



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

B E T W E E N:

THE REPUBLIC OF MOZAMBIQUE
(acting through its Attorney General)

Claimant

- and -

- (1) CREDIT SUISSE INTERNATIONAL**
- (2) CREDIT SUISSE AG**
- (3) SURJAN SINGH**
- (4) ANDREW JAMES PEARSE**
- (5) DETELINA SUBEVA**
- (6) PRIVINVEST SHIPBUILDING S.A.L., ABU DHABI (BRANCH)**
- (7) ABU DHABI MAR LLC**
- (8) PRIVINVEST SHIPBUILDING INVESTMENTS LLC**
- (9) LOGISTICS INTERNATIONAL SAL (OFFSHORE)**
- (10) LOGISTICS INTERNATIONAL INVESTMENTS LLC**

Defendants

DEFENCE AND COUNTERCLAIM OF THE FIRST AND SECOND DEFENDANTS

A SUMMARY

1 In 2013, the Claimant, the Republic of Mozambique, borrowed money from lenders in transactions arranged by the First Defendant (“CSI”). The Claimant acted through two wholly State-owned special purpose entities (“SOEs”) it established specifically for these transactions and the underlying projects. These SOEs promised to use the funds in furtherance of two of the Claimant’s projects: (1) to establish an Exclusive Economic



Zone (“**EEZ**”) monitoring and protection system and to secure its coastline and prevent piracy and illegal fishing (the “**ProIndicus Project**”) and (2) to establish a tuna fishing fleet and processing facilities (the “**EMATUM Project**”). The Claimant provided sovereign guarantees of each loan. The Second Defendant acting through its London Branch (“**CSLB**”) was party to the loan agreements and the guarantees as facility agent.

- 2 Via the SOEs, the Claimant engaged the Sixth to Tenth Defendants (the “**Prinvest Defendants**”) to deliver the projects. CSI and CSLB understood at all times that the loan agreements and guarantees were valid and binding, as had been expressly represented to CSI and CSLB by the Claimant (acting through its then Minister of Finance (“**Finance Minister**”), Mr Manuel Chang (“**Minister Chang**”), who signed the guarantees, other senior officers in the Ministry of Finance, and the Bank of Mozambique, the Claimant’s central bank) at the time. CSI and CSLB carried out their usual internal diligence processes in relation to the loans and further advances (and extensions). As the Claimant was at all material times aware that CSI was entitled to do, CSI subsequently on-sold most of its exposure to the loans (and corresponding rights under the guarantees) via, in the case of the ProIndicus Project, syndication and, in the case of the EMATUM Project, repackaging the debt into loan notes. In 2016, the Claimant restructured the loans and guarantee relating to the EMATUM Project by offering and securing from investors an exchange of the loan notes for sovereign Eurobonds issued by the Claimant.
- 3 Having had the benefit of the monies advanced since 2013, by this claim the Claimant now seeks to say the guarantees were not binding and/or to make CSI and CSLB liable for amounts it alleges it has lost, including its payments in connection with the ProIndicus loan and the Eurobonds. In particular, the Claimant asserts that Minister Chang was not authorised to enter into the guarantees on its behalf and further that the guarantees are unenforceable because the Prinvest Defendants allegedly bribed senior Mozambican officials, including Minister Chang, and three (now former) employees of another Credit Suisse entity (the Third to Fifth Defendants). CSI and CSLB are said to be fixed with the knowledge and actions of the Third to Fifth Defendants and/or to be vicariously liable for their conduct and/or to have been wilfully blind to Minister Chang’s lack of authority and the alleged misconduct. It is also alleged that CSI and CSLB are liable for fraudulent misrepresentations which it is said were made to the Claimant in relation to the 2016 restructuring of the EMATUM loans and guarantees into the Eurobonds.



4 The claims against CSI and CSLB are denied in their entirety. The Claimant is bound by the guarantee (and subsequent confirmations of it) for the ProIndicus Project and was bound by the guarantee for the EMATUM Project at all material times until the restructuring. CSI and CSLB are not liable to pay any damages, compensation or indemnity.

5 Without prejudice to the detail of the Defence below, in summary:

5.1 Whether or not Minister Chang had actual authority to enter into the guarantees and confirmations (as to which no admissions are made and the Claimant is put to strict proof, including as to the consequences and effect of Mozambican law), he had ostensible authority to do so and at all material times CSI and CSLB reasonably believed that the guarantees and confirmations were authorised and complied with Mozambican law. Accordingly, the guarantees and confirmations were valid and binding on the Claimant when they were entered into and at all material times thereafter. In any event, the Claimant has ratified the guarantees and confirmations and/or is estopped from contending they were not authorised and that it is not bound by them. The guarantee and confirmations for the ProIndicus Project subsist and continue to bind the Claimant.

5.2 CSI and CSLB are not in a position to admit or deny the alleged bribery of any of the identified Mozambican officials or the Third to Fifth Defendants by the Privinvest Defendants. But even if any of the Claimant's allegations of bribery are true, it is denied that CSI or CSLB is liable as alleged. On the contrary, in that event, if any of the Third to Fifth Defendants received any of the alleged bribes from the Privinvest Defendants or were involved in bribery of the Mozambican officials at a time that they were acting as agents of CSI or (contrary to CSLB's case as set out below, CSLB), they necessarily would have acted in breach of the duties which they owed to CSI and CSLB and consequently their wrongdoing would not be attributable to CSI or CSLB; nor are CSI and CSLB vicariously liable for their conduct.

5.3 The Claimant's further or alternative case that CSI and CSLB were otherwise wilfully blind to the alleged misconduct is misconceived on the facts and is denied.



- 5.4 Likewise, it is denied that CSI and CSLB are liable for the alleged fraudulent misrepresentations in relation to the 2016 restructuring of the EMATUM loan and guarantee.
- 5.5 In any event, it is denied that the Claimant is entitled to rescind the guarantee (or confirmations) in respect of the ProIndicus loan as alleged: the Claimant has lost the right to do so due to affirmation and/or delay and/or because of the existence of rights and interests of third parties against whom no allegations are made by the Claimant.
- 5.6 Further or alternatively, the Claimant's alleged entitlement to damages and/or equitable compensation and/or indemnification is also denied.
- 5.7 Further or alternatively, if and to the extent CSI and CSLB are liable to pay damages or compensation (contrary to their primary case), the claim against CSI and CSLB fails for circuity of action and/or set-off due to the Claimant's fraudulent misrepresentations to CSI and CSLB that the guarantees were authorised and complied with Mozambique law, which are the subject of CSI's and CSLB's Counterclaim.

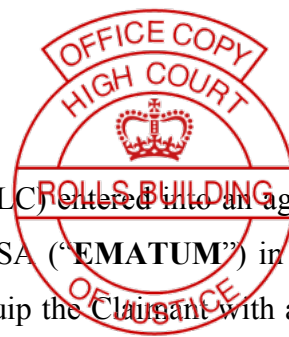
B INTRODUCTION

- 6 In this Defence:
- 6.1 References in the form "paragraph *x*" are references to the Claimant's Amended Particulars of Claim dated 16 August 2019 (the "APoC"), save where otherwise stated.
- 6.2 For convenience only, certain headings and defined terms are adopted from the APoC. No admissions are to be inferred from this.
- 6.3 CSI and CSLB respond only to the allegations in the APoC against CSI and CSLB. No admissions are made as to any allegations against any other Defendants.
- 6.4 Save as is expressly admitted or not admitted herein, each and every allegation in the APoC against CSI and CSLB is denied. In so far as no admissions are made, CSI and CSLB are unable to admit or deny the matter alleged.



- 6.5 CSLB understands from the APoC that it is being sued individually and not in any other capacity. CSLB responds to the allegations in the APoC on that basis and serves this Defence in its own right and not in any other capacity. For the avoidance of doubt, it is denied (insofar as it is alleged) that the Claimant is entitled to any relief as against CSI and CSLB which affects the rights and interests of other “*Finance Parties*” under the guarantee in relation to the ProIndicus Project.
- 7 The claims as pleaded in the APoC concern three transactions involving: three SOEs that the Claimant ultimately owns and controls, through which it borrowed substantial sums for government projects; the Claimant as guarantor in respect of the monies borrowed; one or more of the Prinvest Defendants as suppliers of certain goods and services in connection with the projects, acting by Mr Jean Boustani and Mr Iskandar Safa¹ amongst others; and, in the case of the ProIndicus Project, CSI as lender and arranger and CSLB as facility agent (and now lender) and, in the case of the EMATUM Project, CSI as lender and arranger and CSLB as facility agent. The three transactions are in outline as follows.
- 8 Under the ProIndicus Project so far as CSI and CSLB understood at all material times:
- 8.1 The Sixth Defendant (Prinvest Shipbuilding SAL) entered into an agreement with the SOE ProIndicus SA (“**ProIndicus**”) in January 2013 (the “**ProIndicus Supply Contract**”) to supply a turnkey EEZ monitoring and protection system, including radar stations, patrol vessels, aircraft and staff training, intended to raise revenue by (amongst other things) providing security to companies exploiting recently discovered natural gas reserves.
- 8.2 ProIndicus is and was at all material times ultimately owned, and controlled, by the Claimant. Its immediate owners are or were at all material times the Claimant’s Ministry of National Defence, the Ministry of the Interior and the State Intelligence and Security Service (“**SISE**”) or entities owned by each of them.
- 9 Under the EMATUM Project so far as CSI and CSLB understood at all material times:

¹ Save where expressly stated, references herein to “Mr Safa” are to Mr Iskandar Safa.



- 9.1 The Seventh Defendant (Abu Dhabi Mar LLC) entered into an agreement with the SOE Empresa Moçambicana de Atum SA (“**EMATUM**”) in August 2013 (the “**EMATUM Supply Contract**”) to equip the Claimant with a tuna fishing fleet, including fishing and other vessels and processing facilities, and to provide training, so the Claimant could exploit abundant tuna in its EEZ.
- 9.2 EMATUM is and was at all material times ultimately owned, and controlled, by the Claimant. Its immediate owners are and were at all material times the Mozambique Ministry of Finance (“**Ministry of Finance**”), Ministry of Fisheries and SISE or entities owned by each of them.
- 10 Under the “**MAM Project**”, in which neither CSI nor CSLB (nor any other entity within the Credit Suisse group) participated as arranger, as CSI and CSLB now understand, the Privinvest Defendants agreed with the SOE Mozambique Asset Management SA (“**MAM**”), an entity which is and was at all material times ultimately owned, and controlled, by the Claimant, to construct, equip and train staff for maintenance facilities for (amongst others) the vessels from the ProIndicus Project and the EMATUM Project. The financing for the MAM Project was arranged by VTB Bank (the “**MAM Transaction**”).
- 11 The ProIndicus Project and EMATUM Project were financed by, respectively, (1) an initial loan and further loan advances to ProIndicus pursuant to a Facility Agreement (the “**ProIndicus Facility Agreement**”) and amendments thereto and (2) a loan to EMATUM pursuant to a separate Facility Agreement (the “**EMATUM Facility Agreement**”). CSI arranged both initial loans and some of the further advances to ProIndicus. All of the loan monies and advances were paid by CSI at the direction of ProIndicus and EMATUM respectively (net of fees and costs) to one of the Privinvest Defendants.
- 12 Specifically, the loans and advances were as follows:
- 12.1 CSI (via CSLB as facility agent) advanced US\$372 million on 21 March 2013, US\$100 million on 25 June 2013 (pursuant to an “**Amended ProIndicus Facility Agreement**”), and US\$32 million on 14 August 2013 (in each case less fees, interest prepayments and costs) for ProIndicus.



- 12.2 CSI (via CSLB as facility agent) advanced US\$500 million (less fees, interest prepayments and costs) on 11 September 2013 for EMATUM
- 12.3 VTB Bank arranged and made further advances to ProIndicus of US\$118 million on 15 November 2013 and to EMATUM of US\$350 million on 11 October 2013.
- 13 The Claimant guaranteed the loans for the two projects by entering into the “**ProIndicus Guarantee**” and two subsequent confirmations of it, whereby the Claimant *inter alia* confirmed that the ProIndicus Guarantee covered the further advances (“the **Confirmations**”), and the “**EMATUM Guarantee**” (with the ProIndicus Guarantee and the Confirmations, the “**Guarantees**”). The Facility Agreements and Guarantees were expressly governed by English law. The ProIndicus and EMATUM Guarantees and both Confirmations were signed on behalf of the Claimant by Minister Chang. The ProIndicus and EMATUM Guarantees contained, and each Confirmation incorporated, representations and warranties that: (1) the Guarantee was authorised on behalf of the Claimant and (2) the making and performance of the Guarantee and relevant loan was in accordance with both Mozambican law and the Claimant’s obligations to and arrangements with the International Monetary Fund (“**IMF**”).
- 14 The loans and further advances by CSI, the ProIndicus and EMATUM Facility Agreements (including, for the ProIndicus Project, the amendments in June 2013 and December 2014, the latter extending the repayment dates) and the Guarantees are referred to as the “**ProIndicus Transaction**” for the ProIndicus Project and the “**EMATUM Transaction**” for the EMATUM Project.
- 15 In and after March 2013, CSI transferred the rights and obligations under the ProIndicus Facility Agreement and the ProIndicus Guarantee (and Confirmations) to other “*Lenders*” (as defined therein) in accordance with the terms of those contracts, who acquired such rights. As at the date of this Defence, by virtue of a transfer from CSI to CSLB in March 2015, CSLB holds a “*Commitment*” (as defined) of approximately US\$284.16 million in respect of the ProIndicus Transaction and other “*Lenders*” hold Commitments of approximately US\$312.96 million in respect of the ProIndicus Transaction.
- 16 In September 2013, CSI transferred all its rights and obligations under the EMATUM Facility Agreement and EMATUM Guarantee to a special purpose vehicle, Mozambique



EMATUM Finance 2020 BV (“**MEF 2020**”). MEF 2020 in turn charged and assigned substantially all its rights to a trustee, TMF Trustee Limited (the “**Trustee**”), for the benefit of holders of loan participation notes to be issued (the “**2020 Notes**”). These transactions were notified to the Claimant in writing. The 2020 Notes were subsequently issued to noteholders (“**2020 Noteholders**”). The issuance was underwritten by Credit Suisse Securities (Europe) Limited (“**CSSEL**”) and BNP Paribas as Joint Lead Managers. CSSEL was issued the 2020 Notes and on-sold them including to investors.

