems built into each asset cannot communicate with the central command centres, and therefore the assets cannot be operationalised.”

364. For its part, the IMF established that the 6<sup>th</sup> review of the 2010-13 PSI, and the 3rd, 4th, and 5th reviews of the 2013-16 PSI were completed based on inaccurate information. An IMF report noted again that this previously undisclosed debt:

“(i) played a material role in making Mozambique one of the most heavily indebted countries in Sub-Saharan Africa at present and (ii) places considerable strain on the government’s finances and international reserves with its heavy debt service burden. As such, it undermined achievement of key goals under the PSIs.”

365. As the IMF Executive Board later noted those goals included accelerating economic development and maintaining macroeconomic stability.

#### **Attempting to deal with the aftermath**

366. Meanwhile, in July 2016 Mozambique engaged White & Case and Lazard as advisers in relation to the restructuring of its public debts. In a call between Mr Ubisse, the advisers and VTBC and as noted by Mr Biddulph at the time the Government acknowledged its guarantee obligations.

367. The Ministry of Economy and Finance engaged in further commercial discussions with Mozambique’s creditors. On 1 October 2016, Minister Maleiane gave a presentation to creditors in London. The presentation addressed the IMF’s pre-conditions to resume discussions with Mozambique, including the “international and independent audit process” focussing on Proindicus, EMATUM and MAM. The slides used for the presentation also stated expressly that:

“The Republic of Mozambique reserves any rights it may have in connection with any of its debt obligations and nothing contained in this presentation shall be construed as waiver or amendment of such rights.”

368. The IMF incorporated the Guarantees into its own debt statistics for Mozambique in November 2016 after an exchange of correspondence between Ms Lagarde and Prime Minister do Rosário and Minister Maleiane. In a letter to Ms Lagarde, Minister Maleiane wrote:

“... On behalf of the Mozambican government, I deeply regret the failure to provide the Fund with accurate information as envisaged under the IMF Articles of Agreement, and stand ready to take remedial measures to prevent the recurrence of such events.

In this context, I would like to assure you that the Mozambican Government is committed to rebuilding trust with the Fund. As a first step towards this objective, we have provided the IMF all the data and loan documentation, including government guarantees mentioned in your last letter.

To prevent the recurrence of misreporting, the Government is contemplating a number of measures to strengthen debt management, in coordination with the IMF, including:

...

c) Clarifying debt management requirements to subject long-term borrowing to ex-ante approval by the Ministry of Economy and Finance, for all state-owned enterprises and autonomous government bodies;

d) Publishing a quarterly report on the stock of all outstanding government debt and guarantees and their management policy and;

e) Issuing annual fiscal risk statements with information on SOEs and government guarantees, including the assessment of their contingent liabilities.

... I also take this opportunity to reaffirm our commitment to the IMF in terms of data provision and debt policy reform. I hope that we will continue our fruitful cooperation in the context of the IMF program.”

369. In November 2016 the Executive Board of the IMF noted:

“Since disclosing the previously unreported debt obligations, the Mozambican authorities have taken several important steps to address the situation. In June, the Prime Minister, in an address to Parliament, explained to the Mozambican people and the international community the matters arising from the contracted debt. Remedial measures include the launch by the Public Prosecutor of a criminal investigation into the debts incurred by certain state-owned entities, which will include an independent audit of these entities by an experienced and reputable international auditing company. Further corrective actions will focus on introducing reforms to enhance Mozambique’s debt management, with the aim of reinforcing the process of issuing loan guarantees and improving transparency of public borrowing and guarantees.”

370. At the conclusion of the meeting of the Executive Board, Mr. Tao Zhang, Deputy Managing Director and Acting Chair, stated:

“Due to the non-observance of the continuous assessment criterion on the ceiling for the contracting or guaranteeing of new non-concessional external borrowing under the 2010-2013 and 2013-2016 PSIs, the Executive Board decided that it can no longer maintain a positive assessment of program performance under the two PSIs.”

“With respect to Mozambique’s breach of obligation ... the Executive Board welcomed the remedial measures already taken and additional corrective actions committed to by the authorities to implement measures to improve and strengthen the monitoring and reporting of data provided to the Fund. In view of these remedial measures and additional corrective measures, the Executive Board decided not to require any further remedial action, but called on the authorities to implement the announced measures in a comprehensive and timely manner.”

Mr Zhang recorded that: “The IMF is committed to remaining constructively engaged with Mozambique.”

371. Proindicus defaulted in repayments due under the Proindicus facility on 21 March 2017.
372. In April 2017 the Assembly approved the State General Account by resolution (No. 10/2017). The Proindicus and MAM Guarantees were included.
373. On 18 May 2017 General Lidimu (who replaced Mr Leão as Director General of SISE) wrote to the Privinvest Group to request an extension to the Third Project. The letter suggested that Privinvest had exceeded Mozambique's expectations in terms of supporting the project and referred to goodwill and support despite challenges. The letter was a gloss, in my judgment, reflecting the wish to achieve an extension and hope yet (but unrealistic hope) for an improved outcome.
374. On 9 June 2017 a meeting about the Projects was held at President Nyusi's direction, attended by representatives from among others the Ministries of Finance, Interior, Fisheries and Transport and Communications, SISE and the three SOEs, Proindicus, EMATUM and MAM.
375. The following week there was a meeting between MAM and the Privinvest Group and VTBC in Abu Dhabi on 16 June 2017. The minutes record as "objectives of the discussions" exploring potential of future cooperation and partnership between MAM and the Privinvest Group. Mr Boustani's presentation to the meeting is noted as follows:

1. MAM/Proindicus/Ematum were created as part of a National Economic & Security development vision.
2. Billions of US\$ (in excess of 50) will be spent by the Oil & Gas Operators in Mozambique in the coming years. Billions of US\$ have already started to be invested in the manufacturing of the floating platforms.
3. Mozambican Authorities & Government should set an imperative priority to capture the maximum amount of these investments so they benefit the Mozambican Economy, Social Development, Employment, Know How build-up., etc...
4. Legislative actions are obligatory in order to ensure irrevocable commitment from the Oil & Gas Operators to contract with MAM and local Mozambican Companies
5. VTB Bank would be supportive of these measures to secure back the repayment of its financing of MAM
6. [Privinvest] is willing to partner with MAM and ENH Logistics in order to create a new company in Mozambique to cater for the upcoming business.
7. JB handed over [Privinvest] reply Letter to SISE's Letters. Acknowledgment copy was signed by [Mr de Rosário]".

376. Mr do Rosário's comments are recorded as:

"AR agreed fully with [Mr Boustani's] presentation

AR confirmed the Mozambican Government (notably the President, Prime Minister, and Minister of Finance) support for the development and activation of MAM, Ematum & Proindicus. A Plan of Action to be jointly prepared with Privinvest, Lawyers & shared with VTB Bank to be presented for Government's approval.

AR stated that various international groups submitted proposals to operate Proindicus & Ematum. Mainly PARAMOUNT & Lancaster 6 (affiliated to Blackwater). A presentation made by Lancaster 6 was handed to VTB & Privinvest.

AR also mentioned that the Government (mainly the Minister of Finance) is waiting for the publication of the KROLL Audit Report. ...

AR mentioned that the Minister of Finance has been unsatisfied with LAZARD Bank performance. Proposing to set a meeting between VTB Bank & the Minister of Finance pursuant the publication of the KROLL Audit Report

AR also mentioned that the Minister of Defense has personally assisted to a Navy Show at Pemba on the 15 & 16 of June 2017 displaying Proindicus & MAM assets & capabilities.”

377. As for VTB it was suggested that:

“VTB is willing to meet as soon as possible with the Minister of Finance & to be engaged in the restructuring of Proindicus & MAM Loans

VTB open to dissociate MAM’s Loan from the possible restructuring of the Proindicus Loan and the Mozambican Eurobonds.

VTB happy to be engaging with MAM, [Prinvest] and Lawyers to carve an “operational activation plan” to ensure MAM’s revenues generation which will secure the repayment of its debt

378. An intervention from Mr Valentijn of Prinvest stated:

“1. [Prinvest] has delivered all the scope of supply as per its Procurement Contract with MAM

2. Final Handing Over Letter from [Prinvest] to MAM has been shared with VTB

3. [Prinvest] has all the know how, expertise & willingness to support MAM in its development plan”

Another intervention (by a Mr Alexander Chivale) is recorded as making these points:

“Mozambique has strong Local Content Laws that must be used to enforce MAM’s position as the exclusive national contractor for the Oil & Gas industry

The most probable outcome is a Decree/Concession from the Mozambican Government to grant MAM exclusivity & rights of first refusal

Absolute willingness to work jointly with Lawyers, [Prinvest] & VTB to design & draft the proposed legislative texts to achieve the above mentioned objectives.”

379. The Kroll Report was then published a week later.

380. On 23 November and 4 December 2017 meetings about the Projects were hosted at the Office of the President and attended by President Nyusi, Minister Maleiane and ministers and officials from a number of ministries and departments, Mr do Rosário and other directors of Proindicus, EMATUM and MAM. On 5 December 2017, the press reported Prime Minister do Rosário’s comments that the Office of the Attorney General had been “investigating criminal aspects of the loans and their guarantees”.

## ‘Red Flags’

381. After the settlement with Credit Suisse and some others, Mozambique listed what it termed the ‘red flags’ of which it said VTBC had “actual or constructive” knowledge. By reason of these, individually and/or cumulatively, Mozambique said VTBC “knew or was on inquiry” that Minister Chang had been bribed and, in any event, lacked authority to enter into the Proindicus Guarantee and Proindicus First Guarantee Confirmation, the Proindicus Second Guarantee Confirmation and the MAM Guarantee.
382. Mozambique went on to list ‘red flags’ of which it says BCP had “actual or constructive” knowledge. By reason of these, individually and/or cumulatively, Mozambique said BCP “was on inquiry” that Minister Chang had been bribed and, in any event, lacked authority to enter into the MAM Guarantee. Mozambique listed ‘red flags’ of which it said VTBA had “actual or constructive” knowledge in relation to VTBA’s participation in the First Project in June 2015, and by reason of these, individually and/or cumulatively, Mozambique said that VTBA “was on inquiry” that Minister Chang had been bribed and, in any event, lacked authority to enter into the Proindicus Guarantee, and the Proindicus First and Second Guarantee Confirmations.
383. I was carefully and helpfully taken through the detail by Mr Smouha KC for Mozambique. Not all allegations were alleged in respect of each bank. I also recognise that Mozambique relied on the points in combination, and their accrual, and the patterns that can be discerned. I also keep well in mind Mr Matthews KC’s point that a “red flag” to a banker does not mean that there is in fact something wrong, but it may mean that the banker has to do something: “It does not mean that [the Court] can leap from that to say that the supplier has done anything wrong or that there’s anything wrong with what the supplier did.”
384. The overall total of 94 ‘red flags’ can be grouped and summarised as follows:
- (1) Mozambique was by reputation and report a country with a corruption problem of breadth and depth allowed by weak institutions, poor governance and low transparency.
  - (2) Mr Safa had a reputation and was reported as being involved in corrupt practices, including alleged past and continued involvement in offering and receiving bribes and kickbacks.
  - (3) External due diligence had not been done on Mr Safa or the Privinvest Group or Palomar.
  - (4) There had been no public procurement or competitive tender process, an explanation for this had not been sought or provided, and how the relevant contracts had been obtained had not been investigated.
  - (5) The terms of the Supply Contracts were one-sided and unusual. No valuation of any of the assets and services to be supplied had been carried out.
  - (6) Lending had been structured as a loan to an SPV coupled with a State guarantee, rather than direct lending, a structure that was known to avoid Public Procurement Regulations. An explanation for this had not been asked for or provided.
  - (7) The guaranteed lending was in very large sums, with substantial increases and expansion in a very short time, and for which no explanation was provided or sought; and with one

Project following the next, and the financing paid up front and directly to the Privinvest Group.

- (8) The intermediation of Mr Boustani and the Privinvest Group and Palomar and the absence of representatives of the SPVs or Mozambique in the negotiations or in providing due diligence or KYC information.
- (9) Proindicus and MAM were led by a civil servant (Mr do Rosário) with no background or experience in business. No explanation had been received for this.
- (10) Although the Projects were presented as being self-financing, the business plans were superficial, commercially unrealistic and unviable, including as regards revenue projections, and the relevant SPVs would not be able to service or repay the loan.
- (11) The SPVs had not generated any revenues or profits.
- (12) The Proindicus and MAM transactions were shrouded in secrecy. Neither had been referred to in any public, government or IMF document that the banks had seen and the banks did not seek or obtain an explanation.
- (13) Concerns had been raised by the IMF and international donor community and in the press about EMATUM, and it was abnormal to use privately placed LPNs. These were not investigated.
- (14) The Proindicus Guarantee and the proposed MAM Guarantee had not been disclosed to the IMF and were entered into in breach of the IMF's NCBL which was ascertainable from the IMF's published reports.
- (15) The Guarantees and the Guarantee Confirmations substantially exceeded the guarantee limit in the relevant State Budget Laws and were without Parliamentary approval. The banks had not received an explanation why and had not received any assurance that the State Budget would be rectified to accommodate them.
- (16) The Guarantees and the Guarantee Confirmations would require prior authorisation by "visto" from the Administrative Court unless duly authorised by the General Director of SISE. No authorisation was sought and no explanation was sought or provided.
- (17) The Privinvest Group paid substantial contractor fees. No explanation was sought or provided for this.
- (18) The substantial fees paid or to be paid to Palomar, and their circumstances.
- (19) The payment of subvention fees, and their circumstances.
- (20) The high return ultimately offered to the banks.

385. In the summary above, I have removed three allegations that I should mention. First, that Mr Abboud was bribed: as I explain later in this judgment I do not accept that on the facts. Second, that Mr Abboud believed that Mr Safa "controlled" President Guebuza: although the language was used, the evidence available at trial did not persuade me it was taken literally, or true. Third, of payments promised to Mr do Rosário by or through Palomar in relation to

the MAM transaction: the evidence at trial did not persuade me of a promise that he would be paid in this way.

386. The regulatory, professional and reputational position for these banks may be severely exposed, with economic and operational consequences. However, the question of liability between them and Mozambique has now been compromised by the most recent settlements. It therefore appears unnecessary to include my findings in this judgment.

### **Legal proceedings and commercial discussions**

387. In January 2018, the Attorney General of Mozambique wrote to the President of the Administrative Court in Maputo. She reported that, during the course of the ‘preparatory investigations’ which had been initiated by the Public Prosecutor’s Office, facts had been found which constituted financial infractions which were indicatively attributable to the public managers involved, including Minister Chang. The letter requested that the Court determine the “possible financial responsibilities attributable to the public managers identified herein”.

