



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 said to have been fraudulently obtained through bribery and corruption in the so-called 'tuna bond' 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 to repair 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\$2 billion. The financing of the Proindicus and EMATUM Transactions was principally arranged by Credit Suisse, the financing of the MAM Transaction primarily by VTB Capital.

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 government officials and employees of Credit Suisse by Privinvest Group companies.

Three ex-employees of Credit Suisse have been indicted as co-conspirators and have 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 been indicted as a co-conspirator in New York. 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.

Claim brought by the Republic

The Republic has brought claims against a number of Credit Suisse companies and ex-employees as well as a number of Prinvest Group companies, 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 also 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.

Stay pending arbitration

The supply contracts each contained Swiss Arbitration clauses. The Prinvest Defendants applied to stay the proceedings against them 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 J 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.

The Scope Issue

Mr Justice Waksman decided in a judgment of 30 July 2020 that none of the claims brought by the Republic fell within the scope of the arbitration clauses. This judgment is currently subject to an appeal.

Service

Mr Safa had applied for service on him to be declared ineffective, arguing that he was not validly served, as he was neither present nor resident in England at the time. In a further judgment of 30 July 2020, Mr Justice Waksman found that service had properly been effected in accordance with s.1140 of the Companies Act.