- 17 In 2016, the 2020 Notes were exchanged into Eurobonds due in 2023 (the “**Eurobonds**”) issued by the Claimant (the “**EMATUM Exchange**”). CSSEL acted as Joint Dealer Manager (with VTB Capital plc) in respect of the EMATUM Exchange. Neither CSI nor CSLB arranged or managed the EMATUM Exchange. CSI and CSLB understand that the Claimant has subsequently sought further to restructure the Eurobonds.
- 18 Notwithstanding the seriousness of the Claimant’s allegations, the APoC are vague and inadequately particularised in many important respects. For example, the APoC:
 - 18.1 Make a number of allegations against “*the Defendants*” collectively without distinguishing among them or particularising the relevant conduct and/or knowledge of each Defendant (e.g., paragraphs 131, 132, 134–142, 154);
 - 18.2 Use terms defined to include several persons or entities (e.g., “*the CS Deal Team Defendants*” and “*the Mozambican Officials*”) without distinguishing among them (e.g., paragraphs 9, 36, 48, 106, 129, 129, 147);
 - 18.3 Make a number of allegations in relation to “*the transactions*” collectively, “*the three transactions*” (as defined in paragraph 27), “*the sovereign guarantees*” or otherwise without distinguishing among them and without particularising the relevant conduct and/or knowledge that each of the Defendants is alleged to have engaged in and/or had in relation to each specific transaction (see, e.g., paragraphs 9, 27, 28, 106, 109–110, 112, 130, 132, 136, 137.2, 139, 152, 154–155);
 - 18.4 Fail to specify the times at which knowledge on the part of CSI and/or CSLB (and/or the Third to Fifth Defendants) is alleged (paragraphs 105–124);



- 18.5 Fail properly to particularise the dates, payers and recipients of alleged bribes (or promises of the same) to the “**Mozambican Officials**” (as defined in the APoC), or the alleged breaches of Mozambican law duties, of which CSI and CSLB are alleged to have been wilfully blind and the Third, Fourth and/or Fifth Defendants are alleged to have had knowledge (e.g., paragraphs 105.1, 105.3 and 136);
- 18.6 Allege in Schedule 2 that bribes were paid to individuals other than the Mozambican Officials and the Third to Fifth Defendants, including to Mr Ndambi Guebuza (the son of Mozambique’s former President Guebuza), without providing any proper particulars and without anywhere explaining the relevance of these alleged bribes to the causes of action pleaded by the Claimant. In the light of this, CSI and CSLB do not plead to any allegations concerning the alleged payment of bribes to those persons. For the avoidance of doubt, no admissions are made.
- 19 The Claimant’s failure properly to particularise its case is particularly striking in respect of the MAM Transaction. Neither CSI nor CSLB (nor any other Credit Suisse entity) arranged the MAM Transaction. In the APoC the Claimant correctly does not allege any involvement by CSI and/or CSLB therein. Yet due to the vagueness of the APoC it is wholly unclear whether the Claimant nonetheless advances any claim against CSI and/or CSLB in respect of the MAM Transaction. In so far as it does so, those allegations have no proper basis and are liable to be struck out and/or summarily dismissed. CSI and CSLB reserve the right to bring such an application. They do not plead further to the MAM Transaction pending clarification and particularisation by the Claimant of its case in this regard. For the avoidance of any doubt, if and insofar as the APoC allege or intend to allege anything against CSI and CSLB in relation to the MAM Transaction, those allegations are denied.
- 20 These are examples of fundamental deficiencies in the APoC as a result of which CSI and CSLB do not understand in sufficient detail the case which they have to meet and it has not been possible for them to plead a proper response to the APoC. This Defence is served without prejudice to the foregoing. For the avoidance of doubt, CSI and CSLB reserve the right to amend this Defence if and when the Claimant provides proper particulars of its case and disclosure.



C THE PARTIES AND OTHER RELEVANT PEOPLE AND ENTITIES

(1) The Claimant

21 Paragraph 1 is admitted.

(2) CSI and CSLB

22 As to paragraphs 2 and 3:

22.1 The terms “*investment management company*” and “*asset management*” in paragraph 2 are vague and not understood. CSI is an investment bank and financial services company.

22.2 Save as aforesaid, paragraphs 2 and 3 are admitted.

23 Paragraph 4 is noted. By the defined term “*Credit Suisse*”, the Claimant seeks to equate CSI and CSLB. Insofar as alleged, it is denied that CSI and CSLB may be equated. As noted above, prior to the recent transfer of part of the ProIndicus loan by CSI to CSLB, CSLB’s role in relation to both the ProIndicus and EMATUM Transactions was solely to act as facility agent in accordance with the terms of the Facility Agreements and the Guarantees. For the avoidance of any doubt, it is specifically denied that when negotiating the loans or guarantees for either the ProIndicus or EMATUM Projects any of the Third to Fifth Defendants were acting on behalf of CSLB: without prejudice to the generality of the aforesaid denial, CSLB will rely in particular on the fact that it was not the party that would be providing the aforesaid financing.

(3) The Third, Fourth and Fifth Defendants

24 As to paragraph 5:

24.1 The first sentence of paragraph 5 is denied, save that, subject to paragraph 55.7 below, it is admitted that the Third Defendant was a member of a team that had responsibility for the origination, structuring and advancement of the ProIndicus Transaction and the EMATUM Transaction on behalf of CSI, subject to CSI’s internal supervision, review and authorisation procedures, from 2008 to 16 February 2017. The Third Defendant was employed by CSSEL from 1 June 2002 to 16 February 2017, the same date on which he ceased work. The Third Defendant was at no time a director or officer of CSI, CSLB or CSSEL.



- 24.2 The second sentence of paragraph 5 is admitted, save that it is denied (insofar as alleged) that the Third Defendant performed the function referred to after 16 February 2017 and it is denied that he was a Managing Director of, or Head of Global Financing for, CSLB: on the contrary, he was employed by CSSEL, with the job title of Managing Director from 1 January 2013 and was Head of the Central and Eastern Europe, Middle East and Africa (“CEEMEA”) team within the Emerging Markets Global Financing Group (“EM GFG”, the team being “EM GFG CEEMEA”) from around June or July 2013 until 16 February 2017.
- 25 As to paragraph 6:
- 25.1 The first sentence of paragraph 6 is denied, save that, subject to paragraph 55.7 below, it is admitted that the Fourth Defendant was a member of a team that had had responsibility for the origination, structuring and advancement of the ProIndicus Transaction on behalf of CSI, subject to CSI’s internal supervision, review and authorisation procedures, from July 2008 until around June or July 2013. The Fourth Defendant was employed by CSSEL from 25 September 2000 to 13 September 2013. The Fourth Defendant ceased work around June or July 2013 and was thereafter on gardening leave until 13 September 2013. The Fourth Defendant was at no time a director or officer of CSI, CSLB or CSSEL.
- 25.2 To the best of CSI’s and CSLB’s knowledge, the Fourth Defendant was not involved in the EMATUM Transaction on behalf of CSI or CSLB. The Fourth Defendant was not involved in the EMATUM Exchange on behalf of CSI or CSLB.
- 25.3 The second sentence of paragraph 6 is admitted, save that it is denied (insofar as alleged) that the Fourth Defendant performed the function referred to after around June or July 2013 and it is denied that he was a Managing Director of CSLB, or was the Head of Global Financing for CSLB: on the contrary, he was employed by CSSEL, with the job title of Managing Director from 1 January 2008 to around June or July 2013, and was Head of EM GFG CEEMEA from around 2010 until around June or July 2013.
- 26 As to paragraph 7:



- 26.1 The first sentence of paragraph 7 is denied, save that, subject to paragraph 55.7 below, it is admitted that the Fifth Defendant was a member of a team that had responsibility for the origination, structuring and advancement of the ProIndicus Transaction on behalf of CSI, subject to CSI's internal supervision, review and authorisation procedures, from August 2010 to on or around 22 July 2013. The Fifth Defendant was employed by CSSEL from 1 July 2010 to 21 August 2013. The Fifth Defendant ceased work on or around 22 July 2013 and was thereafter on gardening leave until 21 August 2013. The Fifth Defendant was at no time a director or officer of CSI, CSLB or CSSEL.
- 26.2 To the best of CSI's and CSLB's knowledge, the Fifth Defendant was not involved in the EMATUM Transaction on behalf of CSI or CSLB. The Fifth Defendant was not involved in the EMATUM Exchange on behalf of CSI or CSLB.
- 26.3 The second sentence of paragraph 7 is admitted, save that it is denied (insofar as alleged) that the Fifth Defendant performed the function referred to after on or around 22 July 2013 and it is denied that she was a Vice President in CSLB's Global Financing Group: on the contrary, she was employed by CSSEL, with the job title of Vice President from 1 January 2012 to on or around 22 July 2013, and was in EM GFG CEEMEA from August 2010 until on or around 22 July 2013.
- 27 Mr Dominic Schultens was employed by CSSEL from 1 August 2011 to 5 May 2014. He was a Vice President until 1 April 2014 and thereafter a Director (and therefore a relatively junior employee) and a member of a team that had responsibility for the origination, structuring and advancement of the ProIndicus and EMATUM Transactions, subject to CSI's internal supervision, review and authorisation procedures, from August 2011 to 5 May 2014. Mr Schultens worked on syndication in EM GFG CEEMEA. He reported to the Fourth Defendant from August 2011 to around 13 July 2013 and to the Third Defendant thereafter until 5 May 2014. Mr Schultens ceased work on 1 May 2014 and was thereafter on gardening leave until 5 May 2014. Mr Schultens was at no time a director or officer of CSI, CSLB or CSSEL.
- 28 EM GMG CEEMEA was a small regional team, based in London, within EM GFG (the Emerging Markets Global Financing Group). Other regional teams within EM GFG



existed elsewhere. EM GFG formed part of the Emerging Markets Group, which was in turn part of the Fixed Income Division from 2013–2015 (and part of the Global Securities Division in 2012). The Fourth Defendant was (until around June or July 2013) and the Third Defendant was (from around June or July 2013 to 16 February 2017) subordinate to the Head of the EM GFG. This person was subordinate to the Global Head of Emerging Markets Group, who was in turn subordinate to the Head of Fixed Income Division (or Global Securities Division), who was in turn subordinate to the Chief Executive Officer of the Investment Bank in 2012 (and Head of the Investment Banking Division thereafter).

- 29 In accordance with CSI's and CSLB's internal policies and procedures, on which CSI and CSLB will rely for their full terms and effect, entry into the ProIndicus and EMATUM Transactions were required to be, and were, approved by several senior employees/officers and/or committees. The Third to Fifth Defendants did not have authority (individually or collectively) from CSI or CSLB to decide whether CSI would participate in the ProIndicus Transaction or the EMATUM Transaction or whether CSLB would act as facility agent and, if so, on what terms. Insofar as the contrary is implicitly alleged in the APoC, the allegation is denied.

- 30 By virtue of CSI's and CSLB's policies and/or as a matter of law, the Third, Fourth and Fifth Defendants each owed CSI (and CSLB, if and to the extent that, contrary to CSLB's primary case, any of them acted on its behalf in relation to the negotiation of either the ProIndicus or EMATUM Facility Agreements or the Guarantees) the following duties:
 - 30.1 A duty to act in good faith and/or a duty of loyalty and/or a duty to act in the best interests of CSI and CSLB; and/or
 - 30.2 A duty to adhere to the policies and procedures of CSI and CSLB; and/or
 - 30.3 A duty not to accept any bribe or secret commission (or to accept a promise of the same) and to account to CSI and CSLB for any such bribe or secret commission; and/or
 - 30.4 A duty to disclose any breach of the aforementioned duties by him or her to CSI and CSLB.



31 Paragraph 8 is noted. As to this:

31.1 By use of the defined term “*CS Deal Team Defendants*” throughout the APoC, the Claimant treats the Third to Fifth Defendants as one without properly distinguishing between them and their distinct knowledge and conduct, as to which (save as expressly admitted herein) the Claimant is put to strict proof.

31.2 Insofar as the Claimant seeks by that term to suggest that the Third to Fifth Defendants were the only persons who acted for CSI in relation to the ProIndicus and EMATUM Transactions and/or that they acted on behalf of CSLB, this is denied. Paragraphs 23 and 28–29 above are repeated.

32 As to the first sentence of paragraph 9:

32.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

32.2 Neither CSI nor CSLB arranged or managed the EMATUM Exchange and any such allegation is denied. CSSEL acted as Joint Dealer Manager (with VTB Capital plc) in respect of the EMATUM Exchange.

32.3 The Third, Fourth and Fifth Defendants were not employed by CSI or CSLB. Paragraphs 24–26 above are repeated.

32.4 The allegation that the Third, Fourth or Fifth Defendants were “*senior*” employees is wholly unparticularised and, insofar as it is intended to be alleged that they held senior management roles, that is denied. Paragraphs 24–26 above are repeated.

32.5 It is admitted that, subject to paragraph 55.7 below and as set out (and for the periods, purposes and transactions stated) in paragraphs 24–26 above and paragraph 258.4 below, the Third, Fourth and Fifth Defendants acted as agents of CSI.

33 Save as aforesaid, the first sentence of paragraph 9 is denied.

34 As to the second and third sentences of paragraph 9, CSI says (and CSLB, if and to the extent that, contrary to CSLB’s primary case, any of the Third to Fifth Defendants acted



on its behalf in relation to the negotiation of the Prudicus or EMATUM Facility Agreements or the Guarantees, says) as follows:

- 34.1 Paragraphs 32–33 above and 55.7 below are repeated.
- 34.2 Further or alternatively, any attribution to and/or vicarious liability of CSI or CSLB could arise only in respect of knowledge gained and actions undertaken by the Third, Fourth and/or Fifth Defendants to the extent that each was acting in his or her capacity as an agent of CSI as set out in paragraphs 24–26 above or (contrary to CSLB’s primary case) as an agent of CSLB.
- 34.3 Further or alternatively, any vicarious liability of CSI or CSLB by reason of the acts of the Third, Fourth and/or Fifth Defendants:
- (a) Alleged to arise because the Third, Fourth and/or Fifth Defendants acted as CSI’s and/or CSLB’s agents is not sustainable in law;
 - (b) Alternatively, could in any event arise in law only if and to the extent that:
 - (i) The Third, Fourth and/or Fifth Defendants are found liable in tort or equity to the Claimant (as to which no admissions are made); and
 - (ii) Conduct that is itself sufficient to give rise to any such liability in tort or equity occurred in the course of the agency of CSI or any agency of CSLB of the Third, Fourth and/or Fifth Defendants and it would be fair and just to hold CSI and CSLB vicariously liable.
- 34.4 Save as aforesaid, the allegations in the second and third sentences of paragraph 9 are denied.