388. Shortly afterward, on 29 January 2018, the Public Prosecutor published a press release recording that during the ‘preparatory instruction procedure’, which included the Kroll Report and the Parliamentary Inquiry Commission report, the Public Prosecution had ascertained several facts which may qualify as financial offences. The press release noted the submission to the Administrative Court, and then recorded additional measures which had been considered and recommended by the State General Prosecutor.

389. At the same time, commercial discussions with Mozambique’s creditors continued. Minister Maleiane delivered a further presentation to creditors on 10 March 2018, addressing Mozambique’s macro-fiscal outlook and debt situation. The presentation included under the heading “Disclaimer, terms and conditions of use”, that:

“[t]he Republic reserves any rights it may have in connection with any of its debt obligations and nothing contained in this Document shall be construed as a waiver or amendment of such rights.”

390. On 5 April 2018, after a further presentation to creditors the month before, Minister Maleiane stated at a press conference in Maputo that:

“the Government is aware that Mozambique is a debtor and therefore has to honour its commitments”.

391. Between November and December 2018, discussions took place between Lazard (acting for Mozambique) and Mr Abboud and others at VTBC in relation to a draft of ‘Heads of Terms’ for a refinancing of the MAM transaction. Email exchanges on both sides were referred to by VTBC and BCP in their opening submissions at trial. I do not need to set them out here. It is sufficient to say that Mozambique is correct that they demonstrate that all parties involved were aware of the possibility of future litigation, including claims against VTBC, and they are irreconcilable with the position taken by VTBC that Mozambique had already ratified or was estopped or otherwise precluded from challenging the transactions.

392. Mr Caldeiro of VTBC confirmed that in the course of the commercial discussions there was no discussion of what Mozambique’s position would be if the result of the various

investigations was that it was found that there had been corruption affecting the validity of the guarantees. VTBC, BCP and VTBE emphasise that it was not alleged that Minister Maleiane (or anyone else on behalf of Mozambique) at any stage told VTBC, BCP or VTBE that Mozambique would challenge the validity of the guarantees in those circumstances.

393. On 30 December 2018, Minister Chang was arrested in Johannesburg on an international arrest warrant issued in the United States, in relation to charges of wire fraud, securities fraud and money laundering.
394. A criminal indictment filed on 19 December 2018 by the United States Department of Justice and in the Eastern District of New York was made public on 4 March 2019. It charged the Credit Suisse Deal Team (Mr Pearse, Mr Singh and Ms Subeva), Mr Boustani, Mr Allam, Minister Chang, Mr do Rosário and Mr Nhangumele with federal corruption offences.
395. Mr Pearse, Mr Singh and Ms Subeva each pleaded guilty to one count of criminal conduct as part of a cooperation agreement with the US authorities. Mr Pearse and Mr Singh subsequently gave evidence for the prosecution during Mr Boustani's trial.
396. Mr Boustani was acquitted. But during the trial of Mr Boustani, Mr Pearse also stated in oral testimony that Mr Boustani had told him that "Prinvest" had paid Mr Abboud US \$2 million. Mr Pearse added that he had himself had a conversation with Mr Abboud in Dubai in which Mr Abboud had confirmed that he received payment in about 2015.
397. On 27 February 2019 Mozambique commenced the first of what were to be the present twelve sets of proceedings before the Commercial Court in London. Claims by VTBC, VTBE, BCP, Beauregarde, Orobica, BIM, VR and MAM followed.
398. In April 2019 Mozambique sent a letter of intent to the IMF and informed the IMF that it had removed the Proindicus Guarantee from the debt sustainability analysis baseline and was instead treating it as a contingent liability. IMF Country Report No. 19/136, published on 16 May 2019 confirmed that Mozambique recorded that:
- "Mozambique's Attorney-General has filed a lawsuit in the UK to nullify the criminally-obtained government guarantee to the loan contracted by Proindicus, a state-owned enterprise, with Credit Suisse. Renegotiation discussions with VTB on the government-guaranteed loan contracted by MAM, another state-owned enterprise, are almost finalized and will provide substantial debt relief while protecting the interests of Mozambique in case legal issues were to arise in connection with the government guarantee."
399. On 25 March 2019, an Order of Accusation was made in the Mozambican criminal courts. This alleged offences of bribery and money laundering against Mr Nhangumele and Mr Langa, Mr Ndambi Guebuza, Mr Leão and Mr do Rosário, and others. An Order of Indictment was made on 21 August 2019.
400. A criminal trial in Maputo commenced on 23 August 2021 and lasted to 10 March 2022. President Guebuza appeared as a witness but not as a defendant at the criminal trial. President Nyusi did not appear as a witness or a defendant, but I have already referred to a statement he had made of 8 August 2018 and which was shown to President Guebuza at the trial with a request for President Guebuza's comment. President Nyusi's statement is referred to at earlier points in this judgment and is included in the Appendix.

401. On 19 October 2021 VTBC agreed to pay approximately US\$6.5 million to the US Securities and Exchange Commission because of statements and omissions in the EMATUM Exchange offering materials. The SEC found that the offering materials provided by VTBC to investors failed to disclose the conflict of interest that VTB had as a major creditor of Proindicus and MAM, and the full nature of Mozambique's indebtedness, and the related high risk of default.

### **Disclosure of documents, and inferences**

402. All parties to these proceedings were under a duty to disclose documents relevant to the issues. The procedural rules required this, and I have made a number of related orders over the period leading to trial. There is an extensive background in this respect which is addressed in earlier judgments in the proceedings.

403. There are criticisms that can be made of the disclosure given by a number of parties, not just Mozambique. But given the issues, nowhere was it more important for the parties and the Court to have access to documents than in the case of Mozambique's documents.

404. It is obvious that there would likely have been relevant documents with the Office of the President and SISE. Yet almost no documents were available at trial from those sources within Mozambique. And although it was clear to me that institutional and personal email was used across Government, there was a poverty of disclosure of that nature too. This included in relation to Minister Chang, although I had at least some account of how some of his email was unavailable through loss.

405. There was some evidence that some other documents had been lost by Mozambique, and there was evidence of some searches made, but whatever the reason, the fact is that the trial did not have the advantage of many documents that likely once existed. I record that in the course of case managing these proceedings I made clear that if part of the difficulty was that there were issues of national security said to involve some documents, I was ready to discuss special arrangements for those documents. This facility was not taken up.

406. The responsibility here lies with Mozambique. I have the clear impression that some officials and office holders in Mozambique have not helped their country as it has sought to meet its obligations to give disclosure of documents relevant to the issues. I have, frankly, to include President Nyusi among those office holders. At the same time, I pay tribute to the professionalism of Peters & Peters Solicitors LLP in striving throughout to assist Mozambique to achieve better outcomes in carrying out its disclosure duties.

407. It may seem remarkable that some of the things that it has been possible to reference in this judgment were written down at the time. But that happens in real life, and it is the process of disclosure that enables their availability to contribute to a fair trial. The case stands with others as an example of the importance of the requirements for disclosure of contemporaneous documents. It will be very apparent from this judgment what a central part documentary evidence has played at trial. Not alone, but nonetheless central.

408. At an earlier stage in the proceedings, I refused an application to strike out Mozambique's case by reason of its disclosure failings. In Republic of Mozambique v Credit Suisse (No 9) ([2023] EWHC 1650 (Comm)) at [72] I concluded ahead of trial that it could not be said correctly at that point that there was a substantial risk of an unfair trial, or that it could be concluded at that point that a fair trial was in jeopardy. At [79] I said that at trial,

“... all alternatives, including to strike out and in whole or in part, remain available. The criticisms of the Republic's disclosure, both individual criticisms and the question of the overall effect on confidence in its disclosure, may be highly material at trial. A calibrated response will be possible in a way that is not possible now.”

409. As Mozambique contends, having permitted the trial to proceed the Court is now well placed to make the assessments required. A fair trial has been possible. In the event, with the benefit of the trial, I have reached the view that there has not been an abuse of the Court's process by Mozambique requiring strike out.
410. A calibrated response to the poverty of Mozambique's disclosure is nonetheless required. There are three parts to this that I consider appropriate.
411. First, fairness requires me to draw some inferences of fact against Mozambique in some of the instances where there are no or limited documents disclosed by it. I confine myself of course to inferences that are material. I do not draw all of the inferences I was asked to draw. The inferences I do draw may or may not be correct or accurate in every particular; only the documents, or a relevant witness, would show.
412. The inferences that I draw, against Mozambique, given the poverty of its disclosure of documents, are these:
- a. That the Projects were at all material times known about and supported by a number of individual officials and office holders of Mozambique, including at the Office of the President and at SISE, and including President Guebuza and (both when President and when Minister of Defence) President Nyusi.
  - b. That Mr Nhangumele, Mr Langa and Mr Ndambi Guebuza participated with the knowledge and consent of at least some individual officials and office holders of Mozambique, including at the Office of the President and at SISE, and including President Guebuza and (again both when President and when Minister of Defence) President Nyusi.
413. Second, in places I make some further allowance in favour of Mr Safa and the Privinvest Companies. I have identified where in the body of the judgment.
414. Third, throughout my assessment of whether I am satisfied that Mozambique has met the standard of proof required with convincing evidence (see below) I have deliberately kept in mind the possibility that there are further documents that I have not seen.

#### **Witnesses not called**

415. Generally, there is no duty to call a witness and it is for the Court to judge the case on the evidence it does have. Nonetheless there were criticisms between the parties for witnesses not being called. Fairness to the other parties requires that I should not treat Mozambique as being without the freedom to choose to try to address the shortfall in documentary evidence with oral evidence.
416. As to relevant witnesses in this context, I can accept that some would not be available to Mozambique, but it is plain Mozambique had the choice of calling President Guebuza and President Nyusi as witnesses, in particular in light of the poverty of its disclosure of

documents. The same may be true for Prime Minister Vaquina, whose absence was not explained.

417. It decided not to do so. Of course, I bear in mind the immunity of President Nyusi as Head of State from being involved as a party to the proceedings, and the reasons in international law for that immunity. But here I am dealing with his position as a witness, not a party, and where documentary evidence is incomplete.
418. The decision of Mozambique not to call President Nyusi and President Guebuza as witnesses does reinforce me in the view that the inferences I draw from the poverty of its disclosure are appropriate.
419. The Prinvest Companies and Mr Safa did not call Mr Allam. But they did call Mr Safa and Mr Boustani among their witnesses. Further, assisted by Signature Litigation in the proper performance of their disclosure duties, they gave disclosure of accounting or record keeping documents adverse to them. Given these points, in my judgment no inference is to be drawn against them for not calling other witnesses.
420. I shall not itemise other witnesses who could have been called (I deal separately next with the individual position of Mr Abboud formerly of VTBC).
421. These observations having been made, and bearing in mind the treatment of the subject of inferences in this area in Edofi v Royal Mail Group Ltd [2021] 1 WLR 3863 (Lord Leggatt, especially at [41]) I decline, in all the circumstances of the case at trial, to draw any inference against any party in these proceedings for not calling a witness.

### **Mr Abboud**

422. In June 2023 VTBC served a witness statement from Mr Abboud. Mr Abboud was scheduled to be cross-examined on that witness statement at trial. However, in the course of the trial VTBC informed the Court that they would not be tendering him for cross-examination.
423. Mozambique emphasised how limited was the account given. Mr Safa and the Prinvest Companies responded to VTBC's announcement that VTBC would not be tendering him for cross examination with notice that they intended to rely on his witness statement. Mozambique then sought permission from the Court (pursuant to Civil Procedure Rule 33.4) to call Mr Abboud to be cross-examined.
424. Permission was granted. But Mr Abboud was not physically within the jurisdiction of this Court, and cross-examination would require his cooperation. The Court was asked to indicate whether its preference would be for Mr Abboud to give evidence under cross-examination, and the Court said yes it was.
425. On 25 October 2023, Mozambique wrote to Mr Abboud to inform him that if, notwithstanding that indication, he chose not to attend for cross-examination, Mozambique would invite the Court to draw adverse inferences from his failure to give oral evidence and ask the Judge to make findings as contended for by Mozambique. These included a finding that Mr Abboud received a bribe in relation to his role in the transactions.
426. The following day, Mr Abboud (by email) declined to participate, offering this as his explanation:

“I reluctantly had accepted to provide a witness statement, as I unfortunately had to respond to the outrageous and completely incorrect statements made by Mr. Pearse. I felt it was necessary to personally address them, at the very least, to protect my reputation.

Although it was discussed in the past that I might have to testify in court, I no longer wish to proceed with that as I strongly believe my witness statement covers all relevant points.

This is a chapter of my professional life, both at VTB PLC and in relation to the Mozambique transaction, that I no longer wish to revisit.

Therefore, I respectfully decline to participate in these proceedings any further.”

427. Mozambique contends that accounts of the circumstances in which Mr Abboud and VTBC were first approached, given by the individuals involved and VTBC itself, conflict with each other and with the contemporaneous documents. However, in the result in my judgment this does not matter for the issues I have to decide. I appreciate that some of the accounts given suggest further questions for Mr Abboud. But on the evidence I have at trial I am not prepared to reject Mr Safa’s account in cross-examination to the effect that his introduction to Mr Abboud came through Mr Boustani, who told him that VTBC was “interested in financing Mozambique and have a need to do so”, and that Mr Safa and Mr Abboud first met in September at Barbossi.
428. More significantly, Mozambique refers to a number of points said to support its allegation that Mr Safa and the Privinvest Companies bribed Mr Abboud. These include what Mr Pearse said in the New York proceedings, and the absence of evidence to contradict that. To this Mozambique adds Mr Abboud’s behaviour overall: his time privately with Mr Safa in Barbossi, the way he behaved in the due diligence process, his decision to stress urgency, the presence of ‘red flags’ and his alleged awareness of them. Mozambique notes that the Court does not have Mr Abboud’s mobile phone data, including instant messaging data, or his bank statements, and that only a small number of Mr Abboud’s personal emails have been disclosed, notwithstanding that it is clear that Mr Abboud made relevant use of his personal email.
429. In my assessment Mr Abboud’s behaviour showed that he wanted to get the transactions through, no doubt for financial reward, but not that he was bribed by Mr Safa and the Privinvest Companies. I do not have sufficient confidence in what Mr Pearse said in the New York proceedings (and has not said here under cross-examination) to give any material weight to what he said there. There is no clear reference to a payment to Mr Abboud in the Allam and Senanyake Spreadsheets (although I accept there are entries that are not attributed, and the possibility of indirect payments remains).
430. The reasons given by Mr Abboud for not attending at trial are not impressive or convincing. But, taking into account also the evidence I do have, an adverse inference at trial would be an inference adverse to the case of a party or parties rather than the witness and I do not consider that fairness requires that in all the circumstances.
431. Mr Safa and the Privinvest Companies rely on Mr Abboud’s witness statement, as they are entitled to. I take it into account alongside all the other evidence at trial.

