



PETERS & PETERS

## **The Republic of Mozambique (acting through its Attorney General)**

Peters & Peters is acting on behalf of the Republic of Mozambique in US\$2 billion Commercial Court proceedings arising out of purported sovereign guarantees (the “Guarantees”) said to have been fraudulently obtained through bribery and corruption in the so-called “hidden debts” scandal.

The Guarantees were purportedly signed on the Republic’s behalf between February 2013 and May 2014.

If the Guarantees were valid, the Republic would have underwritten the financing of supply contracts entered into by three SPVs (Proindicus, EMATUM and MAM) with companies in the Privinvest Group for: (i) vessels and equipment to monitor and protect the Republic’s Exclusive Economic Zone (Proindicus); (ii) a tuna fishing fleet and a land operations coordination centre (EMATUM); and (iii) the creation of maintenance and repair facilities for the vessels being sold pursuant to the first and second transactions (MAM).

The total liability of the Republic under the Guarantees would have been around US\$2billion. The financing of the Proindicus and EMATUM Transactions was principally arranged by Credit Suisse, the financing of the MAM Transaction primarily by VTB Capital Plc (VTB).

It has since transpired, in part thanks to a US FBI investigation which culminated in a US Department of Justice indictment, that the transactions are at the heart of a vast and complex fraudulent and corrupt scheme, pursuant to which large bribes and kickbacks were paid to Mozambican government officials, employees of Credit Suisse and employees of VTB by Privinvest Group companies.

Three ex-employees of Credit Suisse were indicted as co-conspirators in the US proceedings and each pleaded guilty to a count of either conspiracy to commit wire fraud or money laundering. Mr Manuel Chang, the now ex-Finance Minister of the Republic, who purported to sign the Guarantees on the Republic’s behalf, has also been indicted as a co-conspirator in the US proceedings. Chang is currently in prison in South Africa. Mr Iskandar Safa, a beneficial owner, controller, and CEO of the Privinvest Group of companies, has been named as an ‘unindicted co-conspirator’ in the indictment.

## The Republic Proceedings

The Republic has brought claims against a number of Credit Suisse companies and ex-employees as well as a number of Prinvest Group companies (the “**Republic Proceedings**”), alleging, amongst other things that:

- the Guarantees were obtained through bribery;
- the Guarantees were incompatible with and in breach of state limits in the Republic’s budget,
- the Guarantees are void or alternatively voidable ;
- Mr Chang did not have authority to commit the Republic to the Guarantees; and
- the Credit Suisse entities were to be attributed with the knowledge of their employees involved in the transaction.

The Republic is seeking a declaration that the Guarantees (such as they subsist) are invalid, alternatively so tainted by illegality as to be unenforceable against the Republic.

The Republic has also brought claims for bribery, unlawful means conspiracy, dishonest assistance, knowing receipt, an account of profits and deceit.

The Republic has issued separate proceedings against Mr Safa alleging that he was the ultimate mastermind behind the fraudulent scheme. Those proceedings have since been consolidated into the Credit Suisse proceedings.

## The Immunity Proceedings

The Republic is a defendant to various claims issued by six different sets of claimants: VTB Capital Plc, VTB Bank (Europe) SE, Banco Comercial Portugues S.A., Beauregarde Holdings LLP, Orobica Holdings LLP and the United Bank for Africa (together, the “**Immunity Proceedings**”). The Republic has responded to each of these claims by issuing an application pursuant to CPR Part 11 contesting jurisdiction and seeking a declaration that the Court has no jurisdiction and/or will not exercise any jurisdiction that it may have to try the Claims because the Republic is a sovereign state and is immune from the jurisdiction by virtue of section 1 of the State Immunity Act 1978.

Pursuant to the Order of Mr Christopher Hancock QC (sitting as a judge of the High Court) dated 23 March 2021, and the Order of Mr Justice Bryan dated 26 July 2021, the Republic’s Immunity Applications are to be case managed and tried together. The issue of whether the Republic is entitled to claim state immunity under section 1 of the State Immunity Act 1978, or whether the exceptions in section 2 and/or section 3 applies to each of Claims, is to be tried as a preliminary issue.

## Stay pending arbitration

The supply contracts between the SPVs and Prinvest Group companies each contained Swiss Arbitration clauses. The Prinvest Defendants applied to stay the Republic’s claims against them in the Republic Proceedings pursuant to s. 9 of the Arbitration Act 1996 or in certain cases, a case management stay.

In a judgment of 8 April 2020, Mr Justice Waksman rejected an argument by the Prinvest Defendants that the Court should not consider their application to stay the proceedings until after the arbitral tribunal

had considered whether it had jurisdiction. He decided that he would determine whether the claims brought by the Republic fell within the scope of the relevant arbitration clauses at a hearing in May 2020 on the basis that, if they did, this would render nugatory two other challenges the Republic had to the application of the arbitration clauses.

In a judgment of 30 July 2020, Mr Justice Waksman decided that none of the claims brought by the Republic fell within the scope of the arbitration clauses. This judgment has been overturned on appeal. The Republic has filed an application seeking permission to appeal this judgment with the Supreme Court.

### **Unitary Trial in October 2023**

Following a hearing before Mr Justice Robin Knowles CBE on 19-21 July 2021, the Republic and Immunity Proceedings are to be case managed together. The proceedings will be heard together at a unitary trial commencing in October 2023, lasting 3 months.

Mr Justice Robin Knowles CBE has ordered that the unitary trial will determine:

- Preliminary issues in the Immunity Proceedings;
- The issues in the Republic Proceedings; and
- All the issues remaining in Privinvest's section 9 applications (save for the scope issue, which is subject to appeal).