(4) The Privinvest Defendants

35 In this Defence, CSI and CSLB use the term “**Privinvest**” to refer to any entities within the Privinvest Group, including but not limited to the Privinvest Defendants.

36 As to paragraph 10:



36.1 The first, second, third and fifth sentences of paragraph 10 are admitted, save that no admissions are made as to the Claimant's understanding nor as to the Sixth and Eighth Defendants.

36.2 The fourth sentence is noted.

36.3 The sixth sentence is not admitted.

36.4 For the avoidance of doubt, CSI and CSLB believed at all material times that the Privinvest Defendants were reputable companies, which had shipyards in France, Germany, Greece and Abu Dhabi, and had completed projects including supplying vessels with the governments of over 30 countries in Europe, Africa and South America. CSI and CSLB also understood when entering into the ProIndicus Facility Agreement and Guarantee that the Seventh Defendant was ultimately co-owned by Privinvest (as to 49%) and Al Ain International Group (ultimately owned by Sheikh Hamdan Bin Zayed Al Nahyan, the former Deputy Prime Minister and Minister of State for Foreign Affairs of the United Arab Emirates) as to 51%.

(5) Allegedly Relevant Privinvest Group Individuals

37 Paragraph 11 is admitted.

38 Paragraph 12 is not admitted.

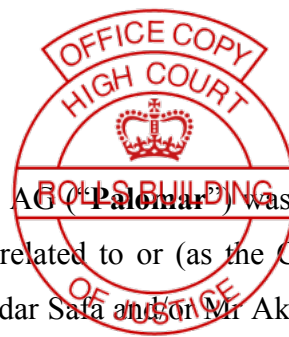
39 Paragraph 13 is admitted insofar as it concerns CSI and CSLB, but no admissions are made as to Mr Boustani's role in relation to any dealings between the Claimant and the Privinvest Defendants in which CSI and CSLB were not involved.

40 Paragraph 14, which is not directed to CSI and CSLB, is noted.

(6) Allegedly Relevant Companies in or related to the Privinvest Group

41 Paragraph 15 is not admitted, save that:

41.1 Paragraph 27 above is repeated and the third and fourth sentences of paragraph 15 are admitted insofar as consistent with it.



41.2 It is admitted that Palomar Capital Advisers AG (“Palomar”) was incorporated in Switzerland in 2003 and was within or related to or (as the Claimant later pleads) linked to Privinvest and/or Mr Iskandar Safa and/or Mr Akram Safa, but no admissions are made as to the nature or extent of any such relationship.

41.3 It is admitted that Palomar entered administration in Zurich on 18 October 2016.

41.4 It is admitted that the directors of Palomar included the Fourth Defendant from October 2013 and Mr Najib Allam from November 2013.

41.5 It is admitted that during at least part of the period with which this claim is concerned, Palomar employed or retained as agents the Fourth and Fifth Defendants and Mr Schultens. CSI and CSLB are not able to state when any such employment and/or agency commenced or its nature.

(7) Relevant Individuals in the Republic

42 The first and third sentences of paragraph 16 are admitted (and it is averred that Mr do Rosário was at all material times a senior official in SISE), save that in relation to MAM paragraph 19 above is repeated. The second sentence of paragraph 16 is not admitted.

43 Paragraph 17 is noted. Paragraph 18.2 above is repeated.

44 Paragraph 18 is admitted and averred.

45 Paragraph 19 is admitted, save that no admissions are made as to the date on which Mr Armando Emilio Guebuza (“**President Guebuza**”) took office as President.

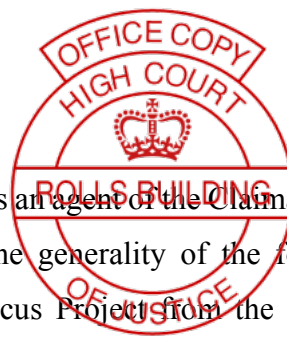
46 Paragraph 20 is admitted.

47 Paragraph 21 is admitted. Ms Dove’s appointment as President Guebuza’s secretary continued until January 2015.

48 Paragraph 22 is noted. Paragraph 18.2 above is repeated.

49 Paragraph 23 is admitted.

50 Paragraphs 24–25 are not admitted.



51 Mr Teófilo Nhangumele acted at all material times as an agent of the Claimant in relation to the ProIndicus Project. Without prejudice to the generality of the foregoing, Mr Nhangumele led the team assigned to the ProIndicus Project from the Office of the President and was the Project Manager for the ProIndicus Project.

D THE CLAIMANT’S SUMMARY OF THE CLAIM AND CSI’S AND CSLB’S GENERAL RESPONSE TO ALLEGATIONS OF ATTRIBUTION

52 Paragraphs 26 and 28–29 purport to summarise the claim and it is not necessary to plead a response since CSI and CSLB respond in detail to the Claimant’s case below. A summary of CSI’s and CSLB’s Defence is pleaded at paragraph 5 above. For the avoidance of doubt, each and every allegation against CSI and CSLB is denied (save as expressly admitted or not admitted herein) and it is denied that the Claimant is entitled to the relief sought or any relief.

53 Paragraph 27 is noted. Paragraph 18.2 above is repeated.

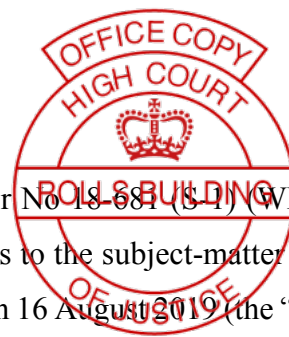
54 Throughout the APoC the Claimant alleges that the Third to Fifth Defendants had knowledge of various matters and says that the knowledge of the Third to Fifth Defendants should be attributed to CSI and CSLB or that CSI and CSLB are vicariously liable for those Defendants’ conduct. The Claimant makes various allegations against CSI and CSLB on that basis. The Claimant makes further or alternative allegations against CSI and CSLB on the basis that CSI and CSLB were otherwise wilfully blind to the same matters.

55 As to the Claimant’s case on the knowledge of the Third to Fifth Defendants and attribution of the same to CSI and CSLB, and alleged vicarious liability for the acts of the Third to Fifth Defendants, CSI’s and CSLB’s response is as follows:

55.1 No admissions are made as to whether any bribes were offered or paid to any of the Third to Fifth Defendants by the Prinvest Defendants as alleged.

55.2 No admissions are made as to whether any bribes were offered or paid to any of the Mozambican Officials by the Prinvest Defendants as alleged.

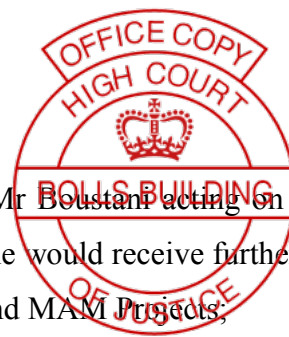
55.3 It is admitted that, as referred to in the APoC, a Bill of Indictment was filed on 19 December 2018 (the “**US Indictment**”) in the United States District Court for



the Eastern District of New York in Case Cr No 18-681 (S-1) (WFK) (the “**US Criminal Proceedings**”) and that this relates to the subject-matter of this claim. A Superseding Bill of Indictment was filed on 16 August 2019 (the “**Superseding US Indictment**”). At the trial of this action CSI and CSLB will refer as necessary to the US Indictment and Superseding US Indictment, but for the avoidance of doubt it is denied (insofar as it is alleged) that either document constitutes evidence of the matters alleged therein. Mr Boustani was a defendant to the US Indictment and the Superseding US Indictment. He was charged with conspiracy to commit wire fraud, conspiracy to commit securities fraud and conspiracy to commit money laundering. The hearing in his trial before the jury took place from 16 October 2019 to 22 November 2019. On 2 December 2019, he was acquitted on all charges.

55.4 It is admitted that each of the Third to Fifth Defendants pleaded guilty to certain charges in the US Indictment and the Superseding US Indictment, as follows:

- (a) The Fourth Defendant pleaded guilty on 19 July 2019 to one count of conspiracy to commit wire fraud charged in the US Indictment. He did so on the basis that:
 - (i) On or about late February 2013, Mr Boustani offered him half of the amount by which he caused CSI to reduce a subvention fee (or contractor fee, that is, an interest prepayment) that Privinvest would pay to CSI as part of the ProIndicus Transaction. The Fourth Defendant agreed to this, made successful efforts to procure CSI to reduce the subvention fee it would receive, and subsequently received payment as promised from Privinvest;
 - (ii) In March 2013, the Fourth Defendant agreed with Mr Safa and Mr Boustani of the Privinvest Defendants that he would receive a percentage of any further advances made by CSI to ProIndicus;
 - (iii) After his employment with CSSEL had ceased, while working as a director of Palomar, the Fourth Defendant:



- (A) Agreed with Mr Safa and Mr Boustani acting on behalf of the Privinvest Defendants that he would receive further payments in relation to the EMATUM and MAM Projects;
 - (B) Subsequently received the funds from Palomar and/or Privinvest; and
 - (C) Recruited the Third Defendant to assist with obtaining further advances to ProIndicus and procuring CSI to advance a loan for the EMATUM Project;
- (iv) In September and October 2013, the Fourth Defendant himself paid the Third Defendant US\$2 million and facilitated an agreement between the Third Defendant and Mr Boustani (of which Mr Safa was aware) under which the Third Defendant would receive payments totalling US\$4.4 million in exchange for assisting to obtain CSI's approval of the EMATUM loan;
- (v) Some time after the Fourth Defendant had ceased employment with CSSEL and after the ProIndicus and EMATUM Transactions were completed, Mr Boustani told the Fourth Defendant that Privinvest had paid the son of President Guebuza at least \$50 million;
- (b) The Third Defendant pleaded guilty on 6 September 2019 to one count of conspiracy to commit money laundering charged in the Superseding US Indictment. He did so on the basis that:
- (i) The Third Defendant made significant efforts to assist in ensuring CSI made further advances to ProIndicus around June 2013 and made the loan to EMATUM in September 2013, because he had agreed with Mr Boustani that Privinvest would pay him a substantial sum of money for helping to do so;
 - (ii) From September 2013 and February 2014 respectively, the Third Defendant received payments of US\$2 million from Privinvest paid



through the Fourth Defendant and further payments directly from Prinvest. He knew these were related to his efforts,

- (iii) The Third Defendant knew that Prinvest had agreed to pay illegal bribes to the Fourth Defendant while the Fourth Defendant was a Managing Director employed by CSSEL;
- (c) The Fifth Defendant pleaded guilty on 20 May 2019 to one count of conspiracy to commit money laundering charged in the US Indictment. She did so on the basis that:
 - (i) In April or May 2013, the Fourth Defendant had told the Fifth Defendant that he had received a bribe of US\$1 million from Prinvest and Mr Boustani in exchange for substantially reducing the fees paid by Prinvest on the loan to ProIndicus;
 - (ii) On or about 12 June 2013, the Fourth Defendant told the Third Defendant that he had transferred her approximately US\$200,000 of the money he had received from Prinvest to the Fifth Defendant's newly opened bank account in the United Arab Emirates;
 - (iii) The Fifth Defendant agreed to accept and keep these moneys, knowing they were the proceeds of illegal activity.

55.5 It is admitted that the Third Defendant, in his Defence filed in this claim dated 20 December 2019, has averred that:

- (a) He received secret commissions in a total sum of US\$5,699,960² “*from the Prinvest Group for his support in securing Credit Suisse’s agreement to (a) the ‘upsizes’ to the Proindicus loan provided by Credit Suisse and (b) the provision of the EMATUM facility*” (paragraph 19.3); and
- (b) “*In or about early March 2013, Mr Pearse told Mr Singh that Mr Boustani had agreed that Mr Pearse would be paid a portion (expected to be US\$2*

² The Third Defendant’s Defence states that he received in total “US\$5,699,960 million”. It is assumed that the word “million” is a typographical error.

million) of the amount by which Credit Suisse agreed to reduce the subvention fee payable by the Prinvest Group”, although he did not know whether the Fourth Defendant in fact received any such sums (paragraph 19.4).

55.6 For the avoidance of doubt:

- (a) The fact and terms of the charges, the guilty pleas and the Defences filed in this claim of the Third to Fifth Defendants are admitted. However, no admissions are made as to the underlying facts or as to the conduct and knowledge of the Third to Fifth Defendants;
- (b) The US Indictment and the Superseding US Indictment do not allege, none of the Third to Fifth Defendants suggested in their allocutions, the Third and Fourth Defendants did not suggest in their evidence at Mr Boustani’s trial, and the Third to Fifth Defendants do not suggest in their Defences filed in this claim that:
 - (i) Any bribe was promised or paid to any of them by or on behalf of Prinvest before Mr Boustani offered a bribe to the Fourth Defendant on or about 26 February 2013;
 - (ii) The Third and Fifth Defendants ever had any knowledge of any bribes offered or paid by or on behalf of Prinvest to Minister Chang or any of the other Mozambican Officials;
 - (iii) The Fourth Defendant had knowledge of any bribes offered or paid by or on behalf of Prinvest to Minister Chang or any other of the Mozambican Officials at any time prior to Mr Boustani informing the Fourth Defendant of the payment of the bribes referred to in paragraph 55.4(a)(v) above in 2015 (well after he had left CSSEL);
- (c) None of the Third to Fifth Defendants ever informed CSI or CSLB (or any other Credit Suisse entity) that he or she had accepted or agreed to accept any bribes from Prinvest, that he or she knew that any other of the Third



to Fifth Defendants had done so, or that Prinvest had offered to pay or paid any bribes to any Mozambican Official,