### **Supply by the Privinvest Group under the Supply Contracts**

432. Taken as a whole, on the evidence that was available to me I find that the Privinvest Group supplied what was required to be supplied under the Proindicus Supply Contract. In particular, a list for the First Project includes references to Bills of Lading and Air Waybills from December 2013 to September 2014 for patrol boats, radar towers, a drone and spare parts to the Ports or Airports of Pemba, Nacala, Maputo.
433. I find the same, supply of what was required to be supplied, was true for EMATUM save for the commissioning of a coordination centre where the materials were provided but not assembled because a site was not made available.
434. MAM is more involved, but I find that the Privinvest Group supplied or was ready and willing to supply what was required to be supplied. After amendment to the MAM Supply Contract, there was still delay in providing required access to the relevant yard at Maputo. Key training could not be delivered because MAM did not provide required trainees. I am prepared to accept Mr Valentijn's evidence that the yard was capable of work with steel, composite/fibreglass and aluminium and that there was "the capacity to build vessels (both from scratch, as well as assembly from parts) as well as repair and maintain them across two sites" (the second being Pemba which was handed over in May 2017). There was an issue over the provision of a 160 tonne crane, but there was some evidence of a 160 tonne crane being held up in customs.
435. Within these supplies, I also find that the Privinvest Group made available the intellectual property and transfer of technology it had contracted to make available for the Proindicus vessels and the EMATUM vessels, and that the intellectual property and transfer of technology under the MAM Supply Contract was also available. The evidence available to me was not comprehensive. Mozambique provided no witness of fact with contemporaneous knowledge that could be tested in cross-examination. In this area too I have been prepared to take into account, against Mozambique, deficiencies in its disclosure of documents.
436. There was repeated chasing by the Privinvest Group to enable the Group to deliver on its obligations. Indeed, there is evidence that the Group went beyond its contractual obligations, showing flexibility and delivering additional services (and assets) free of charge.
437. Mr Safa and the Privinvest Companies make this challenge as a result:
- "Were there any truth to the Republic's allegations, Privinvest would have had no interest in pushing the Republic to allow Privinvest to deliver these valuable services (at a heavy cost to Privinvest). It could have just sat on its hands, having received payment already. Neither would Privinvest have had any interest in delivering beyond its obligations. The fact it did chase and did deliver as obliged, and then more, demonstrates its well-founded and legitimate commitment to the Projects and its interest in seeing them succeed, as a demonstration of its capabilities that it could then use to market to others; it did not want the Projects to fail.
438. The answer in my judgment involves three points. First, the Privinvest Group had (as the challenge acknowledges) been paid up front. Second, although unrealistic, Mr Safa and the Privinvest Group hoped to have the best of both worlds: to make the money they would on the Projects and for the Projects somehow to succeed.
439. Third, many people make up the Privinvest Group. Within the Privinvest Group many involved would have been honest employees there to carry out the Supply Contracts – the

manufacture of assets, the delivery, the services. They will have supported the provision of additional assets and services free of charge as goodwill, largely in order to try and make things work. These employees would have no idea of how the Supply Contracts and the Guarantees came to be achieved.

### **Expressions of satisfaction by Proindicus, EMATUM and MAM, and Mozambique**

440. As Mr Safa and the Privinvest Companies point out, there were occasions where satisfaction rather than criticism was expressed by Proindicus, EMATUM and MAM, and Mozambique. Mr Safa and the Privinvest Companies give examples of expressions of satisfaction.
441. These included instances already referred to. Thus, when Mr Matlaba, the Chairman of Proindicus, wrote to Mr Kuhn in October 2013 that “Proindicus are happy with your work”, and the letter dated 18 May 2017 to one of the Privinvest Companies from General Lidimu on behalf of SISE, referring to exceeded expectations “in terms of support for this project” (although I have commented on the context of that letter).
442. To these Mr Safa and the Privinvest Companies add other examples. There was positive comment from the Deputy Minister of Defence on vessels presented to him in March 2014 at Pemba. In a speech he declared that the Pemba Shipyard “will not only big up the Mozambican Armed Forces, but will also contribute to the full compliance of the noble missions of the Mozambican navy in protection of the sea and its marine resources”. Minister Mondlane (Minister of Defence, then Minister of the Sea, Inland Waters and Fisheries) had said that that the vessels delivered under EMATUM “with good maintenance, last at least 30 years without any problems and are working and producing ...” and described (in a speech in April 2015) EMATUM as one of the steps being taken by the Republic “on the path to the creation of a national tuna fleet”.
443. President Guebuza, Prime Minister Vaquina and General Lazaro Menete (then Admiral and Chief of Navy) and others are reported to have been very happy with the demonstrations of vessels on Armed Forces/Revolution Day in September 2014. Then at Pemba Base Open Day, held in August 2016, the Minister of Defence, Mr do Rosário, the Chief of Navy and the Naval Base Commander were said to be “extremely pleased and happy with the demonstration and the capabilities of the vessels”, prompting MAM in a letter to one of the Privinvest Companies to proclaim the Open Day to be a “great success due to the [Privinvest] team efforts”.
444. A site visit to Pemba to “visit the infrastructure, services and equipment of the companies PROINDICUS and MAM” on 26 October 2016, caused the Parliamentary Commission of Inquiry to report that it “was pleased with the presentations made by the students [of the] Naval School, who demonstrated mastery over the equipment, which dissipates the concern the CPI had regarding the training”. Pemba Naval School held its first graduation day shortly thereafter on 15 December 2016 attended by the Governor of Cabo Delgado, Mrs Celmira da Silca. Following a student demonstration of DV-15 vessels, she reportedly said that:
- “... finally they have the capability to protect their seas from poaching and that she has now seen that it is possible to have a fast reaction force to intercept illegal fishing boats that she knows are preying on their fish stocks.”
445. I am very cautious about all of these examples for present purposes. They are largely very general, often based on appearances. They do not bring out hard, detailed, evidence-based,

facts and figures. Some had morale as their focus. They should not be taken to be based on in-depth knowledge of the situation.

446. And standing back, compared to the cost, scale and significance of the Projects, the fact that the examples are so limited and general in fact simply brings out how deep and complete was the failure of the Projects.

### **The failure of the Projects**

447. Notwithstanding the supply, and the expressions of satisfaction, it is effectively, and in my view realistically, common ground between Mozambique and Mr Safa and the Prinvest Companies that the Projects failed.

448. The, very different, case of Mozambique on the one hand and Mr Safa and the Prinvest Companies on the other, over the reasons for that failure of the Projects is captured in this exchange between Mr Adkin KC and Mr Safa:

“Mr Adkin KC: Okay. What I am going to suggest to you, Mr Safa, and I am going to put to you the MAM supply contract just at — let me take it in turns. The MAM supply contract was totally uncommercial and disastrous for the Republic, wasn't it?”

Mr Safa: I don't agree with this. What was disastrous is the way they managed it.

Mr Adkin KC: The Proindicus contract was totally uncommercial and disastrous for the Republic, wasn't it?

Mr Safa: I don't agree. The way they managed it was disastrous, yes, but the potential was enormous whether for MAM or for Proindicus.

Mr Adkin KC: And the EMATUM contract was uncommercial and disastrous for the Republic, wasn't it?

Mr Safa: It is the way they managed it.

Mr Adkin KC: The projects failed, Mr Safa, not because they were mismanaged or sabotaged but because they were extortionately priced contracts procured by bribery which took no account of the needs of the Republic and could never have been profitable. That is the position, isn't it, Mr Safa?

Mr Safa: I don't agree with this a second. Those contracts were done and drawn in view or taking into consideration what the Republic wanted, what the Republic was looking for and the operational needs of the Republic. And they were supplying to the satisfaction of everybody excellent products. Unfortunately, mismanagement starting since the supply. And then there was a complete failure in managing those projects as well as assets or projects. Complete failure. I want to add at the end what we viewed is that there was probably a will at a certain time not to have it work or not to make it work, but this is always on the side of the Republic who was the customer.”

449. Mr Matthews KC put things in this way in his opening, for Mr Safa and the Prinvest Companies:

“As far as we were concerned the Republic had a perfectly good project. It had a perfectly good provider of that project. What it needed to do was take the equipment, take the support of Prinvest, take the benefits of it, the training, the transfer of knowledge and develop the plan. That’s not what happened.”

450. In my judgment the Projects had no chance from the start. From the start there was no experience or expertise or organisational strength on the part of the three state-owned enterprises or Mozambique itself to manage what was being supplied and realise the ambition of the Projects. I find this was quite clear to Mr Safa and the Prinvest Group whenever they chose to look. It was or would have been clear to the banks too.
451. The problem was not with the quality of what was supplied; it was with the complete unsuitability of that supply for this nation, at that time, and on these terms.
452. The Projects could not and would not have happened but for Mozambique as a sovereign state appearing to be ready to take the financial risk as it did through the Guarantees and the Guarantee Confirmations. The banks would not have lent and that is why the banks focused not on the Projects but the Guarantees; not on the supplies and what was to be done with them but on the sovereign covenant.
453. At one point in argument Mr Matthews KC observed:

“It is a complete fiction to complain of the guarantee as being somehow the root of the evil. They are where they are possibly because of the mechanism to avoid having to have matters resolved in relation to the SPVs. The case has been artificially contrived by the Republic in that sense. But if the SPV mechanism had not been adopted, the supply contracts and therefore the loans to pay for them would have been with the Republic direct and there would have been no need for the guarantees.

The point correctly recognises the importance of the sovereign commitment in the structure. But where it is (as here) in the guarantee then the guarantee will properly be at the centre of any study and challenge. If the sovereign commitment is (but here it is not) in the supply contract then that will be the centre of any study and challenge.

454. Mr Safa and the Prinvest Companies make the point that officials who are not said to have been corrupt were involved in identifying Mozambique’s needs and formulating its policies, and in the Projects and their performance. I accept that. Mozambican officials not alleged to have been dishonest or unreasonable were of course prepared to be involved with what was supplied - for example, with the challenge of vessels and equipment arriving. But this does not mean that there was the experience or expertise or organisational strength on the part of the three state-owned enterprises, or Mozambique, that was required. And these officials would have no idea of how the Supply Contracts and the Guarantees came to be achieved.
455. I accept that, contrary to the suggestion from Mozambique in places, the Projects were in fact widely known and not secret. Some of the vessels supplied under Proindicus Supply Contract and the EMATUM Supply Contract have been and still are used. This included on patrols (as many as 743 times) and missions, for an evacuation of foreign citizens in 2021, for counter-insurgency and for parades. But this use is modest in the scheme of things. As of 2015, nine of the 24 fishing vessels delivered appear to have been granted licences, with 5 of the fishing vessels chartered to Tunamar in February 2019 and 5 leased to Tunafrika.

456. I also accept that officials and office holders in Mozambique saw and discussed revenue-generating potential including through granting exclusivity to Proindicus for providing security services for oil and gas operators in the EEZ (and tax and port dues). This included at least President Guebuza, Minister Chang, Ms Lucas, Mr do Rosário and Mr Matlaba. There are examples of oil and gas companies paying substantial sums for security in the EEZ. Prinvest had advised the Mozambique (in particular President Guebuza) on the possibility of obtaining substantial revenues through offset arrangements.
457. But on scrutiny these details too, show more the limits of what was or could be achieved as compared with the ambition. The fact that Proindicus, EMATUM and MAM, and Mozambique, did not do more to make a success of what was supplied, and the delays and non-performance on their part, simply underlines how unsuitable the Projects, as realised through the Supply Contracts, were for them and for Mozambique.
458. This is the answer when Mr Safa and the Prinvest Companies seek to attribute the failure of the Projects to Mozambique's "failure to capitalise on the assets provided under the Supply Contracts". Mr Safa described "a colossal loss in unrealised revenue and prestige for Mozambique" and "very significant reputational damage and loss of business for Prinvest".
459. Mr Safa's evidence was that he saw "real potential for Mozambique in the MAM Project if Mozambique had fulfilled the potential of MAM as intended". But in my judgment this last point was untrue. Nothing gave Mr Safa and the Prinvest Group any basis to cause them to understand that MAM, or Mozambique, was in a position to succeed with the MAM Project. The same was true across the Projects. At best Mr Safa and Mr Boustani had chosen not to look into the point.
460. The further suggestion of Mr Safa and the Prinvest Companies was that the Projects were neglected or sabotaged for political reasons by President Nyusi. They add:
- "The tragedy is that the Projects fell victim to internal FRELIMO battles and, specifically, President Nyusi's political machinations. The Republic thus denied itself the proper use of the assets and services delivered and the considerable revenue and independence that it would have derived from them had it used them as originally intended."

I appreciate that President Nyusi signalled change in cryptic terms in two emails, referred to earlier in this judgment, and that Mozambique's political priorities may have changed. But there was not the evidence to satisfy me that there was sabotage. As to neglect, the word may simply capture the practical result that comes from supply that a recipient cannot manage.

461. But why should Mr Safa and the Prinvest Group have taken the risk, to their existing business, of involvement in Projects that were, especially to someone of Mr Safa's experience, so obviously waiting to fail. The best answer I can give is that Mr Boustani and in turn Mr Safa lost sight of that risk. They knew they could deliver goods and services, but did not focus on what would happen if that delivery was to a country that lacked expertise and experience and organisational strength to the degree that Mozambique did. What caused them to lose sight of the risk was the fact that Mr Pearse, Mr Singh, Ms Subeva and Mr Abboud seemed to have created rewards that were irresistible from the Projects and prospectively from elsewhere in Africa.

462. One thing was quite clear from the outset, and not faced up to by Mr Pearse, Mr Singh and Ms Subeva (who would already have collected their rewards), and Mr Abboud, and that was that Proindicus, EMATUM and MAM would sooner or later not be able to meet their liabilities for the borrowing they had incurred to enable them to pay under the Supply Contracts, and the Guarantees would be called on. And (such was the scale of what had been allowed to balloon as the Projects grew and accumulated) Mozambique's economy itself would be put at risk.

### **Claims against Mr Safa and the Privinvest Companies**

463. This is civil and commercial litigation, and the standard of proof is on the balance of probabilities. That said, given the nature of allegations levelled by Mozambique against Mr Safa and the Privinvest Companies, to be satisfied to that standard requires convincing evidence.

464. Mozambique puts its case in a number of ways. As a matter of record, it conceded some by the time the proceedings reached the Supreme Court in 2023 (see [2023] UKSC 32; [2023] Bus LR 1359), on a point of arbitration law. The settlements at trial have had their effect in some places. In some cases, the allegations were only collateral.