55.7 If and to the extent that, as alleged by the Claimant:

- (a) Any of the Third to Fifth Defendants agreed to accept or received any bribes from Prinvest and/or knew that any other of the Third to Fifth Defendants had done so (as to which no admissions are made); and/or
- (b) (i) Any bribes were offered or paid by Prinvest to any of the Mozambican Officials (as to which no admissions are made) and (ii) any of the Third to Fifth Defendants knew of and/or were involved in and/or facilitated and/or assisted this (as to which no admissions are made); and/or
- (c) (i) Any of the Mozambican Officials breached any Mozambican law duties by accepting bribes as alleged (as to which no admissions are made) and (ii) any of the Third to Fifth Defendants is held to have dishonestly assisted and/or knowingly received the proceeds thereof (as to which no admissions are made); and/or
- (d) (i) The ProIndicus Guarantee (and/or the Confirmations) and/or the EMATUM Guarantee were in breach of Mozambique law and/or in entering into those documents Minister Chang acted without authority and (ii) any of the Third to Fifth Defendants knew of this (as to which no admissions are made); and/or
- (e) (i) The ProIndicus and/or EMATUM Supply Contracts were “*instruments of fraud, alternatively shams*” as alleged (as to which no admissions are made) and (ii) any of the Third to Fifth Defendants knew of this (as to which no admissions are made); and/or
- (f) The Third Defendant committed deceit in relation to the EMATUM Exchange as alleged (as to which no admissions are made);
- (g) Any of the Third to Fifth Defendants participated in a conspiracy to injure the Claimant by any of the unlawful means alleged in the APoC (as to which no admissions are made),



then CSI and CSLB will say as follows:

- (i) The relevant conduct of the Third to Fifth Defendants was expressly prohibited by, and not within any authority conferred upon them by, CSI or CSLB;
- (ii) Such conduct was in any event unlawful and contrary to CSI's and CSLB's interests, and must have been pursued by the Third to Fifth Defendants in their own interests and/or those of Mr Boustani and/or Privinvest and/or Palomar to the detriment of CSI and CSLB. In so far as any such conduct took place during the period when the Third to Fifth Defendants worked on the ProIndicus or EMATUM Transactions for CSI or, contrary to CSLB's primary case, for CSLB, that conduct breached the duties that they owed to CSI and/or CSLB as pleaded at paragraph 30 above;
- (iii) In the premises, contrary to the Claimant's case:
 - (A) The conduct and knowledge of the Third to Fifth Defendants referred to above are not attributable to CSI or CSLB; and
 - (B) Neither CSI nor CSLB is vicariously liable for such actions:
 - (1) The Third, Fourth and Fifth Defendants were not employees of CSI or CSLB (and mere agency for CSI or, contrary to CSLB's primary case, for CSLB does not in law give rise to vicarious liability);
 - (2) Further or alternatively, the relevant conduct of the Third to Fifth Defendants was not in the course of and/or sufficiently connected with the Third, Fourth and/or Fifth Defendant's role as agents of CSI or, contrary to CSLB's primary case, CSLB, and/or it would not be fair and just to make CSI or CSLB vicariously liable for such actions.

56 As to the alternative case of CSI's and CSLB's wilful blindness based on so-called "*red flags*", CSI's and CSLB's response is that the relevant allegations are inadequately pleaded; are made on the basis of a selective and distorted presentation of the events



leading to the ProIndicus Transaction and the EMATUM Transaction and Exchange; and are not established by the facts and matters pleaded in any event. Insofar as any such allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

E THE ALLEGEDLY LIMITED NATURE OF THE REPUBLIC’S PRESENT KNOWLEDGE OF THE ALLEGED WRONGDOING

57 The first sentence of paragraph 30 is denied. The Claimant’s knowledge of the matters the subject of the claim is to be assessed in light of at least the following:

57.1 Documents held by and information known to the Claimant directly or indirectly through any department, body, entity or current or former official, including by the Office of the President of the Republic, the Ministry of Finance, the Ministry of Defence, the Ministry of the Interior, the Ministry of Agriculture and Fisheries, SISE, the Bank of Mozambique, President Guebuza (and Mr Ndambi Guebuza, his son), the former Minister of Defence and current President of Mozambique (Mr Filipe Nyusi), the former and current Finance Ministers (Minister Chang and Mr Adriano Maleiane (“**Minister Maleiane**”)), the other Mozambican Officials than Minister Chang, the former and current National Directors of the Treasury (respectively Ms Isaltina Lucas and Dr Adrian Isaias Ubisse), the former Deputy National Director of the Treasury (Mr Piedade Macamo), the former Minister of the Interior (Mr Alberto Mondlane), the former Director General of SISE (Mr Gregorio Leao), Mr António Carlos do Rosário (a former senior official in SISE), the former Governor of the Bank of Mozambique (Mr Ernesto Gove), Mr Teófilo Nhangumele (the project manager for the ProIndicus Project), Mr Bruno Langa (an associate of Mr Ndambi Guebuza), Mr Rosario Mutota (a former officer of SISE), Monte Binga SA, Gestao Investimentos e Participacoes e Servicos Limitada, the Mozambique Social Services for State Intelligence and Security, Fundo de Formento Pesquerio, Empresa Mocambicanade Pesca SA, Instituto de Gestao das Participacoes do Estado, ProIndicus, EMATUM and MAM;

57.2 Documents held, investigation carried out by and knowledge of the Claimant’s Public Prosecutor (“**PGR**”) and/or the Office of the Public Prosecutor of the Claimant, and the Attorney General (through whom the Claimant brings this action) and/or the Office of the Attorney General and/or the Ministry of Justice in investigation No 1/2015 resulting in Mozambican criminal proceedings in Case



No 18/2019-C (the “**Mozambican Criminal Proceedings**”), including by third parties providing assistance to the PGR;

- 57.3 The Kroll Report (referred to by the Claimant at paragraph 31) which states that it was prepared “*under the direction*” of the Office of the PGR, as well as any drafts of the Kroll Report, the proposal for the Kroll Report dated 21 October 2016 referred to in the Kroll Report (and any drafts thereof) and any documents and information obtained, interviews conducted and expert opinions or external advice obtained by Kroll;
- 57.4 The report by the Claimant’s Parliamentary Inquiry Commission into the subject-matter of this claim and all documents and information obtained by the Commission; and
- 57.5 Information that has become available from the US Criminal Proceedings.
- 58 If (which is not admitted) any bribes were paid to any of the Mozambican Officials as alleged, there is good reason to believe that the Claimant has understated its knowledge as to improper payments to other Mozambican officials. At the trial of Mr Boustani in the US Criminal Proceedings, the prosecution alleged that many other Mozambican officials not named by the Claimant in the APoC received improper payments in respect of the subject matter of this claim. In addition to Mr Ndambi Guebuza who is named by the Claimant in these proceedings, at the trial of Mr Boustani pursuant to the Superseding US Indictment, it was alleged that (former) President Guebuza and (current) President Nyusi received improper payments associated with these transactions. Similar allegations about receipt of improper payments by other Mozambican officials and residents (believed to be over 25 individuals) are also made in the Mozambican Criminal Proceedings. Documents held, investigations carried out and knowledge of the PGR in relation to the Mozambican Criminal Proceedings and any other criminal investigations in Mozambique fall within the Claimant’s knowledge of the matters the subject of the claim.
- 59 CSI and CSLB reserve the right to plead further in this regard following disclosure.
- 60 As to the second sentence of paragraph 30:



- 60.1 It is admitted that the Fifth Defendant has pleaded guilty to one count of conspiracy to commit money laundering. Paragraphs 55.3–55.5 above are repeated.
- 60.2 It is denied that the Third and Fourth Defendants have not made public admissions. Paragraphs 55.4(a)–(b) above are repeated.
- 60.3 It is denied for the reasons herein, if alleged, that CSI or CSLB have participated in any wrongdoing or that CSI or CSLB must “*confess*” or “*explain*” anything.
- 60.4 Save as aforesaid, the second sentence is not admitted.
- 61 The facts and matters in paragraph 31 are admitted. However, no admissions are made as to the accuracy or completeness of the contents of the Kroll Report.
- 62 Paragraphs 32 and 33 are admitted, save that no admissions are made as to the Claimant’s understanding of and reliance on the US Indictment (or the Superseding US Indictment) or as to the truth of the matters referred to therein. For the avoidance of doubt:
- 62.1 As to paragraph 32.4, CSI’s and CSLB’s understanding is also that “*Privinvest Co-Conspirator 2*” is Mr Safa.
- 62.2 As set out in paragraph 55.4 above, the Third, Fourth and Fifth Defendants each pleaded guilty to one charge and pleaded not guilty to all other charges.

F THE REPUBLIC AND ITS ALLEGEDLY RELEVANT LAWS

(1) The Republic

- 63 The facts and matters in paragraphs 34 and 35 are admitted, but their relevance to the present claim is not understood and denied.
- 64 Paragraph 36 is noted, but no admissions are made. Insofar as the second sentence of paragraph 36 purports to summarise sections II to VIII of the APoC, CSI and CSLB rely on their responses as pleaded below.

(2) The Republic’s Constitution

- 65 As to paragraph 37:



65.1 No admissions are made as to paragraphs 1 to 21 of Schedule 1 to the APoC, save as set out in this paragraph in response to the provisions expressly mentioned in paragraph 37. The body of the APoC does not refer to the other provisions in paragraphs 1 to 21 of Schedule 1, save for the assertion of relevance in paragraph 37, which is accordingly denied. CSI and CSLB reserve the right to respond if the Claimant explains the relevance of those other provisions. No admissions are made as to the allegations of “particular relevance” in paragraph 37.

65.2 Paragraphs 37.1 and 37.3 are noted as summaries of the referenced provisions.

65.3 No admissions are made as to paragraph 37.2, which appears incorrectly to refer to Article 3 (rather than Article 38) of the Constitution and in any event inaccurately paraphrases Article 38.

(3) The SISTAFE Law and Presidential Decree No 2/2010

66 Save that paragraph 65.1 above is repeated *mutatis mutandis* as to paragraphs 22 to 30 of Schedule 1 to the APoC and the allegation of relevance in the third sentence of paragraph 38, no admissions are made as to the first two sentences of paragraph 38, which purport to summarise and opine on the SISTAFE Law. Paragraphs 38.1 and 38.2, which purport to summarise Articles 15 and 16 of the SISTAFE Law, are noted. To the extent relevant, CSI and CSLB will rely on those provisions. Save as aforesaid, no admissions are made.

67 Presidential Decree No 2/2010 (until its repeal in 2015) set out the competences and authorities of the Ministry of Finance. Minister Chang, as Finance Minister, was empowered to exercise those competences and authorities. By Article 3 thereof, the authorities included representing the Claimant to enter into and implement agreements for the contracting of internal and external public debt, to enter into and implement agreements with international financial institutions, and to enter into contracts or agreements that entailed the assumption of financial liabilities or involved fiscal matters.

(4) Bribery and anti-corruption laws

68 No admissions are made as to paragraph 39 and paragraphs 31 to 32 of Schedule 1 to the APoC. The body of the APoC does not refer to the alleged offence mentioned in the first sentence of paragraph 39 or to the provisions in paragraphs 31 to 32 of Schedule 1 to the



APoC, save for the assertion of relevance in the second sentence of paragraph 39, which is accordingly denied. CSI and CSLB reserve the right to respond if the Claimant explains the relevance of these provisions.

(5) The Claimant’s financial history and the discovery of natural gas reserves in 2010–2011

69 No admissions are made as to the facts and matters pleaded in paragraphs 40 to 41.

70 As to paragraph 42, it is admitted that international gas exploration companies made discoveries of natural gas reserves off the coast of Mozambique. Save as aforesaid, no admissions are made.

(6) Corruption in the Republic

71 Paragraph 43 is vague and inadequately particularised and no admissions are made. Without prejudice to the foregoing:

71.1 It is admitted that prior to entering into the ProIndicus and EMATUM Transactions, CSI was aware that it was necessary to consider the risk of bribery and corruption in dealings with the Claimant.

71.2 As pleaded below, CSI carried out due diligence in relation to the ProIndicus and EMATUM Transactions and CSSEL did so for the EMATUM Exchange, including as to the aforesaid risk. To the extent relevant, CSLB relied upon the fact that CSI had carried out the aforesaid due diligence.

(7) The duties allegedly owed by the Mozambican Officials under Mozambican law

72 As to paragraphs 44 to 45 and paragraphs 33 to 35 of Schedule 1:

72.1 It is admitted and averred that Minister Chang was Finance Minister and a Minister of State.

72.2 It is admitted that, given their roles, at all material times, Minister Chang owed to the Claimant the duties in the provisions set out in paragraphs 33 to 34 of Schedule 1 and Mr do Rosário, Mr Matusse and Ms Dove owed to the Claimant the duties in the provisions set out in paragraph 35 of Schedule 1. No admissions



are made as to the accuracy of the Claimant's summary of those provisions. CSI and CSLB will rely on those provisions to the extent relevant.

72.3 No admissions are made as to the proper characterisation of these duties under English law, which is a matter for legal argument and expert evidence.

72.4 Save as aforesaid, paragraphs 44 and 45 and paragraphs 33 to 35 of Schedule 1 are not admitted.

G THE FACTS

73 CSI and CSLB were advised by Couto, Graça & Associados (“CGA”), reputable Mozambique counsel, and Clifford Chance (“CC”), a firm of reputable English solicitors, in relation to the ProIndicus and EMATUM Transactions. The advice that CSI and CSLB received from CGA and CC is privileged. CSI and CSLB assert, and do not waive, privilege over the advice they received.

(1) The ProIndicus transaction

(a) Events in 2011

74 As to paragraphs 46 to 49:

74.1 Paragraph 49.1 is admitted.

74.2 Save as aforesaid, no admissions are made.

(b) Events in 2012 – early 2013

75 Paragraph 50 is admitted as to CSI but otherwise denied. The approach was by Mr Boustani on behalf of Privinvest.

76 On 21 February 2012, in response to a question from CSI, Mr Boustani informed CSI that Privinvest and the Claimant were aware of IMF limits on non-concessional borrowing and that the proposed borrowing for the ProIndicus Project would be within that limit.

77 As to paragraph 51:



- 77.1 It is admitted that CSI sent a letter to the Office of the President of the Republic of Mozambique on 27 February 2012 expressing interest in participating in the financing of an EEZ monitoring and protection system in Mozambique constructed by the Ministry of Defence (that is, the ProIndicus Project).
- 77.2 Save as aforesaid, paragraph 51 is denied.
- 78 As to paragraph 52:
- 78.1 Mr Boustani told CSI in February 2012 that the ProIndicus Project had been built up on a costs-plus basis with the Mozambican authorities with a stated profit margin, which was why the Seventh Defendant had been selected.
- 78.2 It is admitted that Mr Boustani sent to CSI an email dated 9 March 2012. The email stated that the Seventh Defendant had created the project, had through “*high level connections*” persuaded the Mozambican authorities to protect their EEZ and natural resources, had been requested to design and send the Mozambican authorities a proposal, and had been “*selected to execute the project*”. The email stated that the budget was decided by the Claimant’s authorities based on the Seventh Defendant’s advice and that it had operated a tendering process for equipment, in which it advised the Mozambican authorities. The email stated that the process had started more than a year beforehand.
- 78.3 Further discussions between CSI and the Seventh Defendant ensued in relation to these matters. The Seventh Defendant indicated that it had been asked by the Claimant to provide a solution and budget to secure its EEZ and the Seventh Defendant had proposed the ProIndicus Project and a price, to which the Claimant had agreed. The Seventh Defendant stated that its profit margin was approximately 15%.
- 78.4 CSI believed at all material times that the Claimant’s public procurement laws had been satisfied or did not apply to the entry by ProIndicus into the ProIndicus Supply Contract with Privinvest.
- 78.5 CSI internally considered risks of money laundering or bribery and reputational risk arising specifically from the process of appointment of the Seventh



Defendant by the Claimant to carry out the ProIndicus Project (as explained to CSI). This was, in the circumstances as understood by CSI, not considered to give rise to any objection to the transaction.