465. At the end of his cross-examination by Mr Adkin KC and re-examination by Mr Matthews KC, Mr Safa asked to add something. I allowed this and I wish to record that in reaching the conclusions I have in this Judgment I have kept closely in mind what Mr Safa wished to add. It was as follows:

“Mr Safa: Excuse me, if it is possible for me, can I — at the end can I speak for two minutes?

Mr Justice Robin Knowles: Just give me a moment. Mr Matthews, unless you have an objection I am minded to listen to Mr Safa if he wishes to speak but it is a matter for you.

Mr Matthews KC: My Lord, I am not in a position to object or otherwise. It is a matter entirely for your Lordship.

Mr Justice Robin Knowles: Yes. Mr Safa, just I would like to finish hearing what you want to tell me, but please, please be brief because normally the evidence comes through question and answer.

Mr Safa: My Lord, thank you very much. Thank you for this. I believe that in my witness statements I tried as much as possible to explain exactly the issues around what I was asked by Credit Suisse, by Andrew Pearse and by the Republic. I have been giving an explanation on the payments that were effected from our side and the reason for those payments. The thing that, and I tried to do it yesterday, I feel I'm in a place where instead of people saying to me, like in the Credit Suisse case, you were the master of kickbacks, to show to me Mr Iskandar Safa, we have this, this and this against you and that is why you are the master of kickbacks, they are saying to me: you are master of kickbacks, please prove that you are not.

The second thing, and this is not only for the kickbacks. Amando Guebuza. 33 or 30 million were paid to Armando Guebuza, please show me that you didn't pay it, instead of showing me a transfer or a bank statement saying Armando Guebuza receives from many of our companies 30 million. So it is always I have to fight in default and not fight to something that shows exactly what I am being accused of. It applies to the master of

kickback, it applies to Armando Guebuza, it applies to the pricing of the contract. My Lord, the pricing of the contract is an issue that, as I allowed myself to tell you yesterday, that will be found in any contract that will be. The thing is that it is not a boat of 30 metres. One has to give the characteristics of the boat. And one, to compare it with somebody who came with an offer with the same characteristics and saying, look, he came with an offer of \$5, you were at \$55 and we went with you. Please explain. This I can explain.

But I mean to do it backwards and say why the price is not the right price, it is impossible to do. So what I wanted to do, we did as much as we can in order to explain but to explain things in default is impossible or very, very difficult. That is what I wanted to say, my Lord.

Mr Justice Robin Knowles: Thank you for saying it, Mr Safa, and I have listened closely to your evidence and to your making that observation at points during your evidence and I'll be considering it alongside everything else in due course. But thank you for that.

Mr Safa: One more thing if I might, my Lord. I have one more thing. I just want to add for the last 32/33 years when we started this business, unlike probably all companies that are in the defence business, we were never indicted, we were never convicted with the thing concerning bribes or buying a contract. Never.”

466. Mozambique described many promises and payments to different people as bribes but the circumstances of each were different. There were payments described as bribes where the “realistic prospect of a conflict between the agent's personal interest and that of his principal” was between an employee and a bank, rather than Mozambique. And a bribe is one thing, whereas an apparently excessive or exploitative fee for work done by an individual is another. Of course, the latter may still be open to challenge on different grounds and may illustrate an utter lack of proper conduct, but not necessarily as a bribe.
467. However, the heart of Mozambique’s case against Mr Safa and the Privinvest Companies is that they are liable to Mozambique in respect of the alleged corruption by them of Mozambique’s officials and office holders. And within that, the payments or inducements that are of central relevance to the claims the Court has to decide are those to Minister Chang. Mozambique alleges that these resulted in the losses Mozambique has sustained, in particular pursuant to the Guarantees and Guarantee Confirmations.

### **Payments to Minister Chang in connection with the Guarantees**

468. I do not have the advantage of evidence from Minister Chang, and in particular of evidence under cross-examination.
469. At least US\$7 million was paid, to or to the benefit of Minister Chang. I am prepared to infer that the payments were preceded by promises that they would be made. On the evidence before me, I find that Minister Chang received these payments and promises from and as a result of steps taken by the Privinvest Companies and Mr Safa to cause the Guarantees and Guarantee Confirmations to be given by Mozambique.
470. The Privinvest Companies and Mr Safa admit that US\$2 million was paid on 4 August 2013 and 4 September 2013 by a Privinvest Group company. They admit that US\$5 million was paid on or about 21 October 2013, 12 November 2013 and 4 December 2013 by a Privinvest Group company. The Allam Spreadsheet shows a further US\$400,000 in 2013 and US\$5

million in 2014. The reference in the email of 20 November 2013 to Minister Chang and a figure of US\$1.78 million I find harder to place with confidence and therefore leave aside.

471. The background was agreement by Mr Boustani, Mr Safa and the Prinvest Group, to promise payments to people, including Mozambican officials and office holders, in order to procure Mozambique's participation in the Projects. In this, they were assisted by Mr Allam in making and recording payments. The payments to Minister Chang were made at a time that associates them with the time of signing the Guarantees and Guarantee Confirmations.
472. The business and operational foundations of the Projects were so weak as to be unviable, especially when applied to Mozambique at that point in its history. Mozambique's sovereign financial covenant in relation to the Projects, ultimately in the form of the Guarantees and the Guarantee Confirmations, was essential: Mr Safa and the Prinvest Group fully appreciated that.
473. Having heard the evidence of Mr Safa and Mr Boustani, and had the opportunity to assess them, I reject as untrue Mr Safa's evidence that he and the Prinvest Group would not pay bribes. I am satisfied Mr Safa and the Prinvest Group were prepared to promise or pay whoever it took, and specifically Minister Chang, to procure the Guarantees and Guarantee Confirmations and thus the Projects. And that is what they did.
474. In Prinvest Group's records the payments were recorded as made in respect of the Projects. I do not accept Mr Boustani's attempt to distance his 29 March 2013 spreadsheet as a "theoretical model". No credible reason was given for why such a theoretical model would have been constructed and included such figures for the "partners fees". In cross-examination, Mr Safa denied knowledge of the spreadsheet or that Mr Boustani had told him about it. In my judgment that is very unlikely to be correct. Its contents were material, Mr Safa had already been sent earlier documents, and it was being sent to his secretary for him to see.
475. The Allam Spreadsheet, I am satisfied, was to enable Mr Allam and Mr Safa closely to monitor the cash position of the Prinvest Group in relation to the Projects. As set out above it showed a series of payments (both 'budgeted' and actually paid) to various officials, including Minister Chang. In cross-examination, Mr Safa claimed not to have seen the spreadsheet before, but I am satisfied he was mistaken. Both versions of the spreadsheet were sent to his secretary, Ms Pinet, in two emails headed "A Mr Safa". Mr Safa suggested that he would not have seen either email because Ms Pinet is based at Barbossi in the South of France, and Mr Safa never spent time there in August. This fact (it transpired he was in Maputo at the time) did not persuade me that he did not see it. I accept that it was developed over time.
476. According to the Prinvest Companies and Mr Safa the admitted payments of US\$7 million were initially made for the purpose of joint investments, the first in real estate, which did not materialise; the second in a bank and/or sovereign wealth fund or "New Bank" involving Minister Chang, and Pantera Investments SA owned by Mr Leão and Minister Chang.
477. I did not find Mr Boustani's evidence about joint investment credible in relation to these payments. I reject as untrue his evidence that Prinvest:

"... paid USD 7m in connection with the joint investments with Mr Chang including, for example, to put together a team and to create the local logistics and infrastructure for the

proposed sovereign wealth fund, which we thought Palomar might also have a role in managing as a public-private partnership with Mozambique and also to explore and obtain a banking licence for the proposed banking business”

I accept Mozambique’s contention that the suggestion that these very large payments represented ‘joint investments’ when there is no sign that Minister Chang made any financial contribution of his own to the “investments” is implausible, and unsupported by the documentary record on all sides. They were in amounts that I cannot relate to any separate business venture. I find that the suggestion by Mr Safa and the Privinvest Companies that these payments were and were believed to be for investments and not as bribes to be false and designed to conceal their true purpose.

478. When dealing with a claim in bribery, in English Law the question of the extent to which an alleged bribe or the offer of it influenced the person to whom it was given or offered does not arise. Chitty LJ said in Shipway v Broadwood [1899] 1 QB 369 at 373 said that “... it would be almost impossible to ascertain what had been the effect of the bribe...”. Perhaps in case Mozambican Law differs, Mozambique seeks a specific finding that:

“The promises and payments made to Minister Chang were to induce, and did induce, his execution of the Proindicus Guarantee, the Proindicus [Guarantee Confirmations], the EMATUM Guarantee and the MAM Guarantee. That was the quid pro quo for the promises of payment and payments subsequently made to him.”

479. I do feel able in the present case to make that finding. The effect of the promises and payments was to cause Minister Chang to execute the Guarantees and the Guarantee Confirmations. There is no other sufficient reason to explain why the Minister of Finance should have signed them in circumstances where the Budget Laws, and the budgets, stood in the way of that course, and without looking more critically at the Projects and the proposition that the state should commit its covenant to them.
480. The admitted payments were, say the Privinvest Companies and Mr Safa, “repurposed” with Mr Boustani’s permission to fund Minister Chang’s campaign for the National Assembly in 2015. Mr Safa and the Privinvest Companies point out that this latter evidence, given by Mr Boustani, was not challenged. But my focus is on the circumstances of the payments before and at the time they were made in 2013 and 2014, and not later in 2015.
481. To be clear, I would make the findings I do even if the promises and payments to Minister Chang were in some way or at some point to be applied for investments or campaign contributions. On the facts and circumstances of this case, the correct analysis would be that even as an investment or campaign contribution they would still be an inducement to execute the Guarantees and Guarantee Confirmations.
482. Mr Matthews KC refers to the fact of request from Minister Nyusi to Minister Chang to sign:

“And further, you may ask, if we have the backing of the Defence Minister [Minister Nyusi] why would we need to bribe Minister Chang? The Republic does not say Minister, or now ... President Nyusi was bribed. There is an untainted channel of instruction for the guarantees to be signed running from the then Defence Minister Nyusi”

Minister Chang was Minister of Finance. The answer in my judgment is that, whatever the responsibilities of others, it was for Minister Chang to inquire and challenge and consider whether to say no to Guarantees or Guarantee Confirmations. This is why he was targeted for bribes.

483. The records do contain narrative that appears to allocate particular payments to individual guarantee commitments by Mozambique. The promises and payments preceded either or both of the MAM Guarantee (20 May 2014) and the Proindicus Second Guarantee Confirmation (17 December 2014). I do not consider that this matters. The proper conclusion is that the promises and payments were part of a course of conduct that induced Minister Chang to sign the Guarantees and Guarantee Confirmations. The earlier promises and payments also induced Minister Chang to sign those later guarantee commitments by Mozambique. In English law (as referenced below) “the payment need not be linked to a particular transaction, it is sufficient that the agent is tainted with bribery at the time of the transaction between the payer of the bribe and the principal”. If in this case there is the possibility that Mozambican law does not say the same, still, on the facts in these proceedings, there is no other convincing alternative explanation.
484. The payments and promises were kept secret from Mozambique, the principal that Minister Chang was duty bound to serve. In my judgment, it is a safe and proper conclusion that Mozambique itself did not know about the payments and promises. This is so whatever the position (the subject of much contention at trial) on secrecy or transparency as regards the Projects as whole or as regards other aspects of the Projects.
485. True, it cannot be ruled out that some other senior officials and holders of public office knew of the payments to Minister Chang and the promises that preceded them or that they implied for the future. And Mr Matthews KC emphasised here as elsewhere the poverty of Mozambique’s disclosure of documents and its decision not to call suitable witnesses. But the private knowledge of a senior official or holder of public office, even a President, of a bribe would not suffice to give knowledge to Mozambique in a claim by Mozambique against the briber. I am satisfied this is the result that would be reached under Mozambican law, where (as Professor Jose Gomes described) there is no attribution of knowledge if there is a valid reason to disavow attribution of knowledge. In the situation under discussion, I find there is such valid reason.
486. It should be noted further than even the most senior holder of public office did not have authority to permit or ratify a bribe, and these were bribes of the Minister of Finance. There was no disclosure to the Assembly of Mozambique of the fact of the payments: there would have been visible public consequences had there been such disclosure.

### **Mr Safa and the Prinvest Companies as individual Defendants**

487. Mr Safa and the Prinvest Companies emphasise, correctly, that each of the Prinvest Companies is legally distinct from one another. In closing they summarised (the emphasis is in the original):

“... The Republic must make good, for each payment, the corporate entity it alleges the payment in question was made by (and how liability is said to arise in virtue of that). It has not sought to do that. If it did, it would expose that the Republic’s case – that all Corporate Defendants are liable for all payments – cannot be maintained.”

488. Further Mr Safa and the Prinvest Companies argue:

“... a payment by party *A* cannot render party *B* liable in bribery. The Republic has advanced no factual case to overcome the objection. On any view, therefore, the only party which could be held liable in bribery for any particular payment is the payor itself.”

489. The answer lies in the facts. I am satisfied that Mr Safa acted throughout for each and all of the Prinvest Companies, and in fact for the whole Prinvest Group. When a promise or payment to Minister Chang was made by one individual or company that was an action on behalf of Mr Safa and all the Prinvest Companies, and with the knowledge and intent of Mr Safa and all the Prinvest Companies. The way in which they worked was that any promise or payment could as readily have been made by another company in the Prinvest Group as by the company that made it; operational convenience alone lay behind the choice of company at the point of payment to make a payment. The payment was made on behalf of all, in an attempt to benefit the whole Prinvest Group and in that way all of Mr Safa and the Prinvest Companies.

490. The facts also provide the answer to the contention by Mr Safa and the Prinvest Companies that there are problems with Mozambique’s allegation that (in addition to Mr Safa) Mr Boustani and Mr Allam committed crimes. Mr Boustani and Mr Allam are not parties to these proceedings. It is not necessary to reach a conclusion on whether they committed crimes. I am satisfied that Mr Safa was the individual ultimately behind each promise and payment to Minister Chang (even where assisted by Mr Boustani or Mr Allam), and the decision to make promises and payments to Minister Chang.

#### **Mr Ndambi Guebuza, Mr do Rosário and Mr Leão**

491. Mozambique also alleges that Mr do Rosário, Mr Leão and Mr Ndambi Guebuza were bribed.

492. Mr do Rosário, Mr Leão and Mr Ndambi Guebuza were promised and paid sums. These may be open to the strongest criticism, and also may give rise to various forms of liability. But that is not enough for the particular point I am addressing, which is bribery as an element of Mozambique’s claim against Mr Safa and the Prinvest Companies.

493. Here, Mozambique has not satisfied me to the necessary standard of proof, that Mr Ndambi Guebuza was an agent of Mozambique.

494. Mr do Rosário and Mr Leão held, in addition to their position as officials of Mozambique, a position in the state-owned enterprises. They may have been promised and received sums for work in that capacity rather than as agents of Mozambique. Again, Mozambique has not satisfied me on this to the necessary standard of proof.

#### **Applicable Law**

495. Article 4 of Rome II provides:

“General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the

damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.”

496. Mr Safa and the Prinvest Companies contend that where a claimant’s complaint is that it has been induced to enter into an unfavourable transaction as a result of a defendant’s wrongdoing, the claimant suffers damage at the point and in the place where it concluded the transaction as a matter of fact, thereby placing an irreversible burden on its assets. In the present case, this would be when and where the Guarantees were signed by Minister Chang, that is, Mozambique.

497. Mozambique disagrees and contends that the correct answer is English law for two reasons. It contends first that direct damage was sustained in England because the point at which “the scheme” became irreversible was when the banks decided, in England, to release funding to the Prinvest Companies. Before that decision, it argues, the Guarantees had nothing to bite on, and only after that decision would bribes would be paid. Second, and relying on Article 4(3), Mozambique contends:

“the Court sees a scheme to commit the Republic to English-law-governed Guarantees of English-law-governed financing obligations, in respect of lending advanced from London by English banks, selected because their London bankers could be (and were) corrupted”.

It points to the involvement of the Prinvest Companies (through Mr Boustani) in negotiations, and to laws other than Mozambican law in the transactions making up the Projects, in particular English law and Swiss law.

498. In my judgment the Prinvest Companies and Mr Safa are correct that, applying Article 4, the governing law of the claims against them is Mozambican law. Mozambique is where the damage occurred, in the form of the execution of the Guarantees and Guarantee Confirmations by Minister Chang. The Guarantees and Guarantee Confirmations were the sovereign financial commitment that he was bribed to deliver.

499. A review of all the circumstances shows less connection with England than is argued by Mozambique. Mozambique is where Minister Chang held the office that the promise of a bribe corrupted. The references deployed by Mozambique to England and English bankers (in fact within banking groups led from a range of other countries) were eclipsed by the activity in Mozambique, France, and the Middle East, and in Russia and Switzerland.

500. I do not address this aspect of the case at greater length. I shall consider the position under each of Mozambican law and English law below. In the result, as was fairly summarised by Mozambique in opening:

“Unsurprisingly, the outcome is the same whichever system of law governs: Mozambican law condemns bribery and conspiracy to commit it and provides remedies to those who suffer loss in consequence.”

(I also mention for completeness that, to the extent that Article 10 of Rome II applies, it leads to the same outcome as Article 4 in the present case.)

## **Mozambican law**

### Initial points

501. In considering the Mozambican law issues I had the benefit of expert evidence. This included the evidence of those expert in Portuguese law, given the historical origins of some of today’s Mozambican law and Mozambican law at the time of events material to these proceedings.

502. Article 483(1) of the Civil Code provides:

“Whoever intentionally or negligently violates another person’s right or any statutory provision intended to protect the interest of others, is obliged to compensate the injured party for the damages resulting from the violation.”

The civil liability recognised by this provision includes where the violation amounts to a criminal offence.

503. I should add, for completeness, and with the benefit of the expert evidence, that I did not consider Mozambique was materially assisted by its reliance on Articles 87 and 89 of the Mozambique Commercial Code or 500 of the Mozambique Civil Code, or on (reverse) piercing the corporate veil under Mozambican law.

### “Active corruption”

504. Article 321 of the 1886 Penal Code was in these terms:

“Any person who corrupts by giving gifts, presents, offers or promises to any public employee, seeking an unlawful act, buying a vote or seeking to achieve or ensure by corruption the result of any claims, shall be punished with the same penalties that are imposed on the corrupt employee, with the declaration that the penalties of dismissal or suspension shall be replaced by suspension of political rights, for not less than two years.

505. The elements of the crime of active corruption are agreed between experts of Mozambican criminal law in their Joint Expert Memorandum:

“(i) a person; (ii) an offer, payment or promise of money or an advantage; (iii) not due to a public servant/employee; (iv) for the public servant/employee to perform acts or omissions, whether or not contrary to the duties of office.”

There is a subjective element of intention.

506. In my judgment the elements are each satisfied. In summary, the promises and payments by Mr Safa and the Privinvest Companies to Minister Chang, were not due to Minister Chang as a public servant and were, intentionally, to cause him to sign the Guarantees and the Guarantee Confirmations.

507. Mr Safa and the Privinvest Companies accept that Article 321 of the 1886 Penal Code proscribed active corruption. It is however necessary also to resolve a question whether Mozambican Law proscribed what has been termed “proper” active corruption (the active corruption that Mozambique alleges) at the material time or whether another Law, Law 6/2004, had the effect of removing that proscription. Articles 1, 2, 7-9 and 24 of the 2004 Law are set out in full in the Appendix to this Judgment. The argument for Mr Safa and the Privinvest Companies was developed in writing, and orally in closing by Mr Fred Wilmot-Smith.
508. Law 6/2004 was passed on 17 June 2004. The object of the Law was stated, by its Article 1, to be “to strengthen the legal framework in force to combat the crimes of corruption and unlawful economic participation.” Article 24 provided that:
- “Provisions that are contradictory to this Law are hereby repealed”.
509. Article 9(1) of Law 6/2004 proscribed what has been termed “improper” active corruption. It provided as follows:
- “Article 9 (Active corruption)
1. Whoever gives or promises to the entities provided for in Article 2 [see Appendix], by themselves or through an intermediary, money or other pecuniary or non-pecuniary advantage not due to them, for the purposes indicated in Article 8 [see Appendix], shall be punished with the penalties of that provision.
- ...”
510. According to Professor Justino, Article 24 of the 2004 Law repealed all of Article 321 of the 1886 Criminal Code. I did not find Professor Justino’s evidence persuasive. No basis was given for why the legislator should have intended to remove proper active corruption from what would constitute the offence of active corruption. Professor Justino did not show how his analysis was consistent with the objective of the 2004 Law, set out in Article 1, of strengthening the legal framework in force to combat the crimes of corruption.
511. I approach the matter with care given what Professor Justino had to say about the distinctive nature of the Mozambican system. But the short answer is that Article 321 is not “contradictory” to Article 9. In fact, at most Article 9 repeats, duplicates or elaborates some of Article 321. Contrary to Professor Justino’s concerns, no technique of systematic interpretation is discarded, and no principle of legality or non-retroactivity or “maximum precision” is offended. Analogical reasoning is not required, and legal certainty is not undermined.
512. It is also not necessary to draw here on other areas canvassed by Professor Soares Pereira. The Court was asked to hold that the reports of Professor Soares Pereira are not admissible and to disregard his evidence because, it was said, he was not properly qualified to opine on Mozambican criminal law. I respectfully decline to do so. I found that all of those called as experts had an expert contribution to make to the discussion, especially given the historical relationship of Portuguese Law to Mozambican Law.

Liability for participation in criminal offences committed by Minister Chang

513. Mozambique further alleged that Mr Safa had criminal liability under Mozambican law (with civil liability in consequence) as co-author, accomplice or concealer of offences committed by Minister Chang.
514. For most of these offences (and all that were material), Mr Safa could not be an author under the relevant law, and thus could not be a co-author. As for Mr Safa's liability as accomplice or concealer, the experts differed on the question whether for the offences in question the fact that Mr Safa could not be an author meant further that he could not be an accomplice or concealer.
515. The position has been addressed by an amendment to the Mozambican Penal Code that renders accessories liable, but that was not until 2019. Professor Soares Pereira was of the opinion that before that amendment there was liability but he was unable to support that conclusion sufficiently to satisfy me, especially when I take into account the contrary view expressed by Professor Justino. In fairness, Professor Soares Pereira recognised the limits to the support for the conclusion he favoured.

"Passive corruption for unlawful act"

516. The elements of the crime of passive corruption are agreed between experts on Mozambican criminal law in their Joint Expert Memorandum, by reference to Article 318 of the 1886 Penal Code, and Article 7 of Law No 6/2004. Article 7(1) of Law No 6/2004 provides:

"Article 7 (Passive corruption for unlawful act):

1. The entities provided for in Article 2 who, by themselves or through an intermediary, with their consent or ratification, request or receive money or a promise of money or any pecuniary advantage, which are not due to them, to perform or not to perform an act that implies a breach of the duties of their office, shall be punished by a major prison penalty of between two and eight years and a fine of up to one year.

..."

517. The elements agreed between the experts are:

"(i) a public servant/employee; (ii) a request for or receipt of money or any advantage by the public servant/employee or through an intermediary that is not due to him/her; (iii) to carry out an act or omission that involves a breach of the duties of office."

A crime of passive corruption is a "doloso" crime, requiring the perpetrator's knowledge and will to carry out the act.

518. Mr Safa and the Privinvest Companies take two specific points. First, they allege the offences are impossible as Mr Safa and Mr Boustani were not public servants.
519. Article 2(3) of Law 6/2014 is said by Mozambique to be an answer to this point, but I am not satisfied it is in the particular context of Article 7(1). Article 2 provides, under the heading "Scope of application":

"1. This law applies to perpetrators of the crimes referred to in Article 1 who are managers, officials or employees of the State or local authorities, public companies,

private companies in which the State has a shareholding or public service concession companies.

2. A public official or employee is regarded as anyone who, for the purposes of this law, exercises or participates in public functions or functions equivalent thereto, and to which they have been appointed or chosen by direct effect of law, or by election or by determination of the competent authority.

3. The provisions of this Law apply to those who, even if they are not part of any of the categories referred to in the previous number, induce or contribute to the committing of the crimes listed in Article 1 or take advantage of them.”

It is not possible to use Article 2(3) to read the reference to “entity” in Article 7(1) as someone other than a public official or employee. To do so would have the result that Article 7 was no longer addressed to state or public corruption.

520. The second point made by Mr Safa and the Privinvest Companies was that Mozambique cannot establish the mental state of Mozambican officials or office holders. This is not in my respectful view a good point. As Mozambique in effect argues, the corrupt intent of Minister Chang follows from the conclusion that he accepted promises and payments from the Privinvest Companies for his execution of the Guarantees and Guarantee Confirmations.

521. In case 160/2020 the Mozambican Supreme Court arguably expressed the view that there could be conviction of passive corruption for an unlawful act (and for the crime of embezzlement) by a person not holding special qualities required to be held by a principal offender, if there was “communication” from the latter to the former. The view is not binding (this is common ground between the experts), it is not reasoned, and it places some reliance on the 2019 amendment to the Penal Code. I share Professor Vieira and Professor Justino’s doubts about the view and am not satisfied that it should be treated as of application beyond the strict confines of the specific factual and legal matrix of the decision.

#### Consent

522. Mozambican Law recognises a defence of consent to wrongdoing. This fails on the facts. Mozambique did not consent.

523. In addition, by Article 340 of the Civil Code:

“... the consent of the injured party does not exclude the unlawfulness of the act when it is contrary to a legal prohibition ...”.

#### Contribution

524. Mozambican Law recognises a defence of contribution. For this, Article 570 of the Civil Code requires a “wrongful act of the injured party”. Mozambique did not commit a wrongful act.

#### Limitation

525. In the case of active corruption, the applicable limitation period in Mozambican law, within which a claim must be commenced or it will be lost, is 5 years from the date when the claimant was “aware of its rights”. In other cases, the limitation period is 15 years.

526. Five years before the claims were issued against the Privinvest Companies and Mr Safa was 27 February and 31 July 2014. Mozambique was not “aware of its rights” at that point. Put simply, it was not aware that Mr Safa and the Privinvest Companies had been bribing Minister Chang to execute the Guarantees and the Guarantee Confirmations.
527. There are no good limitation defences under Mozambican law.
528. In the written closing argument, Mr Safa and the Privinvest Companies the following paragraph was one of four concluding paragraphs:
- “The Republic’s case should also be dismissed because it is time-barred: the Republic provided no evidence of its own discovery of the underlying facts. That, ultimately, is fatal. This might seem a simple, if surprising, oversight. It is, however, more than that. Had the Republic sought to prove the date of its discovery of the facts, its case on the merits would have unwound. The evidence would have led inexorably back to the start of the story: neither the Projects nor Privinvest’s investments and campaign contributions were secret from the Republic.”
529. In my judgment, Mr Safa and the Privinvest Companies are right to say that the Projects were not secret from Mozambique. What was secret was the fact that the Minister of Finance, Minister Chang, was being bribed over the Guarantees. The discovery of that fact by Mozambique was not before 2018. Even on arguments by Mr Safa and the Privinvest Companies that Mozambique cannot contend for limitation period greater than three years after it became “aware of its rights”, it is within the limitation period.

### English Law

530. If English Law is applicable then Mozambique contends that Mr Safa and each of the Privinvest Companies are liable to it in the tort of bribery, for dishonestly assisting in breaches of duty by Minister Chang and in the tort of unlawful means conspiracy.

#### The tort of bribery

531. In the Supreme Court, in these proceedings ([2023] UKSC 32; [2023] Bus LR 1359), Lord Hodge said (Lords Lloyd-Jones, Hamblen, Leggatt and Richards agreeing):

“86. Leggatt J in *Anangel Atlas Cia Naviera SA v Ishikawajima-Harima Heavy Industries Co (No.1)* [1990] 1 Lloyd’s Rep 167, 171 succinctly described a bribe as:

“a commission or other inducement, which is given by a third party to an agent as such, and which is secret from his principal.”

The components of a claim for bribery are (i) that a secret payment or other inducement has been made to an agent which gives rise to a realistic prospect of a conflict between the agent’s personal interest and that of his principal, and (ii) the recipient of the bribe (or the person at whose order the bribe is made) must be someone with a role in the decision-making process in relation to the transaction in question. But the payment need not be linked to a particular transaction, it is sufficient that the agent is tainted with bribery at the time of the transaction between the payer of the bribe and the principal. The agent and the payer of the secret commission are jointly and severally liable not only to account to the principal for the amount of the bribe but also for damages for fraud for any

loss suffered by the principal. See *Novoship (UK) Ltd v Mikhaylyuk* [2012] EWHC 3586 (Comm), paras 104-111 per Christopher Clarke J (his judgment was later overturned on a different point).”

532. The analysis by Christopher Clarke J in Novoship followed his own reference to the definitions given by Leggatt J (above) and Slade J (below) and included these passages:

“106. The essential character of a bribe is, thus, that it is a secret payment or inducement that gives rise to a realistic prospect of a conflict between the agent's personal interest and that of his principal. The bribe may have been offered by the payer or sought by the agent. A bribe encompasses not just a payment of money but the conferring of any advantage or benefit, and may be an actual benefit or merely the promise of a benefit held out by the payer or an expectation of one.