78.6 The Claimant gave final approval for the ProIndicus Project only after the financing with CSI had been negotiated on terms that were satisfactory to the Claimant. The “*Effective Date*” (as defined) of the ProIndicus Supply Contract did not occur until the Sixth Defendant had received the invoiced price (Article V), which could in practice occur only if satisfactory funding was arranged.

78.7 Save as aforesaid, paragraph 52 is denied.

79 As to paragraph 53:

79.1 In around July 2010, a Credit Suisse team had rejected a request to open an account of which Mr Safa was a beneficial owner. It did so because Mr Safa had had a WorldCheck profile³ that mentioned various allegations against him. In December 2011, a Credit Suisse team submitted Mr Safa for designation as an undesirable client (one with whom all Credit Suisse entities may not enter into or maintain a banking business relationship) (“UC”), and he was so designated.

79.2 WorldCheck had, in the meantime, removed Mr Safa’s profile in September 2010.

79.3 The first sentence of paragraph 53 is admitted. Mr Safa remained designated as a UC as at 12 March 2012.

79.4 As to the second sentence of paragraph 53, it is admitted that on 13 March 2012 CSI reviewed 11 news articles concerning Mr Safa. On 13 March 2012, the Third Defendant and others were sent a summary that contained links to five articles and stated that Mr Safa had been acquitted of charges or was not charged in three identified cases (which related to events in the 1980s, between 1993 and 1995,

³ WorldCheck is a screening service (supplied, at times relevant to this proceeding, by Thomson Reuters) aimed at financial institutions and other parties that need to identify or investigate the backgrounds of their counterparties (or related entities or individuals). It enables names of individuals and companies to be searched against a proprietary database of public records and news articles (amongst other things), which is maintained and updated from time to time.



and in 2005 respectively). The Third Defendant had earlier that day been sent an email that stated that there were no pending cases against Mr Safa.

- 79.5 Around that time, a Credit Suisse team identified that WorldCheck had removed Mr Safa's profile. The team in March or early April 2012 asked WorldCheck why Mr Safa's profile had been removed. WorldCheck responded that the allegations against Mr Safa that had led to his WorldCheck profile were no longer pursued.
- 79.6 In April 2012, in light of these matters, Mr Safa's designation as a UC was removed.
- 79.7 Save as aforesaid, paragraph 53 is denied.
- 80 On 22 March 2012 CSI was informed by Mr Nhangumele that the Claimant had carried out a feasibility study in relation to the ProIndicus Project, which considered its costs (including debt payments) and likely income and showed that it was viable.
- 81 On 11 April 2012, CSI was informed by Mr Nhangumele that the ProIndicus Project had been approved by the Head of State (that is, President Guebuza).
- 82 On 12 June 2012, CSI sent the Claimant an indicative term sheet for the ProIndicus Transaction dated 12 June 2012, for the purposes of discussion and subject to contract.
- 83 Paragraph 54 is admitted and averred. The letter was on the letterhead of the Ministério das Finanças and marked No 334/GM/MF/2012. It acknowledged the Seventh Defendant's proposal to President Guebuza and CSI's financing proposal. It stated: "... *the abovementioned proposal was jointly analysed by the relevant government departments and [they] have unanimously expressed their consent and approval of the proposal and [it is] therefore to be implemented with expediency.*" It indicated that the Seventh Defendant should continue to seek financing for the project on behalf of the Claimant. A copy was provided to CSI on 3 September 2012. Pending disclosure, no admissions are made as to which government departments had jointly analysed the proposal as stated in this letter.
- 84 From June 2012 until around September 2012, CSI discussed possible terms of financing with *inter alia* Mr Boustani and Mr Nhangumele. In those discussions, the Third Defendant suggested, and Mr Boustani agreed, that CSI could make a loan for the



ProIndicus Project, on terms acceptable to the Claimant, if the Seventh Defendant paid a subvention fee (or contractor fee, that is, a prepayment of interest) which subsidised the financing costs, so as to reduce the interest rate (and thus interest) the Claimant paid. The ProIndicus Facility Agreement expressly contemplated such payments by Privinvest to CSI as “Lender” (Schedule 3 paragraph 6). ProIndicus’s Utilisation Requests of 21 March 2013, 12 August 2013 and 15 November 2013 authorised such payments.

85 Paragraph 55 is admitted. The meeting took place on 13 September 2012.

86 As to paragraph 56:

86.1 The first sentence of paragraph 56 is vague and inadequately particularised as to the alleged “direction”. No admissions are made pending clarification by the Claimant.

86.2 The second sentence of paragraph 56 is admitted, save that it is denied (insofar as it is alleged) that this statement was made on or about 1 November 2012 or was a report. The Fourth Defendant said this in an email of 19 November 2012 when discussing with colleagues possibilities for CSI’s participation in the ProIndicus Transaction. On the same day, a colleague said in response that, notwithstanding the individual’s initial reaction, the participants in the discussion might need to “go to [the individual] and demonstrate that those [the potential counterparties] are good partners to have in the deal”.

86.3 As to the third sentence of paragraph 56, it is denied (insofar as it is alleged) that the statement was made by CSI or CSLB. Further and in any event, it is denied that CSI or CSLB were aware of the statement in November 2012 (as appears to be alleged).

87 As to paragraph 57, it is admitted that Mr Safa sent a letter dated 3 December 2012 to President Guebuza. The summary of the letter in paragraph 57 is incomplete and self-serving. CSI and CSLB will refer to the letter for its full terms and effect.

88 Save that no admissions are made as to the effect or consequences as a matter of Mozambican law of the matters set out in the second sentence thereof, paragraph 58 is admitted.



- 89 Paragraph 59 is admitted, save that it is denied that Minister Chang wrote the letter on or about 22 December 2012. The letter is dated 14 December 2012. The letter was marked No 964/MF-GAB/2012 and was on the letterhead of the Ministério das Finanças. It was addressed to Mr Safa on behalf of the Seventh Defendant and signed by Minister Chang as Finance Minister. It stated: *“Having analysed your counterproposal contained in the abovementioned letter, we are convinced that these new terms meet the requirements for the financing to be accepted by the Government of Mozambique.”* It made a further request for changes to the structure of capital repayments. The letter concluded: *“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 where by an SPV, dully [sic] 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.”*
- 90 By the 14 December 2012 letter, Minister Chang represented that the Claimant could lawfully provide a guarantee of a loan to an SOE for the purpose of the ProIndicus Transaction, and that doing so would not lead to the breach of any IMF limit. CSI and CSLB reasonably relied upon those representations in subsequently entering into the ProIndicus Transaction.
- 91 The 14 December 2012 letter was provided to CSI on 22 December 2012.
- 92 The first sentence of paragraph 60 is admitted. The second sentence of paragraph 60 is admitted as a summary of Article 11 of the 2013 State Budget Law, but no admissions are made as to its effect.
- 93 Paragraph 61 is admitted, save that it is denied that CSLB issued the indicative terms and conditions (the **“Indicative Terms”**). CSI issued the Indicative Terms. The Indicative Terms did not under the heading *“Conditions Precedents”* or elsewhere refer to requirements for an opinion from the Mozambique Attorney General or approval by the IMF.
- 94 On 25 January 2013, CSI approached *inter alia* the London office of the reputable law firm Simmons and Simmons (**“S&S”**) to advise the Claimant on the financing documents for the ProIndicus Project.



- 95 After 20 February 2013, S&S provided advice to the Claimant.
- 96 The Claimant confirmed on 26 February 2013 to CSI that it had been advised by S&S as English law counsel acting on its behalf in relation to the ProIndicus Facility Agreement and ProIndicus Guarantee.

(c) *The ProIndicus Transaction*

- 97 From January to March 2013, CSI applied its policies and procedures to decide whether to enter into and maintain the ProIndicus Facility Agreement and ProIndicus Guarantee. These included policies and procedures in relation to customer due diligence, financial crime compliance (including bribery and anti-corruption), credit risk management and reputational risk. CSI and CSLB will rely on the policies and procedures for their full terms and effect. Relevantly:

97.1 A transaction could not proceed unless the required approvals were obtained from the relevant approvers for each area mentioned above, who were not part of the Fixed Income Division and who each determined that he or she was satisfied that there were no objections to the transaction proceeding.

97.2 After enquiries and consideration, the ProIndicus Facility Agreement and ProIndicus Guarantee were approved for each area mentioned above before CSI and/or CSLB assumed any binding obligation to advance any funds.

- 98 Paragraph 62 is admitted. To the best of CSI's and CSLB's knowledge, neither CSI nor CSLB received this letter and they were not otherwise aware of the Sixth Defendant's commitment to transfer US\$13 million to ProIndicus.

- 99 Paragraph 63 is admitted, save that no admissions are made as to the entry by ProIndicus into the ProIndicus Supply Contract being "*purported*". So far as CSI and CSLB were aware at all material times, the ProIndicus Supply Contract was valid and binding and being performed.

- 100 As to paragraph 64:

100.1 The first two sentences of paragraph 64 are not admitted and the Claimant is put to strict proof of these allegations. Paragraph 99 above is repeated.



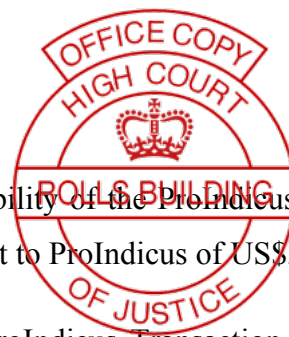
100.2 As regards the remainder of paragraph 64:

- (a) The agreement and payment of subvention fees (which in any event occurred after entry into the ProIndicus Supply Contract) is admitted as pleaded at paragraphs 115 and 124 below. For the avoidance of doubt:
 - (i) Subvention fees had, around that time, been used or considered in other transactions in Europe, Africa and the Middle East;
 - (ii) The subvention fees in issue were disclosed to the Claimant, reduced the interest that the Claimant paid on the ProIndicus loan, and were said by the Sixth and/or Seventh Defendant (via Mr Boustani) to be a subsidy, at least in part, from Privinvest (as set out in paragraph 84 above).
- (b) It is further admitted that CSI was aware of the terms of the ProIndicus Supply Contract and the changes effected by the change orders referred to in paragraph 119 below (which in any event occurred after entry into the ProIndicus Supply Contract).
- (c) Otherwise, no admissions are made as to the facts and matters referred to in paragraph 64 (including for the avoidance of doubt the timing of the alleged bribes to the Mozambican Officials). The Claimant is put to strict proof of its allegations.
- (d) It is denied (insofar as it is alleged) that CSI or CSLB knew or should have known of any of the facts and matters referred to in sub-paragraph (c) above. Without prejudice to the generality of this, CSI and CSLB will rely on the full terms and effect of the ProIndicus Supply Contract and they aver that it did not appear to CSI that the price paid thereunder bore no resemblance to the unique and bespoke turnkey goods and services to be supplied thereunder.
- (e) In any event, it is denied that any of the matters pleaded establish the allegations in the first two sentences of paragraph 64.

101 As to paragraphs 65 and 66:



- 101.1 Paragraph 93 above is repeated.
- 101.2 It is admitted that the draft of the Facility Agreement dated 22 January 2013 provided to the Claimant included as a proposed condition precedent to “*Utilisation*” of funds (as defined) an opinion from the Attorney General.
- 101.3 It is further admitted that Mr Boustani sent an email on 18 February 2013 to the Fifth Defendant containing the text quoted in paragraph 65. With text the Claimant omits, Mr Boustani’s first sentence read relevantly: “*the attorney general opinion is not mandatory and is being pushed by Clifford Chance*”. The Fifth Defendant passed this email on to the Third and Fourth Defendants. To the best of CSI’s and CSLB’s knowledge, the contents of Mr Boustani’s email was not forwarded, or its contents otherwise communicated to, any other person at CSI or CSLB.
- 101.4 Prior to entering into the ProIndicus Transaction, CSI and CSLB understood that an Attorney General’s opinion was not a legal requirement in Mozambique (that is, the ProIndicus Transaction would be valid and enforceable under Mozambique law without an Attorney General’s opinion). It is averred that this was a correct understanding of Mozambique law at the relevant time.
- 101.5 CSI and CSLB further understood that no approvals or authorisations from any public authorities other than the Bank of Mozambique were necessary under Mozambique law to permit the execution of the ProIndicus Guarantee and Facility Agreement and their performance.
- 101.6 CSI and CSLB further knew and understood that the representations and warranties set out in paragraph 110 below were included in the ProIndicus Guarantee.
- 101.7 ProIndicus submitted an application for approval of the ProIndicus Transaction to the Bank of Mozambique dated 8 March 2013. Its enclosures included the ProIndicus Facility Agreement, the ProIndicus Guarantee, the ProIndicus Supply Contract, and a study on the economic and financial viability of the ProIndicus Project. The application (of two pages) *inter alia* explained the benefits of the ProIndicus Project for the Claimant, stated that other means of financing were



unavailable, explained the expected profitability of the ProIndicus Project, and stated that CSI would make a single payment to ProIndicus of US\$366 million.

101.8 The Bank of Mozambique approved the ProIndicus Transaction in a letter to ProIndicus dated 14 March 2013. This was communicated to CSI. The Bank of Mozambique thereby represented to CSI and CSLB, on behalf of the Claimant, that Minister Chang as Finance Minister was authorised to enter into the ProIndicus Guarantee on behalf of the Claimant.

101.9 Paragraph 66 is admitted insofar as it is consistent with the above. Insofar as it is alleged that Mr Boustani's email was a, or the, reason why CSI and CSLB agreed that no opinion from the Attorney General was required (which, for the avoidance of any doubt, was not a decision made by any of the Third to Fifth Defendants), this is denied.

101.10 Save as aforesaid, no admissions are made.

102 Prior to 13 February 2013, the Claimant's Ministry of Finance had been provided with a draft ProIndicus Facility Agreement dated 22 January 2013 and a draft ProIndicus Guarantee dated 22 January 2013 (the "**Initial Draft Guarantee**"). A meeting occurred between CGA and the Claimant's Ministry of Finance (including to the best of CSI's and CSLB's knowledge the National Director of the Treasury) on 13 February 2013:

102.1 In the meeting, the Ministry of Finance provided comments on the draft ProIndicus Facility Agreement dated 22 January 2013. It did not, to the best of CSI and CSLB's knowledge, make any comments on the Initial Draft Guarantee or suggest that the representations and warranties in it were in any way incorrect.

102.2 The Initial Draft Guarantee (read with the draft ProIndicus Facility Agreement of 22 January 2013) included in clauses 2.4, 5.1, 5.2 and 6.2 provisions substantively equivalent to those in paragraphs 1–6 and 8–9 of Schedule 1 hereto.⁴ The draft

⁴ For the avoidance of any doubt:

(1) Clause 17.4 of the draft Facility Agreement of 22 January 2013 did not refer in terms to a restriction on borrowing or guaranteeing powers, as did the representation in the final ProIndicus Facility Agreement incorporated by reference into the ProIndicus Guarantee, as set out in paragraph 2(d) of Schedule 1 hereto. It is averred that clause 17.4 of the draft Facility Agreement of 22 January 2013, which was incorporated into the Initial Draft Guarantee, was nonetheless to the same substantive effect. It contained a representation



Facility Agreement included in clause 17.6 a representation that: “*All public procurement rules in Mozambique which are applicable to [ProIndicus’s] entry into and the exercise of its rights and performance of its obligations under the Transaction Documents to which it is a party and the Project have been complied with or have been irrevocably and unconditionally waived by the relevant authorities in Mozambique.*” By virtue of the definitions in clause 1.1, “*Transaction Documents*” included the ProIndicus Supply Contract.

102.3 Accordingly, the draft ProIndicus Facility Agreement of 22 January 2013 included in clause 17.18 representations and warranties that (1) provision has been or would be made for all amounts payable or that become payable under the Facility Agreement or Guarantee during the next fiscal year in the Claimant’s annual budget statements and (2) the annual budget statements did not place any restriction upon the ability of the Claimant (as Guarantor) to meet its obligations thereunder. These were incorporated by reference into the draft ProIndicus Guarantee of 22 January 2013.

102.4 In the meeting, the Ministry of Finance requested amendments so that this provision represented and warranted that (1) to the extent required by law, provision would be made for all amounts payable or that become payable under the Guarantee (only) in the Claimant’s annual budget statements and (2) the current annual budget statements do not place any restriction upon the ability of the Claimant (as Guarantor, only) to meet its obligations thereunder. The Ministry of Finance further requested that the representation and warranty be included only in the Guarantee.

103 By its comments and requests and/or its failure at any point to suggest that the representations and warranties referred to in paragraph 110 below (which were in substance given in the Initial Draft Guarantee) were incorrect, the Ministry of Finance

that the Guarantor’s (that is, the Claimant’s) execution of the Guarantee and performance of its rights and obligations thereunder “*do not and will not conflict with the Constitution of Mozambique, any ... treaty to which ... the Guarantor is a party or which is binding upon ... the Guarantor ... or ... any applicable law or regulation.*”

(2) Clause 19.1 of the draft ProIndicus Facility Agreement of 22 January 2013 (incorporated by reference into the Initial Draft Guarantee) did include the provision in paragraph 9(a) but not that in paragraph 9(b) of Schedule 1 hereto. It is averred that this makes no substantive difference of any present relevance.



for and on behalf of the Claimant made the representations set out in paragraph 110 below. It further represented that Mozambique procurement laws did not apply to the ProIndicus Supply Contract (or to the ProIndicus Project generally) or had been complied with. CSI and CSLB reasonably relied on those representations in entering into the ProIndicus Transaction.

- 104 On 20 February 2013, CSI sent *inter alia* further drafts of the ProIndicus Facility Agreement and ProIndicus Guarantee to the Ministry of Finance, acting by its National Director of the Treasury and its Deputy National Director of the Treasury. CSI referred to the representations and warranties to be given by ProIndicus in clause 17 of the draft ProIndicus Facility Agreement and those to be given by the Claimant in the ProIndicus Guarantee. CSI stated: “*The representations to be given by the Borrower here (and by extension, by the Guarantor in the Government Guarantee) already reflect in our view the relevant Mozambican law position (in light of local advice taken by us). If any provision appears to you to be inaccurate, we would be willing to discuss (via Taciana Lopez at CGA or otherwise as you prefer) specific concerns on specific statements asked of you.*”
- 105 The draft of the ProIndicus Guarantee sent by CSI on 20 February 2013 (read with the draft ProIndicus Facility Agreement sent on the same date) included in clauses 2.4, 5.1, 5.2, 5.3, 5.4, 5.5, 6.4, 6.5 and 6.6 provisions that were identical in substance to those in paragraphs 1–9 of Schedule 1 hereto. The draft Facility Agreement included in clause 17.6 a representation that: “*No procurement rules in Mozambique are applicable to [ProIndicus’s] entry into and the exercise of its rights and performance of its obligations under the Transaction Documents to which it is a party or the Project.*” By virtue of the definitions in clause 1.1, “*Transaction Documents*” included the ProIndicus Supply Contract. The Ministry of Finance did not identify any such provision as being inaccurate.
- 106 By its comments and requests and/or its failure at any point to suggest that the representations and warranties referred to in paragraph 110 below (which were in substance given in the draft of the ProIndicus Guarantee sent by CSI on 20 February 2013) were incorrect, the Ministry of Finance for and on behalf of the Claimant made the representations set out in paragraph 110 below. It further represented, correctly, that Mozambique procurement laws did not apply to the ProIndicus Supply Contract (or to



the ProIndicus Project generally). CSI and CSLB reasonably relied on those representations in entering into the ProIndicus Transaction.

107 As to paragraph 67, it is admitted that the ProIndicus Guarantee did not contain a term that required the Claimant to notify the IMF of the existence of the loan, in the following circumstances:

107.1 CSI understood that the practice of the IMF was not to give transaction-specific confirmations of the kind mentioned.

107.2 The substance of the warranties set out in paragraph 3 of Schedule 1 hereto (in sum, warranties that the ProIndicus Guarantee is consistent with the Claimant's IMF arrangements) was included in clause 17.14 of the draft ProIndicus Facility Agreement of 22 January 2013.

107.3 At the Claimant's request, its guarantee had been removed from the Facility Agreement and inserted into a separate guarantee document. The Initial Draft Guarantee (of 22 January 2013) in clause 5.1, and the (final) ProIndicus Guarantee in clause 5.2, included provision equivalent to paragraph 3 of Schedule 1 hereto (that is, that the Claimant made the representations there set out).

107.4 The Initial Draft Guarantee in clause 5.1, and the ProIndicus Guarantee in clause 5.4, included provision equivalent to paragraph 5 of Schedule 1 hereto (that is, that the Claimant made the representation there set out).

107.5 The Initial Draft Guarantee in clause 5.2, and the ProIndicus Guarantee in clause 5.5, included provision equivalent to paragraph 6 of Schedule 1 hereto (including but not limited to express acknowledgment that the "*Finance Parties*", defined to include CSI and CSLB, entered into the ProIndicus Facility Agreement and the ProIndicus Guarantee in reliance on the Claimant's representations).

107.6 By clause 6.4 of the draft ProIndicus Guarantee of 20 February 2013, and of the ProIndicus Guarantee, the Claimant gave the undertaking set out in paragraph 7 of Schedule 1 hereto.

107.7 In the meeting between CGA and the Claimant's Ministry of Finance on 13 February 2013, referred to in paragraph 102 above, the Claimant's Ministry of

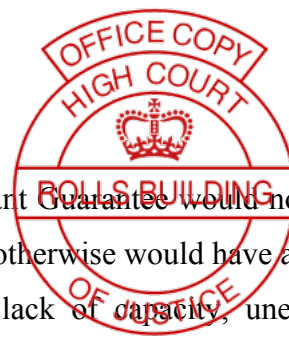


Finance requested that certain references to the World Bank and IMF were removed from the ProIndicus Facility Agreement. The clauses set out immediately above had been or were then included in the ProIndicus Guarantee, and the requested amendments to the ProIndicus Facility Agreement were made.

- 108 On 27 February 2013, CSI met with the Claimant’s Ministry of Finance (including, to the best of CSI’s and CSLB’s knowledge, the National Director of Treasury) to discuss the ProIndicus Transaction. To the best of CSI’s and CSLB’s knowledge, the Ministry of Finance did not suggest that the representations and warranties referred to in paragraph 110 below were incorrect. By its failure to do so, the Ministry of Finance for and on behalf of the Claimant made the representations set out in paragraph 110 below. CSI and CSLB reasonably relied on those representations in entering into the ProIndicus Transaction.
- 109 Paragraph 68 is admitted, save that it is denied that Minister Chang’s entry into the ProIndicus Guarantee as Finance Minister was “*purported*”. For the reasons herein, it was valid and effective to bind the Claimant. The Third Defendant signed the ProIndicus Guarantee (and ProIndicus Facility Agreement) on behalf of CSLB on the basis of a specific authority to sign on its behalf. The Third Defendant had no broader authority to act on behalf of CSLB. The ProIndicus Guarantee and ProIndicus Facility Agreement were signed by an additional individual on behalf of CSI and CSLB.
- 110 Relevant provisions of the (final) ProIndicus Guarantee (upon the full terms of which CSI and CLSB will rely as necessary) are set out in Schedule 1 hereto. By virtue of clauses 5.1 to 5.5 of the ProIndicus Guarantee (as set out in paragraphs 2–6 of Schedule 1 hereto), by signing the ProIndicus Guarantee Minister Chang as Finance Minister expressly represented, for and on behalf of the Claimant, that:
- 110.1 The obligations expressed to be assumed by the Claimant under the relevant Guarantee were legal and valid obligations binding on it and enforceable in accordance with their terms;
- 110.2 The Claimant had the power and authority to enter into the relevant Guarantee and to perform its obligations thereunder;



- 110.3 All action required (under Mozambican law or otherwise) to authorise the execution of the relevant Guarantee and the performance of its obligations under the relevant Guarantee had been duly taken;
- 110.4 The execution and performance of the relevant Guarantee would not breach any limit on guaranteeing powers or conflict with the Constitution or any applicable law;
- 110.5 The current annual budget statements of the Claimant did not place any restriction on the Claimant's ability to enter into and perform the relevant Guarantee;
- 110.6 The Claimant was in compliance in all respects with its obligations to the IMF and World Bank;
- 110.7 The Claimant's "*Treaty Obligations*" (defined to include arrangements with the IMF) did not contain any provision which, expressly or impliedly, limited the ability of any "*Obligor*" (defined to include the Claimant) to enter into, deliver or perform its obligations under the "*Finance Documents*" to which it was party;
- 110.8 No negative sanctions had been or could be applied against the Claimant under the "*Treaty Obligations*" or other similar arrangements as a result of any "*Obligor*" (defined to include the Claimant) entering into, delivering or performing its obligations under the "*Finance Documents*" to which it was a party;
- 110.9 He (Minister Chang) was authorised in all the circumstances to bind the Claimant to the relevant Guarantee.
- 111 CSI and CSLB relied upon the aforesaid representations in entering into the ProIndicus Facility Agreement and Guarantee, as set out in ProIndicus Guarantee clause 5.5. This reliance was reasonable.
- 112 Further or alternatively, by clauses 2.4, 6.5 and 6.6 of the ProIndicus Guarantee, set out in paragraphs 1 and 8–9 of Schedule 1 hereto, Minister Chang for and on behalf of the Claimant undertook and represented that:



- 112.1 The Claimant's obligations under the relevant Guarantee would not be affected by any act, omission, matter or thing which otherwise would have affected them, including any incapacity, lack of power, lack of capacity, unenforceability, illegality or invalidity;
- 112.2 The Claimant would procure that its annual budget statements (which on its true construction extends to the Claimant's State Budget Laws) did not place any restriction on its ability to perform the relevant Guarantee and that it would not justify any failure to pay an amount by virtue of an allocation not having been made in its annual budget statements (including its State Budget Laws);
- 112.3 The Claimant would obtain, comply and do all that is necessary to maintain in full force and effect all "*Authorisations*" (which on its true construction extends to an authorisation by the Mozambique Parliament) required in or by any Mozambique law or regulation, and do all other acts, conditions and things required to be done, fulfilled or performed, to enable the Claimant lawfully to enter into and perform its obligations under the relevant Guarantee and to ensure its legality, validity and enforceability in Mozambique.
- 113 The representations and undertakings set out in paragraphs 110 and 112 above (and in paragraphs 122 and 162 below, from when they were made) formed part of the basis for the ProIndicus Transaction. The Claimant is accordingly contractually estopped from advancing any contention contrary to them. Further or alternatively, CSI and CSLB reasonably relied on those representations and undertakings in entering into the ProIndicus Transaction (or relevant parts of it) and CSI and CSLB changed their positions to their detriment by doing so, and/or advancing funds to ProIndicus (as set out in paragraphs 117, 123 and 127 below) and/or forbearing to call on the ProIndicus Guarantee (and Confirmations). The Claimant is thus estopped from advancing any contention contrary to them.
- 114 Further or alternatively, by appointing Minister Chang as Finance Minister and allowing him to sign the ProIndicus Guarantee (and Confirmations), the Claimant held him out as authorised to do so. Without limitation, CSI and CSLB will rely on the provisions mentioned in paragraph 190 below. CSI and CSLB reasonably relied upon these representations in entering into the ProIndicus Transaction (or relevant parts of it).



115 Paragraph 69 is admitted, save that only CSI (and not CSLB) agreed to receive the subvention fee. The Fourth Defendant signed the Contractor Fee Letter on behalf of CSLB on the basis of a specific authority to sign on its behalf. The Fourth Defendant had no broader authority to act on behalf of CSLB. The Contractor Fee Letter was signed by an additional individual for CSI and CSLB. The other signatory for the Sixth Defendant was Mr Boulos Hankach, the Sixth Defendant's President and CEO.