...

108. The recipient of the bribe (or the person at whose order the bribe is paid) must be someone with a role in the decision-making process in relation to the transaction in question e.g. as agent, or otherwise someone who is in a position to influence or affect the decision taken by the principal.”

533. Where there has been bribery, dishonesty or corrupt motives are irrebuttably presumed (Novoship at [106] citing Re A Debtor [1927] 2 Ch 367 at 376 per Scrutton LJ – “the court ought to presume fraud in such circumstances”).

534. The definition formulated by Slade J in Industries and General Mortgage Co Ltd v Lewis [1949] 2 All ER 573 at 575 is as follows:

“For the purposes of the civil law a bribe means the payment of a secret commission, which only means (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent.”

535. Lord Hodge continued, again referring to these proceedings:

“87. It is clear from this description of a claim for bribery that the Republic’s claim based on bribery does not require an examination of the validity of any of the supply contracts. Nor is it necessary to prove dishonesty or that any fraudulent representation was made to the principal. Further, a defence that the supply contracts were valid and were on commercial terms would not be relevant to the question of a defendant’s liability to account for the bribe. The law assumes that the price of the goods and services purchased by or on behalf of the principal was increased by at least the amount of the bribe: *Daraydan Holdings Ltd v Solland International Ltd* [2004] EWHC 622 (Ch); [2005] Ch 119 para 53 per Lawrence Collins J. In this case, although this matter need not be proved, it is not disputed that the cost of the payments said to be bribes was financed by Credit Suisse’s lending which the Republic purportedly guaranteed. A defence of the commerciality of a supply contract, ie that the Republic received value for the monetary obligation which it undertook in entering into a guarantee, would be relevant only in

relation to the quantification of the Republic’s claim for damages and indemnity beyond the amount of the bribes.”

536. Minister Chang was in the position of an agent to Mozambique. He had a role in the relevant decision-making process in that he had to decide whether to execute the Guarantees and Guarantee Confirmations. The Guarantees and Guarantee Confirmations committed Mozambique to liability in the financing of the Projects.
537. A promise to Minister Chang of payment for his personal benefit gave rise to a realistic prospect of a conflict between his personal interest and that of Mozambique. It was in his interest not to scrutinise as carefully as he might whether he should be signing the Guarantees and Guarantee Confirmations or instead challenging or challenging harder the idea of entering into them (and the Facility Agreements or even the Projects as these would lead to liability under the Guarantees and Guarantee Confirmations).
538. In their written opening argument Mr Safa and the Prinvest Companies advanced the following point (the emphasis is in the original):

“The essence of bribery is that a payor has corrupted a principal’s agent in order to obtain some advantage for themselves. It is for that reason a precondition of the tort that the payor and principal are negotiating with one another: the payee must be *“the agent of the other person with whom [the payor] is dealing”*.

...

The Republic’s case is that it was not dealing with either the Corporate Defendants or Mr Safa. It has expressly abjured any suggestion that it was party to the Supply Contracts, insisting that its case concerns the Guarantees only. And Prinvest were not dealing with the Republic in respect of the Guarantees: those transactions were between the Republic and the lenders.

... on the assumption that the Republic proposes the relevant transaction to be the Guarantees, the only Mozambican Official with any role in respect of the Guarantees was Minister Chang. ...”

539. It is not a precondition of the tort that the payer (Mr Safa and the Prinvest Group) and the principal (Mozambique) are “negotiating with one another” in the sense that they must be seeking to contract with each other. The phrase *“the agent of the other person with whom [the payer] is dealing”* was used by Slade J but not to convey the limit suggested.
540. The Guarantees were between Mozambique and the banks as lenders. Mozambique was not party to the Supply Contracts. But Mr Safa and the Prinvest Group (the payer) wanted the Guarantees to be given by Mozambique because the Guarantees were an integral part of the transactions to achieve the Supply Contracts and commence the Projects. They corrupted the agent (Minister Chang) of the principal (Mozambique) in order to obtain that advantage from the principal (Mozambique) for themselves (Mr Safa and the Prinvest Group). That, in my judgment, is sufficient.

Dishonestly assisting in the breaches of duty

541. Confined to the promises and payments to Minister Chang, to cause him to breach his fiduciary duty to Mozambique, this was, in effect, another way of putting the same case as the case that the tort of bribery had been committed.
542. Mr Safa and the Prinvest Companies highlighted two points. First, the need to prove that Minister Chang received payments in order to facilitate the grant of the Guarantees. Second, the need to “demonstrate the mental state” of each defendant that Mozambique wished to hold liable. I consider these were proved or demonstrated.

#### Unlawful means conspiracy

543. Mozambique alleges that Mr Safa and Mr Boustani combined together with the Prinvest Companies, whom they represented, to injure Mozambique by bribing Minister Chang (and others) and thereby cause the Guarantees to be executed.
544. In written closing argument, Mr Safa and the Prinvest Companies noted that where the case was maintained in respect of the alleged unlawful means of bribery, and did not turn on alleged bribery of Mr Freiha, Mr Afiouni (also of Credit Suisse) and Mr Abboud, the conspiracy rested on Mozambique’s bribery case and required no separate treatment.
545. I adopt the same practical approach. I have not been satisfied by Mozambique that there was bribery of Mr Freiha, Mr Afiouni and Mr Abboud.

#### Limitation

546. Limitation defences fail at English law. This is because the claims were brought within 6 years of the date on which the Proindicus Guarantee was executed (the earliest date loss could be said to have been sustained). Further, Mozambique is entitled to rely on section 32 of the Limitation Act 1980. I find Mozambique did not and could not with reasonable diligence have known the material facts (the bribery of Minister Chang) until well after 27 February 2013 and 31 July 2013, which is the date six years before the claims were brought.

#### **Circuity of action**

547. Mr Safa and the Prinvest Companies alleged two kinds of representation, summarised as follows in its written opening:

“There were two kinds of representation:

(1) the Investment Representations. President Guebuza, President Nyusi, Mr Chang, Mr Leão and Mr do Rosário represented that the payments made as investments were lawful. Those representations were made expressly and/or impliedly. The Republic does not admit the fact of the representations, save that (without explanation) it denies any representations were made to Mr Safa.

(2) the Campaign Contribution Representations. President Guebuza, President Nyusi and Mr Chang represented that the campaign contribution payments were lawful. Those representations are also not admitted by the Republic.”

Do Mr Safa and the Prinvest Companies have an equal and opposite claim against Mozambique based on representations made by its officials that private investments with (or campaign contributions for) the relevant officials were lawful?

548. The payments were discussed in this way between Mr Adkin KC and Mr Safa, by reference to these alleged representations:

Mr Adkin KC: And the monies that you paid to the Mozambican officials and others that we have said are bribes, nobody, nobody ever represented to you that those were lawful payments, nobody ever represented to you that those were payments that you could properly make, did they?

Mr Safa: No, the payments that were made and that we recognise as payments were done as investments and we had the confidence from everybody including the recipients that those were lawful payments according to Mozambican law.

Mr Adkin KC: Nobody ever represented to you that campaign contributions were lawful payments, nobody ever represented to you that the payments to Mr Chang and the other Mozambicans were lawful, and you knew that they weren't. That is right, isn't it, Mr Safa?

Mr Safa: No. On the contrary, it was represented to me that campaign contribution was not a problem, was lawful, and Chang by the way with whom we started, we started this — the team who started working with him on the number of investments to be done in the country who were done post guarantees, so it had nothing to do and no link whatsoever with the guarantees like you said yesterday. Nothing.”

549. I am not satisfied the alleged representations were made. But in any event, as I have explained earlier, the promises and payments to Minister Chang were not made as investments or campaign contributions and were made to cause him to achieve the Guarantees and the Guarantee Confirmations.

### **Causation, loss and damage**

550. Mozambique's case is that, as was the plan, the bribery - the promises and payments - to Minister Chang induced him to execute the Guarantees and the Guarantee Confirmations.
551. From there, it argues it has paid money because of the Guarantees and Guarantee Confirmations, and it will have to pay further sums ahead. On Mozambique's case, Mr Safa and the Privinvest Companies are liable to compensate Mozambique for what it has had to pay and to indemnify it against the payments that it will have to make in the future.
552. For their part, Mr Safa and the Privinvest Companies contend that Mozambique is not entitled to any sums under any head of loss. They accept that the sums paid “in respect of the three transactions” are “the sort of loss which is in principle recoverable”, but in respect of all sums claimed they contend Mozambique is unable to establish causation. That is because, say Mr Safa and the Privinvest Companies, Mozambique “made the payments knowing the facts which entitled it to refuse to pay”; the factual and legal cause of the payments was “the Republic's voluntary choice”.
553. Here Mr Safa and the Privinvest Companies refer to Mozambique's own arguments that the Guarantees (a) breached the limits on state guarantees set out in the State Budget Laws and reserved by the Constitution to the Assembly, (b) breached the SISTAFE Law (Law 9/2002) and (c) breached the requirement for a “*visto*” from the Administrative Court.

554. Mozambique itself had argued that these breaches meant that Minister Chang had no authority to bind Mozambique to the Guarantees and that the Guarantees were, as a result invalid, voidable or unenforceable. Mr Safa and the Privinvest Companies contend that if Mozambique is correct in these arguments and knew the position at the time of making a payment then Mozambique is responsible for the payment and is not entitled to be compensated for it.

555. Their case on Mozambique's knowledge is summarised as follows by Mr Safa and the Privinvest Companies, taking the payment dates of 10 March 2015, 11 September 2015, 11 March 2016 and 21 March 2016:

“(1) The Republic knew the content of its own laws, including the limits on state guarantees set out in the State Budget Law 2013 and 2014, the SISTAFE law, and whether Minister Chang had Parliamentary authority. This is not in dispute. The same applies to the acts of its public institutions. The Republic would, therefore, know whether the Administrative Court had issued a “*visto*”. It follows that the Republic knew of all the [limits and breaches] at all times.

(2) The Republic knew of the Guarantees from the moment they were signed. ... President Nyusi signed the request to Minister Chang to sign the terms of the Proindicus financing agreement (which included reference to a guarantee being provided); the EMATUM debt was public; very many public ministries and organisations within the Republic were aware of the Projects and the Guarantees; and Minister Maleiane knew about the Proindicus and MAM transactions (and agreed that they should not be disclosed) by March 2015.”

556. Mr Safa and the Privinvest Companies continue that even if and insofar as Mozambique was under any enforceable liabilities as of the date of making any payments, such liabilities must – on its own case – have arisen as a consequence of its voluntary conduct, which either ratified the Guarantees and/or gave rise to an estoppel precluding the Republic from denying that they were binding or enforceable. Here too, argue Mr Safa and the Privinvest Companies, “the Republic cannot claim in respect of such payments because they were paid under liabilities which the Republic voluntarily assumed, with knowledge of the relevant facts to establish one or more of the grounds of invalidity or unenforceability on which it now relies”.

557. Of expenses incurred in the EMATUM Exchange, and payments made under and liabilities assumed under the 2023 Eurobonds, Mr Safa and the Privinvest Companies similarly contend that Mozambique elected “knowing substantially the same facts as it does now” to enter into the Exchange and the 2023 Eurobonds.

558. Of sums paid under the settlement agreement on the eve of trial, Mr Safa and the Privinvest Companies contend that:

“[Mozambique] agreed to pay these sums on 30 September 2023 in relation to the Proindicus Guarantee, not only in the knowledge that the Guarantee was void (and/or was liable to be set aside/unenforceable) by reason of the breaches set out above, but also in circumstances where it made and continues to make allegations to that effect in these proceedings.

...

Alternatively, if [Mozambique] was under any enforceable liabilities under the Proindicus Guarantee on the date of the Settlement Agreement, those liabilities were incurred as a consequence of the Republic's voluntary conduct."

559. I do not consider that these arguments by Mr Safa and the Privinvest Companies can prevail.
560. As against the banks in whose favour Mozambique gave the Guarantees, Mozambique's position that the Guarantees were invalid, voidable or unenforceable was an argument, no more, and one with which the banks firmly disagreed. Centrally, the argument was not whether limits had been breached or that there was not a "visto" but whether the consequence was that the Guarantees were invalid, voidable or unenforceable. A considerable body of distinguished expert evidence was before the Court on these matters because conclusions would have been required in the (now settled) Immunity Proceedings between Mozambique and the banks involved in those proceedings.
561. On the facts, there were three documents of guarantee signed by the person who was Minister of Finance. In this litigation Mozambique claims the loss it suffered by reason of these documents existing. There are three parts to that loss, and they depend not on the question of a final determination of the validity or enforceability of the Guarantees but on the fact of the documents existing.
562. First, there are the sums Mozambique paid because the documents existed; the alternative was to risk the success of an allegation that would not honour its sovereign, international, obligations. Second, there are the sums it will be paying under the Eurobonds to which it committed for the same reason. Third, there are the sums it has paid or will pay under the settlements, to compromise the argument for good.
563. For the avoidance of doubt, the EMATUM Exchange, and its subsequent restructuring and refinancing to Eurobonds is to be treated as, in my judgment, a reasonable step mitigating Mozambique's loss given the EMATUM Guarantee and the alternative of default at that point on that Guarantee. There is no challenge to the rights enjoyed by the holders of Eurobonds.
564. Mr Safa and the Privinvest Companies add that Mozambique made the case that the Guarantees were invalid irrespective of or independently of the allegedly corrupt payments, so that Mozambique's knowledge of the allegedly corrupt payments "is not strictly material" to the argument of Mr Safa and the Privinvest Companies at this point (which refers to the Budget Laws, the SISTAFE Law and the absence of a "visto"). They go on however to argue that "to the extent thought relevant" Mozambique knew of the allegedly corrupt payments from the first, and in any event is precluded, by reason of its disclosure failures, from running a case that it did not know of the allegedly corrupt payments.
565. As to this, in my judgment Mozambique did not know of the bribery of Minister Chang. It was secret at the time and there is no evidence that satisfied me that it became known to Mozambique before the payment dates in 2015 and 2016 taken by Mr Safa and the Privinvest Companies above. It was not until 2018 that the Attorney General of Mozambique wrote to the President of the Administrative Court in Maputo reporting that, during the course of the 'preparatory investigations' which had been initiated by the Public Prosecutor's Office, facts had been found which "constituted financial infractions which were indicatively attributable to" Minister Chang. And even then, bribery of Minister Chang was another step, yet to be found.

566. For all the challenges that are made to the quality of Mozambique's performance of its duties to this Court to disclose documents, I do not consider there is any likelihood that there are or were disclosable documents held by Mozambique before 2018 on the point of bribery of Minister Chang.