116 In the circumstances, prior to entering into the ProIndicus Transaction, CSI and CSLB reasonably believed that there was no limit on the borrowing or guaranteeing powers of the Claimant that would be exceeded by entry into the ProIndicus Guarantee or its performance, that all actions required to authorise its execution or performance under Mozambique law had been duly taken, and that the Claimant was validly bound by the ProIndicus Guarantee.

117 On 21 March 2013, CSI advanced US\$327,900,000 (being US\$372 million less the arrangement fee and interest prepayment via the subvention fee) to the Sixth Defendant at the direction of ProIndicus pursuant to its Utilisation Request dated 21 March 2013.

118 Paragraph 70 is not admitted.

119 As to paragraph 71:

119.1 The existence of the Change Orders pleaded in its sub-paragraphs, their dates and their signature by Mr do Rosário (on behalf of ProIndicus) and Mr Boustani are admitted. They were signed on behalf of ProIndicus also by Mr Eugenio Matlaba. The references to the "*purported*" effects of the Change Orders are not understood. So far as CSI and CSLB were aware at all material times, the Change Orders were valid and binding and being performed.

119.2 As to paragraph 71.1, it is admitted that Change Order No 1 dated 29 April 2013 increased the price by US\$250 million from US\$366 million to US\$616 million. Change Order No 1 also required the Seventh Defendant to supply 36 interceptor vessels in total (an additional 24 vessels to the 12 originally to be supplied), 3 "*WP 18*" vessels (none having previously been purchased by the Claimant), and 3 HSI 32 offshore patrol vessels in total (instead of the 2 CL 52 vessels originally to be supplied). It is admitted that, instead of two maritime patrol aircraft, six



maritime patrol aircraft were to be supplied. No admissions are made as to the model of aircraft to be supplied.

119.3 As to paragraphs 71.2–71.3:

- (a) It is denied (insofar as it is alleged) that Change Order No 2 dated 15 May 2013 reduced the price for all goods and services to be supplied pursuant to the ProIndicus Supply Contract and Change Order No 1 to US\$466 million and that Change Order No 3 dated 17 May 2013 increased that price again to US\$616 million. Instead, Change Order No 2 and Change Order No 3 together contained all goods and services that were, pursuant to the ProIndicus Supply Contract and Change Order No 1, to be supplied to the Claimant, and provided for the supply of certain of those items in exchange for two additional tranches of payments, respectively of US\$100 million and US\$150 million.
- (b) It is admitted that Change Order No 2 stated: *“Following execution of the First Change Order [Change Order No 1] Credit Suisse suggested, and the Customer agreed, that to finance the additional material to be the subject of the First Change Order, certain structural changes to the First Change Order were required so as to enable financing.”*

119.4 CSI understood that the rationale for the changes to the ProIndicus Project reflected in the Change Orders was to adjust the vessels and aircraft that would be supplied to ProIndicus so as better to suit the Claimant, in light of its geographically relatively narrow but long EEZ.

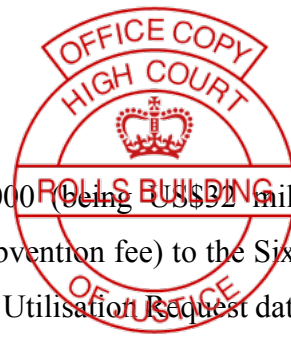
119.5 Save as aforesaid, no admissions are made.

120 Paragraph 72 (which pleads the “**First Confirmation**” being made on 14 June 2013) is admitted, save that:

120.1 It is denied, insofar as it is alleged, that the guarantee given by the Claimant in the ProIndicus Guarantee did not in any event extend to the additional US\$250 million subsequently advanced to ProIndicus; and



- 120.2 It is in any event denied that Minister Chang's entry into the First Confirmation was "*purported*". It was valid and effective to bind the Claimant.
- 121 Paragraph 73 (which pleads the "**Amendment Agreement**" and the Amended ProIndicus Facility Agreement being made on 14 June 2013) is admitted.
- 122 By the First Confirmation, the Claimant agreed that the representations pleaded in paragraph 110 above were deemed also to be made (by reference to facts and circumstances then existing) on 14 June 2013, and thereby repeated those representations. CSI and CSLB reasonably relied upon the aforesaid representations in entering into the First Confirmation, the Amendment Agreement and subsequent parts of the ProIndicus Transaction. Further or alternatively, paragraph 114 above is repeated *mutatis mutandis* in relation to the First Confirmation.
- 123 On 25 June 2013, CSI advanced US\$90,190,000 (being US\$100 million less the arrangement fee and interest prepayment via the subvention fee) to the Sixth Defendant at the direction of ProIndicus pursuant to the latter's Utilisation Request sent to CSI on 22 June 2013.
- 124 Paragraph 74 is admitted.
- 125 As to paragraph 75:
- 125.1 It is admitted that Change Order No 4 was signed on behalf of ProIndicus (by Mr do Rosário and Mr Matlaba) and the Seventh Defendant (by Mr Boustani) and dated 28 June 2013. It is denied, insofar as alleged, that CSI or CSLB was party to Change Order No 4.
- 125.2 It is admitted that Change Order No 4 stated: "*Credit Suisse has confirmed that it might take longer than originally envisaged to raise the funds for Tranche 2 (as defined in Change Order 3) by November 2013 and that it is unable to confirm if and when funds might be raised.*"
- 125.3 Save as aforesaid, no admissions are made.
- 126 Paragraph 76 is admitted.



127 On 14 August 2013, CSI advanced US\$28,860,000 (being US\$2 million less the arrangement fee and interest prepayment via the subvention fee) to the Sixth Defendant at the direction of ProIndicus pursuant to the latter's Utilisation Request dated 12 August 2013.

128 In accordance with the terms of the ProIndicus Facility Agreement, the ProIndicus Guarantee and the Confirmations, CSI transferred parts of its interest in the ProIndicus loan and further advances and the ProIndicus Guarantee (and Confirmations) to various financial institutions which are not related to any Credit Suisse entity. In March 2015, CSI transferred its then remaining interest to CSLB. As stated, CSLB holds a "Commitment" of approximately US\$284.16 million. VTB Capital plc made an advance pursuant to an "Increase Notice" (as defined) under the ProIndicus Facility Agreement. The outstanding "Commitments" that were transferred to or advanced by "Lenders" (as defined under the ProIndicus Facility Agreement) other than CSI total US\$312.96 million.

(2) The EMATUM transaction

129 From 2010, the Claimant sought to develop a tuna fishing industry. Steps it took included the following:

129.1 In 2010, the Claimant passed a Fisheries Master Plan, which set out a fisheries strategy for 2010 to 2019.

129.2 In 2012, the Claimant became a member of the Indian Ocean Tuna Commission ("IOTC"), an intergovernmental organisation responsible for the management of tuna and similar species in the Indian Ocean. In 2013, the IOTC proposed a quota system for tuna fishing. One criterion for allocation of the quotas was the current size of a country's fishing fleet. To the best of CSI's and CSLB's knowledge, the Claimant at that time had no substantial fishing fleet, but submitted a Fleet Development Plan to the IOTC.

129.3 To the best of CSI's and CSLB's knowledge, in April 2013, the Claimant passed an updated fisheries law and, in July 2013, the Claimant's Ministry of Fisheries published a Strategic Plan for Tuna Fisheries Development in Mozambique.



- 130 Paragraph 97 above is repeated *mutatis mutandis* in relation to the EMATUM Transaction, for which: (1) CSI applied its policies and procedures between July and September 2013; (2) CSLB again relied on the due diligence conducted by CSI; and (3) entry into the EMATUM Facility Agreement and EMATUM Guarantee and the issue of the 2020 Notes was approved by the European Investment Banking Committee on 19 August 2013.
- 131 CSI approached S&S to act for the Claimant and EMATUM in relation to the EMATUM Transaction on 30 July 2013. S&S duly provided advice. S&S confirmed on 18 August 2013 to CSI that it had advised the Claimant by its Ministry of Finance.
- 132 On 26 July 2013 and 1 August 2013, CSI sent (in the first instance indirectly) drafts of the EMATUM Facility Agreement and EMATUM Guarantee to *inter alia* the Claimant's Ministry of Finance acting by its National Director of Treasury, Ms Lucas.
- 133 Paragraph 77 is admitted, save that no admissions are made as to the entry by EMATUM into the EMATUM Supply Contract being "*purported*". So far as CSI and CSLB were aware at all material times, the EMATUM Supply Contract was valid and binding and being performed.
- 134 Paragraph 78 is admitted.
- 135 As to paragraph 79:
- 135.1 The first two sentences of paragraph 79 are not admitted and the Claimant is put to strict proof of these allegations. Paragraph 133 above is repeated.
- 135.2 As regards the remainder of paragraph 79:
- (a) The agreement and payment of subvention fees (which in any event occurred after entry into the EMATUM Supply Contract) is admitted as pleaded at paragraph 149 below. Paragraph 100.2(a) above is repeated;
 - (b) It is further admitted that CSI was aware of the terms of the EMATUM Supply Contract;
 - (c) Otherwise, no admissions are made as to the facts and matters referred to in paragraph 79 (including for the avoidance of doubt the timing of the alleged



bribes to the Mozambican Officials). The Claimant is put to strict proof of its allegations;

- (d) It is denied (insofar as it is alleged) that CSI and CSLB knew or should have known of any of the facts and matters referred to in sub-paragraph (c) above. Without prejudice to the generality of this, CSI and CSLB will rely on the full terms and effect of the EMATUM Supply Contract and aver that it did not appear to CSI that the price paid thereunder bore no resemblance to the unique and bespoke turnkey goods and services to be supplied thereunder;
- (e) In any event, it is denied that any of the matters pleaded establish the allegations in the first two sentences of paragraph 79.

136 In a meeting on 6 and 7 August 2013 in Maputo with the Ministry of Finance, CSI discussed with the Finance Minister (Minister Chang) and the National Director of the Treasury (Ms Lucas) an overview of the proposed financing and capital markets syndication strategy for the 2020 Notes, the strategic importance of the EMATUM Project to the Claimant, the Claimant's IMF non-concessional borrowing limit, and the Claimant's debt stocks. CSI also met on 6 and 7 August 2013 in Maputo with the other proposed participants in the EMATUM Project.

137 On 8 August 2013, in response to questions from CSI, Mr do Rosário represented to CSI for and on behalf of the Claimant that the Claimant's IMF non-concessional borrowing limit covered the full "*Facility Limit*" (defined to mean US\$850 million) in the EMATUM Facility Agreement and would not be breached by entry into the EMATUM Facility Agreement. CSI and CSLB reasonably relied upon these representations in entering into the EMATUM Transaction.

138 On 15 August 2013, CSI sent execution versions of the EMATUM Facility Agreement and EMATUM Guarantee to *inter alia* the Claimant (by its National Director of Treasury, Ms Lucas). On 17 and 19 August 2013, CSI sent updated versions of the EMATUM Facility Agreement. On 19 August 2013, the Claimant's Ministry of Finance by its National Director of Treasury confirmed that the Claimant was content with certain changes that had been made to the EMATUM Facility Agreement and that this was the document referred to in the EMATUM Guarantee.



- 139 The Bank of Mozambique approved the EMATUM Transaction in a letter to EMATUM dated 21 August 2013. This was communicated to CSI. The Bank of Mozambique thereby represented to CSI and CSLB, on behalf of the Claimant, that Minister Chang as Finance Minister was authorised to enter into the EMATUM Guarantee on behalf of the Claimant. CSI and CSLB reasonably relied on that representation in entering into the EMATUM Transaction.
- 140 On 22 August 2013, CSI and CSLB provided an executed version of the EMATUM Guarantee to CC and CGA to hold to CSI's and CSLB's order. The Claimant's Ministry of Finance (by its National Director of Treasury, Ms Lucas) was provided with these documents at the same time.
- 141 The draft and execution versions of the EMATUM Guarantee with which the Claimant's Ministry of Finance was provided on 26 July 2013, on 1 August 2013, on or about 15 August 2013 and on 22 August 2013 (read with the corresponding EMATUM Facility Agreement sent on the same date in each case), as set out in paragraphs 132, 138 and 140 above, included in clauses 2.4, 5.1, 5.2, 5.3, 5.4, 5.5, 6.2 and 6.3 provisions that were identical in substance to those in paragraphs 10–17 of Schedule 1 hereto. The Ministry of Finance did not identify any such provision as being inaccurate. By its statements and/or its failure at any point to suggest that the representations and warranties referred to in paragraph 110 above were incorrect (on each such occasion), the Ministry of Finance for and on behalf of the Claimant made the representations set out in paragraph 110 above in relation to the EMATUM Guarantee and EMATUM Facility Agreement. CSI and CSLB reasonably relied on those representations in entering into the EMATUM Transaction.
- 142 Paragraph 80 is admitted, save that it is denied that Minister Chang's entry into the EMATUM Guarantee as Finance Minister was "*purported*". For the reasons herein, it was valid and effective to bind the Claimant. The EMATUM Facility Agreement was signed by the Third Defendant and an additional individual on behalf of CSI and CSLB. The Third Defendant signed the EMATUM Guarantee (and EMATUM Facility Agreement) on behalf of CSLB on the basis of a specific authority to sign on its behalf. The Third Defendant had no broader authority to act on behalf of CSLB. The other signatory to the EMATUM Facility Agreement on behalf of EMATUM was Henrique Alvaro Cepeda Gamito, Executive Director.