### The Settlements

567. The settlements appear to have required or to require payments of US\$142,820,800 and US\$220,000,000. The liabilities compromised for those payments were alleged to total around US\$1 billion.

568. I do not believe Mr Safa and the Prinvest Companies contend that the settlements are other than at arm's length. I bear in mind that the most recent settlement, properly disclosed by Mozambique in accordance with its continuing duties of disclosure, came after the trial. I will hear any argument that, for any reason, I should hear more about it and its effect.

569. I believe the fact of the settlements render it unnecessary, and unhelpful, for me to provide findings had there not been the settlements. If I may be wrong in my belief, for any reason, I remain ready to hear argument that I should do so.

### Figures

570. In the result, and subject to correction of my figures, and subject to the balance of this judgment, Mozambique is entitled as against Mr Safa and the Prinvest Companies to payment of US\$825,188,391 and to an indemnity in respect of the payments estimated at US\$1,501,250,000 that it is liable to pay hereafter (US\$95,000,000 to banks under the most recent settlement agreement and the estimated US\$1,406,250,000 to bondholders).

571. The elements I have taken are summarised below:

572. First, the money Mozambique has had to pay already comprises US\$67,514,720 on 21 March 2016 in respect of the Proindicus borrowing that it had guaranteed, and US\$230,977,087 in respect of the EMATUM borrowing that it had guaranteed (US\$26,796,250 on 10 March 2015; US\$103,296,250 on 11 September 2015; US\$100,884,587 on 11 March 2016). These sums combine principal, interest and fees to Credit Suisse AG, VTBC and Palomar.

573. Second, in the EMATUM Exchange, Mozambique has paid US\$31,375,784 in fees and expenses. It has paid US\$227,500,000 under the Eurobonds: US\$40,000,000 on 15 July 2019; US\$30,000,000 on 15 March 2020; and seven payments of US\$22,500,000 on dates between 15 March 2020 and 15 September 2023.

574. Third, under the settlements that bring to an end Mozambique's liabilities to the banks (including syndicated lenders) under the Guarantees and the Guarantee Confirmations. Mozambique has paid or will pay totals of US\$142,820,800 and US\$220,000,000 to achieve this (of the latter sum, US\$95,000,000 is to be paid rather than paid).

575. Fourth, the amount that Mozambique is estimated as liable to pay to holders of the refinanced Eurobonds over the years to come until 2031 is US\$1,406,250,000.

576. An additional head of claim, for what were described as macro-economic losses, was not ultimately pursued by Mozambique.

## Commerciality, Collateral Benefit

### Principle

577. As appears above, in the Supreme Court, in this litigation, Lord Hodge spoke of “a defence of ... commerciality ...”, and of “value” received by Mozambique. He made clear that this: “would be relevant only in relation to the quantification of the Republic’s claim for damages and indemnity beyond the amount of the bribes”. In the context of the argument before the Supreme Court, the commerciality referenced was that of the Supply Contracts.
578. Mr Safa and the Prinvest Companies framed this aspect as “mitigation and collateral benefit” in their written opening. In closing they wrote that the “essence of the point” was that, even if Mozambique’s case was correct and any of Mr Safa and the Prinvest Companies “... committed legal wrongs which occasioned prima facie loss, that loss must be offset by reference to the benefits the Republic obtained from Prinvest through the performance of the Supply Contracts”. Mr Philip Riches KC developed the argument, as an argument on “value”, in oral closing for Mr Safa and the Prinvest Companies.
579. In the event, Mr Safa and the Prinvest Companies sought three forms of “credit”. First, for “the value of the goods and services actually received under the Supply Contracts”. Second, “for the benefits [Mozambique] would have received but for its own sabotage of the Projects”. And third:

“It must further give credit for any funds received from others in connection with the three Transactions, including any assets obtained through forfeiture orders—such as the \$421,000,000 the head of the Republic’s Central Office for the Recovery of Assets, Dr Machava, publicly stated in August 2021 had been seized.”

### Mozambique and Proindicus, EMATUM and MAM

580. In fact no assets and services were supplied to Mozambique. The assets and services supplied were supplied to Proindicus, EMATUM and MAM, each of which had separate legal personality from Mozambique.
581. At least at one point, Mr Safa and the Prinvest Companies address this with the argument:
- “The SPVs, who were the direct beneficiaries of the performance under the Supply Contracts, were ultimately wholly-owned by the Republic. Any benefits to them would therefore inure to the Republic either through the increase in the value of those shares or through the payment of dividends or capital distributions.”
582. There is no evidence of the payment of dividends or capital distributions. EMATUM and MAM were in liquidation, and all three state-owned enterprises may now be dissolved. There is no sign of the possibility of a distribution to Mozambique as owner. Could it be said instead that there was, at the time of and by reason of the supply of assets and services, an increase in the value of shares in Proindicus, EMATUM or MAM? The answer appears to be no, because on no credible analysis did the value of the supply exceed the price paid.
583. Mozambique does in principle have claims as a creditor in the estate of the principal debtor company where it has paid as guarantor under the Guarantees. If and when Mozambique receives any payment in its capacity as creditor (including as a dividend as an unsecured

creditor in a liquidation) that will reduce its loss at the hands of Mr Safa and the Prinvest Companies.

584. Mr Safa and the Prinvest Companies point to absence of disclosure of documents by Mozambique “as regards the interrelationship between the SPVs and the Republic itself in terms of the actual use of the SPV assets and services”. This should, they argue, lead to adverse inferences being drawn against Mozambique when it seeks to deny that it has benefitted from the assets and services.
585. Respectfully, here I do not agree. Mozambique’s benefit is as owner of the SOEs, if and where the SOEs benefitted or could have benefitted.

#### Value at delivery

586. Mr Safa and the Prinvest Companies contend that the contract price of the assets and services delivered reflected their value. The Republic pleaded no positive case as to the value of the assets and services delivered, but made no admission. In its written closing it did however contribute figures on value.
587. Two parts of the contract pricing used for the Supply Contracts call for particular comment.
588. First, the contract pricing involved the application of a “turnkey multiplier” by the Prinvest Group. The principle of an uplift, even a substantial uplift, to reflect the added value of an integrated whole of individual supplies (with each contract and even across the contracts) and the risks and costs to which the Prinvest Group was exposed through the Supply Contracts, was not controversial. But no witness, factual or expert, was able to explain satisfactorily how the Prinvest Group arrived at the multiplier they used.
589. Second, the contract pricing also included a value that Prinvest put on the intellectual property and transfer of technology delivered under the MAM Supply Contract of US\$83,375,000; whilst Mozambique’s experts were not in a position to challenge this, I must observe it is a remarkable figure when considered against the detail of the contract terms and the reality of what little in practice Mozambique and MAM would likely be able to do with it.
590. However, the larger point in the present case is that in the hands of Proindicus, EMATUM and MAM, the assets and services had little value because they were not ready or able to make proper use of them, where they were supplied. Certainly, they had no value beyond that for which they could be onsold. This is unsurprising given that, whatever was said at shows or in speeches or to encourage help from the Prinvest Group, the assets and services were simply not suited for Proindicus, EMATUM and MAM, or Mozambique.
591. What of on-selling the supplies that Proindicus, EMATUM and MAM could not handle? I do not consider it reasonable that they, or Mozambique, should have taken on the considerable and expert task of attempting a sale of the assets and services supplied, where, as far as I am aware, the Prinvest Companies with all their expertise have not offered to take that on.
592. Mr Safa and the Prinvest Companies argue that if Mozambique is entitled to recovery of any sums claimed from any of them, it must give credit for the value it received and not “some lesser value by reason of the failure of the Republic to realise value, alternatively diminished value by reason of its failure to mitigate through proper use of the assets and services.” I respectfully disagree that this burden or obligation is placed on the victim in a

case of bribery, especially in a case where part of the whole problem is that bribery resulted in the Guarantees and in the supply of assets and services that the victim did not have the experience and expertise or organisational strength to use successfully to create value.

#### Profits and cashflows

593. There was expert evidence on cashflows from possible uses of the assets and services, and the net present value of those cashflows. I am grateful for the contributions made by the experts, but I see no circumstance in which profits and positive cashflows would have been made by Proindicus, EMATUM or MAM. The lens is not what someone else could have made when Proindicus, EMATUM and MAM, and Mozambique, could not.
594. On the facts that form the history leading to the Supply Agreements and the Facility Agreements, on no credible analysis would Mozambique have received value as a (direct or indirect) owner of Proindicus, EMATUM or MAM.
595. I add that I am not persuaded that it is the law, of Mozambique or of England, that a victim of bribery that has induced a contract of guarantee of a contract of supply should be required to give credit for profits that could have been but were not made from the supply. The scenario of profits forgone because of sabotage does not arise because I am satisfied that there was no sabotage on the facts.

#### Delivery to “corrupted bribe-takers”

596. Mozambique made a further argument that it should not have to give credit for value delivered because the delivery was to SOEs under the control of “corrupted bribe-takers such as Mr do Rosário”. As against Mr Safa and the Privinvest Companies I have not been satisfied that Mr do Rosário took bribes. For that reason at least, Mozambique’s further argument fails.

#### **Recoveries by The Asset Recovery Office of Mozambique**

597. A distinct point arises in relation to The Asset Recovery Office of the PGR (a prosecuting authority in Mozambique) which says that Mozambique has recovered at least US\$421.2 million in assets in respect of the Transactions. A newspaper interview from 1 Aug 2021 contains this passage:

“The Central Office for the Recovery of Assets (“GCRA”) of the Republic’s Prosecutor-General’s Office (“PGR”) says that all the assets seized in the context of the undeclared debts represent just 15.6 percent of the 2.7 billion dollars, the global amount of the loans that sank the country into a profound financial crisis and a bitter dialogue with international financial institutions.

These relate to 19 real estate properties, including a hotel located in the city of Tete; 81 vehicles, 14 motorcycles, four vessels and an amount [in cash] estimated as 614 million and 932 thousand meticals, which were in the possession of the various defendants in the proceedings.

All these assets represent 15.6 percent of the 2.7 billion [US dollars], which, corresponds to 421 million and 200 thousand dollars. In meticais, this amounts to approximately 27 billion meticals at today’s exchange rate.”

598. This was referenced as follows in the statement of case (Defence) of Mr Safa and the Prinvest Companies:

“Further, the Republic must give credit for any funds it recovers from other persons in respect of the Three Transactions, which reduces its loss in connection therewith. In particular, the Republic must give credit for any sums recovered by way of compensation and/or seizure of assets from the defendants to the Maputo Trial and/or any other person whose property has been seized on the basis of a connection to the Three Transactions. According to an article dated 1 August 2021, featuring an interview with a Deputy Attorney General of the Republic, Amélia Machava, Ms Machava stated that the Republic’s Central Office for the Recovery of Assets has seized US\$ 421,200,000 of assets in respect of the Three Transactions. The Republic’s alleged loss is accordingly reduced (at present) by (at least) US\$ 421,200,000.”

599. Mozambique’s statement of case (Reply) responds as follows:

“393.4A. Save that it is admitted that the Republic will give credit for any sums for which it is obliged to do so as a matter of the relevant governing law and that Dr Machava made statements broadly as alleged, no admissions are made of paragraph 491.5 and it is denied that the Republic must presently give credit in the amount alleged.”

600. The position was developed further by Mr Riches KC in closing argument, including with reference to the possibility of an appeal against a decision of the Mozambican Court that appears to achieve forfeiture with a passing of title. Having regard to the limited engagement on this point, and to the position with Mozambique’s disclosure of documents, I will deal with this aspect as follows. There will be credit for US\$ 421,200,000 against the loss that Mr Safa and the Prinvest Companies are liable to make good to Mozambique unless Mozambique applies for an enquiry into the amount of credit that should be allowed and that application is granted. I shall consider the application if made and shall require to be satisfied (among any other points raised with me) that Mozambique has made proper disclosure of documents on the issue.

### **Contribution Claims by Mr Safa and the Prinvest Companies**

601. In closing, Mr Safa and the Prinvest Companies made clear that the scope of their contribution claims had reduced in light of the various settlements between the parties (in particular their own settlement with Credit Suisse: see Order dated 6 October 2023) and my separate Judgment in relation to the additional claims against Ms Lucas (see Judgment 11).

602. They maintain contribution claims against Minister Chang, Mr do Rosário, Mr Leão, President Guebuza, Mr Ndambi Guebuza, and President Nyusi. These they describe as the “Remaining Contribution Defendants”. Where Mozambican law applied a right of contribution exists under Article 497(2) of the Civil Code. Under English law there is provision for contribution between those liable for the same damage, by section 1(1) of the Civil Liability (Contribution) Act 1978.

603. Advancing any contribution claim against President Nyusi in this jurisdiction, and the determination of any such claim, must await the end of his Head of State immunity.

604. In Mozambique’s claim against Mr Safa and the Prinvest Companies I found that the evidence of corruption on the part of Minister Chang was sufficient to provide an element of

a route to liability on the part of Mr Safa and the Prinvest Companies to Mozambique. However, I was not satisfied I could reach that finding in the case of Mr do Rosário, Mr Leão, President Guebuza and Mr Ndambi Guebuza. I have not, for example, found that the reason payments were made to Mr Ndambi Guebuza, Mr Nhangumele and Mr Langa was in order to influence President Guebuza or that payments by the Prinvest Companies and Mr Safa to them were bribes.

605. This is however simply the position that results from the evidence, and the limits to the evidence, that was available to me at trial, principally as deployed by Mozambique in support of its case. The same position does not necessarily hold true when I consider the position of Mr do Rosário, Mr Leão, and Mr Ndambi Guebuza, or President Guebuza, in relation to a contribution claim of Mr Safa and the Prinvest Companies against them. This is because as against Mr Safa and the Prinvest Companies I am told they have not disputed that claim, and they have not filed a response. I will hear further argument from Mr Safa and the Prinvest Companies on whether I should enter judgment against Mr do Rosário, Mr Leão, and Mr Ndambi Guebuza, or President Guebuza.

### **Claims in deceit by Mr Safa and the Prinvest Companies**

606. Claims in deceit are maintained by Mr Safa and the Prinvest Companies against Minister Chang, President Guebuza, Mr do Rosário, Mr Leão and President Nyusi.
607. The claims are based on what Mr Safa and the Prinvest Companies termed the Investment Representations and the Campaign Contribution Representations. These have been set out earlier.
608. Again, the claim against President Nyusi must await the end of his Head of State immunity.
609. Otherwise, I am not satisfied the representations were made. If they were made, I am not satisfied that they were relied on by Mr Safa and the Prinvest Companies.

### **Other claims against other parties not appearing at trial**

610. Inevitably the trial concentrated on the parties who appeared, all of them represented. A number of parties appeared and were represented only until they reached settlement.
611. However, within the 12 sets of proceedings there are also parties who did not appear and were not represented at the trial. At points in the course of this judgment I have concluded that I was not satisfied that an allegation has been made out against a particular person or persons who did not appear at trial. That conclusion is to be taken as referring to a finding as against parties other than the person. But as against the very person who did not appear, and where that person had the opportunity to appear at trial and make their defence to an allegation but did not do so, the position may be different.
612. In these circumstances, when dealing with consequential matters, at a further hearing, I will deal with any outstanding claim against a party who did not appear. I think this is the safest course. I reserve those matters until then.
613. The position of President Nyusi is of course again separate. At the trial he was not a party, but for the individual reason that he has Head of State immunity whilst President.

### **Standards**

614. Notwithstanding the settlements, there has been a major, public, trial and a great deal of evidence has been heard. I have made findings about some institutions, corporations and individuals where that remained necessary, either to explain the case or to decide the issues that remained for decision. My findings about some do not mean there were not others – institutional, corporate and individual – with much to answer for.
615. The trial revealed this to be a case of Mozambique as a developing nation being exploited by highly developed institutions and corporations that should know better. But it also showed a nation well capable of doing better but which was also let down by its own officials and office holders. It is remarkable to note that, in all I heard and read, I was unable to identify a single senior official or office holder who over the period 2011-2015 stood up for Mozambique and challenged or tested what was or might be going on.
616. It is not difficult to understand a state's interest in itself defending waters offshore rather than leaving that to private contractors, or in replacing foreign fishing with domestic fishing, or in developing a shipbuilding capability. Projects may have been wanted or needed in these areas, but not projects put together like these Projects were. Mozambique was hustled to buy what it couldn't use properly and didn't need and wasn't prepared for. The chances of choices being made that were good for Mozambique and its people, or sustainable, were eroded at every turn.
617. There was corruption. But this is also a case about an overall absence of standards that went far wider than the instances of corruption. There were those prepared to prey on weakness and inexperience. Those who saw the opportunity to make money with no regard to whether the Projects would fail and what that would mean for others. Those who set their sights on self interest and on personal financial reward, and put those over any sense of responsibility. There were no searching questions about preparation for supply, or the projections. Sometimes one piece of behaviour below proper standards enabled another with ultimate consequences that were truly serious.
618. Some might be able to say that the law and any relevant regulatory framework did not require more of them than they did. But that is not my point. Those who did the worst may suffer legal or regulatory consequences, but what about the others? Law and regulation alone cannot do all the heavy lifting, even where the remarkable common law is available. They are not the only source of standards. A far greater sense of responsibility was required. The case shows why ethics is so critical in finance, in commerce and in state administration, and how bad things can get without ethics.
619. On the banking side, the opportunity was there to show what banking could do. To focus on how banking could help and enable a nation and its people. But the opportunity was not taken, and that is nothing short of a tragedy. The focus was instead on what banking could make out of Mozambique, alongside others looking to do the same. Even if the banks were not to help and enable the nation, at least the involvement of banking expertise could have drawn attention to the fact that these Projects would fail. Instead, with sovereign guarantees in the picture, the reviews of the bankers were focused on the credit risk to the banks rather than also the propriety of what was going on as a consideration in its own right; to Mozambique's covenant and not beyond to what would happen to the Projects.
620. The scale and nature of what was able to happen in this case presented systemic threat to Mozambique's economy. Its relationship with the IMF was tangibly damaged for a period. It is striking, and to note, that the banks were not searching as they asked about the IMF's

position on the financial commitments that Mozambique was proposing to take on. Could there not have been clear arrangements to enable, expect or require banks to check directly with the IMF rather than through the country? And, as a wider point, could the country have had the benefit of further support from the IMF and the international community in the crucial area of how to contract well?

### **The legal teams and the trial**

621. I do wish to pay tribute to the legal teams on all sides. A maximum of three months was allowed for the trial, which followed intensive case management over the two years from ordering the trial to its commencement.
622. To complete the trial itself within time required a level of professionalism by all teams, including in coordination. There was some of the most thorough work and some of the finest advocacy. The command that the legal teams had of the enormous amount of material was utterly impressive.
623. The settlements that were achieved will have been very challenging to achieve, but the involvement of the legal teams in achieving them deserves respect. With the earlier of the settlements, just as the trial was about to start, existing arrangements over who would lead on which issues at trial had to be reset, but the complete professionalism and deep experience of all legal teams (departing and remaining) enabled this.
624. The parties to these proceedings came from many parts of the world. The trial was followed from many parts of the world. It was a privilege to see shared confidence in a fair trial here, in England and Wales. A lot of resources were consumed. But not unduly so: a fair trial is important to the rule of law, on which every country in the world ultimately depends and from which every country in the world ultimately benefits.

## **APPENDIX**

### **1. President Nyusi's statement in the Mozambican criminal proceedings**

“--- On the eighth day of the month of August of the year Two Thousand Eighteen, at the Office of the President of the Republic of Mozambique where they were present, the Honourable Public Prosecution Magistrate, Dr Alberto Paulo, Deputy Attorney General, and

along with me, Guilhermina Alice Uiliamo Macuácuá, Official Records Clerk, after all legal formalities had been completed, took statements from the President of the Republic, His Excellency, **FILIFE JACINTO NYUSI**.

--- For the record he stated that he held the position of Minister of National Defence from 2008 to 2014 and, in that capacity, [he held the position of] Member of the Joint Defence and Security Forces Command — CCFDS, a body whose members also include the Minister of the Interior, the State Information Service Director General, the Chief of Staff of the Defence Armed Forces of Mozambique, the Chief Commandant of Police of Mozambique, among other senior officials, under the direction of the President of the Republic in his capacity as Commander in Chief:

--- The CCFDS is a body for coordination and counselling and advising the Head of State on the principal issues connected to Defence and Security.

--- This body also takes the form of a Defence and Security Forces Operational Command — COFDS, in that instance subject to coordination by the Minister of National Defence, for the purpose of addressing and handling issues of an essentially `operational nature on a day-to-day basis.

--- The Defence and Security Forces, in particular the Mozambique Navy, was providing protection to companies involved in gas prospecting in the Rovuma Basin, namely ENI and Anadarko as well as the Kenmare company, which conducted exploration in heavy mineral sands in the Moma District, presently the Larde District, in Nampula Province, under a logistical support memorandum under which those companies paid the Defence and Security Forces certain amounts for logistical assistance.

--- Under the national legislation of those companies, they were not permitted to pay for the protection service provided by the Government through the Defence and Security Forces, and the most that could be done was to provide only some logistical support on the basis of the aforementioned memorandum.

--- The SISE [Serviço de Informações e Segurança do Estado—State Security and Information Service], through its respective Director General, proposed the organization of a company that could provide a protection service to the companies involved in gas prospecting and other related areas, and by that means receive income for the services provided.

--- It was in this context that ProÍndicus was organized, and its shareholders were the companies GIPS, which is linked to the SISE, and Monte Binga, which is connected to the Ministry of Defence, each with a 50% equity stake.

--- At the time, ProÍndicus had put forward a scenario in which the Ministry of the Interior would also take a stake through the DALO, but that did not happen due to the irregular situation that company was in [and] what would happen that the situation was regularized.

--- Monte Binga designated as its representatives at ProÍndicus, successively, Victor Bernardo and Eugênio Henrique Zitha Matlhaba, who held the position of Chairman of the Board of Directors, and the latter was replaced by an SISE official, the present Chairman, António Carlos do Rosário.

--- Management of the Company and all acts and actions pertaining to it, was always in compliance with the principles that it was a private company. For that reason, there was no interference by the declarant as Minister of National Defence. At the time that it was organized, he watched several simulated presentations performed by SISE colleagues proposing the company, demonstrating the company's potential.

--- As a member of the Joint Command, as well as a member of the Government, the declarant never participated in and never had knowledge of an act that supposedly authorized the company to assume debt backed by the State.

--- He does not know how the process was initiated for the financing of the company with [Credit Suisse] nor did he have any authority or control over the contracts the company signed for the purchase of equipment from the Abu Dhabi Mar company in the Privinvest group, and at no time was there a discussion regarding the companies in question. Likewise, he had no authority or control over how the Ministry of Finance issued guarantees assuring payment of the debts of that company in the event of non-payment on its part.

--- While he was Minister of National Defence, no new military equipment was purchased that he knew about. He did not receive any equipment purchased with the money from the loan taken out by ProÍndicus or provided by the companies with which Proindicus contracted.

--- The purchase of equipment of a military nature for the State is carried out under the State budget pursuant to a request by the Chief of Staff of the Mozambique Defence Armed Forces (FADM), preceded by concurrence by the Defence and Security Council and after the recommendation is submitted for a decision by the Chief of State, for which reason it would not have been possible to purchase such equipment for the Ministry of National Defence through Proindicus without the knowledge and consent of that body.

--- When asked about the fact that the Integrated Monitoring and Protection System [SIMP] was approved after financing and supply commitments made by ProÍndicus, he explained that the SIMP was subsequently created for the purpose of ensuring that the protection of the companies involved in gas prospecting and related activities would be provided exclusively by ProÍndicus, a company connected to the Defence and Security Forces, thereby preventing participation by other foreign companies in order to defend sovereignty but also as a source of income to strengthen national defence and security overall.

--- When asked about the connection between the purpose of the organization of Proindicus, S.A. [sic] and the EMATUM, S.A, and MAM, S.A, companies, he explained that while he was Minister of National Defence, he never knew of the existence of these two companies and had no authority or control over the extent to which those companies could be considered to have been connected to Defence and Security matters.

--- In this regard, he knows nothing about the processes for their organization, financing and operation, particularly because he became aware of the existence of these two companies only when the matter of the so-called hidden debt came out publicly and at that time he was no longer Minister of National Defence.

--- When asked about the sustainability of the view that EMATUM, S.A,'s debt ... was employed for the national defence and in that way was subsequently placed under the State

budget by the Assembly of the Republic, he admitted he thinks the matter could be better explained by the Assembly of the Republic.

--- He was aware that the Chairman of the EMATUM Board of Directors, António Carlos do Rosário, had recommended that the current Minister of National Defence, Salvador N'temuke sign the confirmation of receipt of equipment in that amount. At the time, that executive consulted the declarant regarding the matter, and he had explained that, in actual fact, nothing had been received, for which reason that document was ultimately not signed.

--- In answer to a question raised as to how it would be possible to obtain financing for the companies on the basis that an exclusive economic zone protection project had been approved that had received the backing of the government, when that was not consistent with the truth, the declarant explained that because he had not participated in the negotiation process he had no authority or control as to how that could have happened.

--- Given the magnitude of the matter, and taking into account the amounts involved in the debt to be guaranteed by the State, it is not very probable and he believes rather dangerous what they did so without following legal procedures.

--- He had nothing more to state, and once his statements had been read, he approved, ratified and signed them.

[signature]

This record was prepared as an official record, and after it had been read it was duly signed.”

## 2. Law 6/2004 of Mozambique (Articles 1, 2, 7-9 and 24)

### “Article 1 (Object)

The object of the present Law is to strengthen the legal framework in force to combat the crimes of corruption and unlawful economic participation.

### Article 2 (Scope of application)

1. This law applies to perpetrators of the crimes referred to in Article 1 who are managers, officials or employees of the State or local authorities, public companies, private companies in which the State has a shareholding or public service concession companies.

2. A public official or employee is regarded as anyone who, for the purposes of this law, exercises or participates in public functions or functions equivalent thereto, and to which they have been appointed or chosen by direct effect of law, or by election or by determination of the competent authority.

3. The provisions of this Law apply to those who, even if they are not part of any of the categories referred to in the previous number, induce or contribute to the committing of the crimes listed in Article 1 or take advantage of them.

...

Article 7 (Passive corruption for unlawful act)

1. The entities provided for in Article 2 who, by themselves or through an intermediary, with their consent or ratification, request or receive money or a promise of money or any pecuniary advantage, which are not due to them, to perform or not to perform an act that implies a breach of the duties of their office, shall be punished by a major prison penalty of between two and eight years and a fine of up to one year.

2. The penalties provided for in Article 318 of the Penal Code shall also be applied to the entities provided for in Article 2.

3. The same penalty will be applied when the advantage requested or received by the perpetrators provided for in Article 2 is of a non-pecuniary nature, provided that it is for the performance of an act that implies a breach of the duties of the offices, or the omission of an act that they have the duty to perform, which includes, namely:

a) granting favourable treatment to a certain person, company or organisation;

b) intervening in a process, taking or participating in a decision that involves obtaining benefits, rewards, subsidies, or loans, the awarding or signing of contracts in general, the recognition or registration of rights, and the exclusion or cancellation of an obligation in violation of the law;

c) providing information on public tenders to the detriment of fair competition;

d) fraudulently providing information about examination papers.

4. However, if the act is not performed, the penalty shall be imprisonment of up to one year and a fine of up to two months.

5. In the case of mere omission or delay in performing an act related to their functions but with breach of the duties of their office, the penalty shall be, respectively, in the case of numbers 1 and 2, imprisonment of up to two years and a corresponding fine and, in the case of number 3, imprisonment of up to one year and a fine of up to six months.

6. If the accepted offer or promise is voluntarily retracted or the money or value of the pecuniary advantage is returned before the act is committed, omitted or delayed, the provisions of this Article shall cease.

Article 8 (Passive corruption for lawful act)

The entities provided for in Article 2 who, by themselves or through an intermediary, with their consent or ratification, request or receive money or a promise of money or any pecuniary or non-pecuniary advantage, which are not due to them, to perform acts not contrary to the duties of their office and falling within the scope of their functions, shall be punished with imprisonment of up to one year and a fine of up to two months.

Article 9 (Active corruption)

1. Whoever gives or promises to the entities provided for in Article 2, by themselves or through an intermediary, money or other pecuniary or non-pecuniary advantage not due to them, for the purposes indicated in Article 8, shall be punished with the penalties of that provision.
2. If, however, the crime was committed in order to prevent the perpetrator, or his relatives or relatives by affinity up to the third degree, from being exposed to the danger of being punished or of being subjected to a criminal sanction, the judge may extraordinarily mitigate the penalty.
3. The provision of Article 7(6) only applies to the perpetrator of active corruption if he or she voluntarily accepts the repudiation of the promise made or the return of the money or pecuniary advantage given.
4. The perpetrator is also exempt from punishment in cases where the commission of the crime resulted from a request or demand of an official, as a condition for the practice of acts falling within his or her respective competence and the former reports the crime to the authorities.

...

Article 24

Provisions that are contradictory to this Law are hereby repealed.”