- 143 The EMATUM Guarantee signed by Minister Chang (upon the full terms of which CSI and CSLB will rely as necessary) included in clauses 2.4, 5.1, 5.2, 5.3, 5.4, 5.5, 6.2 and 6.3 the provisions in paragraphs 10–17 of Schedule 1 hereto. By virtue of those terms, by signing the EMATUM Guarantee, Minister Chang as Finance Minister expressly, for and on behalf of the Claimant, made the representations set out in paragraph 110 above in respect of the EMATUM Guarantee and EMATUM Facility Agreement.
- 144 CSI and CSLB relied upon the aforesaid representations in entering into the EMATUM Transaction, as set out in EMATUM Guarantee clause 5.5. This reliance was reasonable.
- 145 Further or alternatively, paragraph 112 is repeated *mutatis mutandis* in relation to clauses 2.4, 6.2 and 6.3 of the EMATUM Guarantee (set out in paragraphs 10 and 16–17 of Schedule 1 hereto) and entry into the EMATUM Transaction.
- 146 The representations and undertakings set out in paragraphs 143 and 145 above formed part of the basis for the EMATUM Transaction. The Claimant is accordingly contractually estopped from advancing any contention contrary to them. Further or alternatively, CSI and CSLB reasonably relied on those representations and undertakings in entering into the EMATUM Transaction and CSI and CSLB changed their positions to their detriment by doing so, and/or advancing funds to EMATUM (as set out in paragraph 150 below) and/or forbearing to call on the EMATUM Guarantee. The Claimant is thus estopped from advancing any contention contrary to them.
- 147 Further or alternatively, paragraph 114 above is repeated *mutatis mutandis* in relation to the EMATUM Guarantee and EMATUM Facility Agreement.
- 148 In the circumstances, prior to execution of the EMATUM Facility Agreement and the EMATUM Guarantee, CSI and CSLB believed that:
- 148.1 The Claimant’s public procurement laws did not apply to the entry by EMATUM into the Supply Contract with Privinvest;
- 148.2 No approvals or authorisations from any public authorities other than the Bank of Mozambique were necessary under Mozambique law to permit the execution of the EMATUM Guarantee and Facility Agreement and their performance; and



- 148.3 There was no limit on the borrowing or guaranteeing powers of the Claimant that would be exceeded by entry into the EMATUM Guarantee or its performance, all actions required to authorise its execution or performance under Mozambique law had been duly taken, and the Claimant was validly bound by the EMATUM Guarantee.
- 149 As to paragraph 81:
- 149.1 No admissions are made as to whether the Claimant has seen the document referred to.
- 149.2 For the avoidance of doubt:
- (a) The Contractor Fee Letter was signed by CSI and CSLB on or around 22 August 2013;
 - (b) The Arrangement Fee Letter of 30 August 2013 between EMATUM, CSI and CSLB authorised payment of the subvention fee (paragraph 10). The Offering Circular for the 2020 Notes stated that CSI was receiving a fee from the Seventh Defendant (a reference to the subvention fee) and from EMATUM (a reference to the arrangement fee) and that the former may be variable.
- 149.3 Save as aforesaid, paragraph 81 is admitted.
- 150 On 11 September 2013, CSI advanced US\$446,900,000 (being US\$500 million less fees and interest prepayment via the subvention fee) to the Seventh Defendant at the direction of EMATUM pursuant to the latter's Utilisation Request dated 30 August 2013.
- 151 Save that BNP Paribas acted with CSSEL as Joint Lead Manager, and neither CSI nor CSLB arranged or managed the issuance, paragraph 82 is admitted. As part of the issuance of the 2020 Notes:
- 151.1 By a Sale and Purchase Agreement and a Transfer Certificate (under the EMATUM Facility Agreement) each dated 11 September 2013 between CSI and MEF 2020, CSI transferred all its rights and interests under the EMATUM



Facility Agreement and EMATUM Guarantee to MEF 2020 (the issuer of the 2020 Notes).

151.2 By a Trust Deed dated 11 September 2013 between CSLB, MEF 2020 and the Trustee:

- (a) MEF 2020 as “*Issuer*” charged and assigned its rights under the EMATUM Facility Agreement and EMATUM Guarantee in favour of the Trustee (subject to presently immaterial reservations) for the benefit of persons including those entitled to payment under the 2020 Notes; and
- (b) The 2020 Notes were constituted on the terms scheduled to the Trust Deed (the “**2020 Note Terms**”).

151.3 The Claimant and EMATUM were notified of the transactions mentioned in paragraphs 151.1–151.2 above in writing on the day on which they occurred.

151.4 Under the 2020 Note Terms, the Trustee was permitted to have recourse to the rights under the EMATUM Facility Agreement and EMATUM Guarantee charged and assigned to it in order to make payments to 2020 Noteholders.

151.5 The 2020 Noteholders subscribed for the 2020 Notes on the basis of the 2020 Note Terms and the 2020 Notes were issued to CSSEL and on-sold.

152 Paragraphs 83 and 84 are not admitted.

153 On 20 September 2013, Moody’s Investors Service (“**Moody’s**”), a ratings agency, assigned a “government issuer” rating of “*BI*” to the Claimant and a “*BI*” rating to the 2020 Notes. It issued public documents stating and explaining these ratings.

154 To the best of CSI’s and CSLB’s knowledge, neither the Fourth nor Fifth Defendant was involved in the EMATUM Transaction on behalf of CSI or CSLB. Paragraphs 25.2 and 26.2 above are repeated.

155 On 20 December 2013, the Claimant (by Minister Chang and Mr Gove, Governor of the Bank of Mozambique) submitted a Letter of Intent to the IMF. This included in Attachment 1 (the Memorandum of Economic and Financial Policies) details of EMATUM and the 2020 Notes (paragraph 2). It further stated that in December 2013 the



government had: submitted a revised budget proposal for 2014 that incorporates the non-commercial activities of EMATUM (equivalent to \$350 million), as part of the appropriations for the Ministry of Defense”, which was approved by Parliament on 13 December 2013; and obtained an authorisation for an amendment to Article 11 of the budget law, requesting an increase in the ceiling on government guarantees by US\$500 million to support the commercial activities of EMATUM. CSI and CSLB infer that this was an accurate statement of the actions taken by the Mozambique Parliament and their basis.

156 In January 2014, the IMF published IMF Country Report No 14/20 in relation to the Claimant (the “**EMATUM IMF Report**”). This Report stated that it was based on the visit of an IMF team to Mozambique from 16–30 October 2013. The report referred expressly to the establishment of EMATUM to establish a tuna fishing fleet and to carry out “*quasi-fiscal activities in the area of defense/maritime security*”. It also referred to the grant of the EMATUM Guarantee by the Claimant, initially to cover US\$500 million and then expanded to US\$850 million, and to the issue of the 2020 Notes as “*Mozambique’s first international debt issue*”. The Report stated: “*Foreign borrowing remained within the program ceiling, despite the issuance of a large government guarantee.*”

157 On 22 August 2016, by Resolution No 11/2016, the Claimant’s Parliament approved the 2014 General State Account, which expressly included the EMATUM Guarantee, in the knowledge of operation of the 2013 State Budget Law (and the guarantee limit therein) and other Mozambican laws.

158 The Bank of Mozambique, on the instructions of the Claimant’s Ministry of Finance, made payments of principal and interest under and in accordance with the EMATUM Facility Agreement, on behalf of EMATUM, of: approximately US\$103.3 million (US\$76.5 million repayment of principal and approximately US\$26.8 million interest) on 10 September 2015; and approximately US\$100.9 million (US\$76.5 million repayment of principal and approximately US\$24.4 million interest) on 11 March 2016.

(3) **The MAM Transaction**

159 As to paragraphs 85 to 90, paragraph 19 above is repeated. CSI and CSLB accordingly do not plead further in relation to the MAM Transaction.



(4) **Developments in December 2014 in relation to the ProIndicus transaction**

160 Paragraphs 91 and 92 are admitted and averred, save that:

160.1 The “**Further Amendment Agreement**”, which further amended the Amended ProIndicus Facility Agreement, was signed on behalf of CSI and CSLB on 14 December 2014, not 4 December 2014. The “**Re-Amended ProIndicus Facility Agreement**” was scheduled to the Further Amendment Agreement and had effect from that date. The Further Amendment Agreement was signed also by Mr José Manuel Goppo on behalf of ProIndicus.

160.2 It is denied that the Second Government Guarantee Confirmation (the “**Second Confirmation**”) “*purported*” to acknowledge that increase in the “*Maximum Facility Amount*” (as defined). The Second Confirmation was valid, effective and bound the Claimant. In any event, the ProIndicus Guarantee as originally made, pursuant to clauses 1.2, 2.1, 2.4 and the definition of “*Finance Documents*” incorporated from clauses 1.1 and 1.2 of the ProIndicus Facility Agreement, applied to any amounts drawn down under the ProIndicus Facility Agreement (including the Amended ProIndicus Facility Agreement and the Re-Amended ProIndicus Facility Agreement).

161 The Further Amendment Agreement (1) extended the first date on which principal had to be repaid from 23 March 2015 to 21 March 2016, (2) reduced the amount which ProIndicus had to pay by 21 March 2016 from 25% to 4% of the outstanding principal and (3) extended by two years the total period over which the principal was to be repaid.

162 By the Second Confirmation, the Claimant agreed that the representations pleaded in paragraph 110 above were deemed also to be made (by reference to facts and circumstances then existing) on 17 December 2014 and the “*Effective Date*” (as defined in the Further Amendment Agreement), and thereby repeated those representations. CSI and CSLB reasonably relied upon the aforesaid representations in entering into the Second Confirmation and Further Amendment Agreement. Further or alternatively, paragraph 114 above is repeated *mutatis mutandis* in relation to the Second Confirmation.

163 Before agreeing to the increase in the “*Maximum Facility Amount*”, CSI:



163.1 Understood that a concession had been granted to ProIndicus by the Claimant on 17 February 2014 to operate an EEZ monitoring and protection system; and

163.2 Met in Mozambique with government officials including the National Director of Treasury (Ms Lucas) and Mr do Rosário, as well as Mr Phil Forsyth (AEGIS⁵ Country Manager for Mozambique), to discuss ProIndicus's revised business plan.

164 As to paragraph 93:

164.1 It is admitted and averred that CSI entered into a Running Fee Letter dated 17 December 2014 with the Claimant by which CSI was to receive an annual running fee of 0.95% of the outstanding loan amount under the Re-Amended ProIndicus Facility Agreement, to accrue from 23 March 2015. At the material time CSI anticipated receiving on average approximately US\$3.8 million per year or approximately US\$23.2 million through to March 2021 as running fees. CSI did not receive any other arrangement fee in connection with the Re-Amended ProIndicus Facility Agreement.

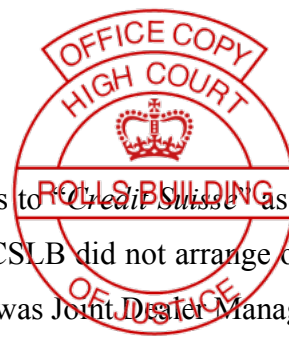
164.2 Save as aforesaid, no admissions are made as to paragraph 93.

165 In March 2016, the Bank of Mozambique, on the instructions of the Claimant's Ministry of Finance, made a payment under and in accordance with the Re-Amended ProIndicus Facility Agreement, on behalf of ProIndicus, of approximately US\$58.8 million (US\$24.88 million principal and approximately US\$33.9 in interest and fees).

(5) EMATUM Exchange

166 Paragraph 97 above is repeated *mutatis mutandis* in relation to the EMATUM Exchange, save that CSSEL applied relevant policies and procedures appropriate to the EMATUM Exchange. It did so between August 2015 and April 2016. CSSEL's involvement in the issue of the Eurobonds, including its entry into the Dealer Manager Agreement dated 9 March 2016, was approved by the Global Investment Banking Committee on 4 March 2016.

⁵ AEGIS provides defence services.



- 167 Insofar as paragraphs 94 to 101 make allegations as to ~~Credit Suisse~~ as defined (CSI and CSLB), those allegations are denied. CSI and CSLB did not arrange or manage the EMATUM Exchange. CSSEL (not CSI nor CSLB) was Joint Dealer Manager with VTB Capital plc. In so far as they are able to, CSI and CSLB address the allegations made below without prejudice to the generality of this denial.
- 168 Paragraph 94 is denied insofar as it makes allegations as to CSI and CSLB and, otherwise, is not admitted, as it is not within CSI's or CSLB's knowledge.
- 169 On 4 June 2015, CSSEL attended a meeting in Maputo with EMATUM and the Claimant. CSSEL was asked to provide a proposal for restructuring the EMATUM debt.
- 170 On 15 January 2015, Minister Maleiane was duly appointed, and replaced Minister Chang, as Finance Minister. By March 2016, Dr Ubisse was duly appointed as the National Director of Treasury at the Ministry of Finance.
- 171 As to the first sentence of paragraph 95:
- 171.1 It is admitted and averred that before March 2015 the Fourth and Fifth Defendants and Mr Schultens had ceased to be employees of CSSEL. Paragraphs 25–27 above are repeated.
- 171.2 Paragraph 41.5 above is repeated. No admissions are made as to the date by which the Fourth or Fifth Defendant or Mr Schultens were employed by or became agents of Palomar.
- 172 As to the second sentence of paragraph 95:
- 172.1 The allegation that the involvement of the Fourth or Fifth Defendant or Mr Schultens in the EMATUM Exchange was a “*red flag*” to CSI and CSLB (who did not arrange or manage the EMATUM Exchange) is not understood and, insofar as it is understood, is denied. Without prejudice to the generality of the foregoing denial, CSI and CSLB rely on the response to items (i) and (ii) below.
- 172.2 Item (i) is denied:
- (a) Paragraph 153 above is repeated;



- (b) Further or alternatively, the involvement in the EMATUM Exchange of the Fourth and Fifth Defendants and Mr Schultens did not indicate (and should not reasonably have indicated) to CSI or (if contrary to CSLB's primary case those acting were doing so on its behalf) CSLB that the Privinvest Defendants were providing remuneration or bonuses to them for their prior involvement in the ProIndicus or EMATUM Transactions. It was and remains not unusual for CSSEL employees to take up a position with a counterparty with whom they have dealt while employed by CSSEL.

172.3 As to item (ii):

- (a) Paragraph 41.2 above is repeated;
- (b) It is admitted that, as set out in paragraph 41.5 above, the Fourth and Fifth Defendants and Mr Schultens acted on behalf of Palomar (and further admitted that they did so in relation to the EMATUM Exchange), but no admissions are otherwise made as to the "staffing" of Palomar;
- (c) No admissions are made as to the terms and purpose of Palomar's engagement with the Claimant, the Claimant's knowledge of Palomar's relationship to Privinvest and/or Mr Iskandar Safa and/or Mr Akram Safa, or the existence of any conflict on its part in giving advice to the Claimant, an allegation which is wholly unparticularised. It is denied, insofar as it is alleged, that CSI or CSLB knew (or ought to have known) of these matters;
- (d) It is denied that the involvement of the Fourth and Fifth Defendants and Mr Schultens in the EMATUM Exchange on behalf of Palomar indicated or should reasonably have indicated to CSI or CSLB that Palomar had any conflict of interest.

173 As to paragraph 96, the facts and matters pleaded therein are admitted. If and insofar as it is alleged that the substitution of debt owed by an SOE ultimately owned and controlled by the Claimant, and guaranteed by the Claimant, for debt issued directly by the Claimant in and of itself adversely affected the Claimant's exposure and position, this is denied. The 2015 Engagement Letter was signed *inter alia* by Mr do Rosário and Ms Cristina

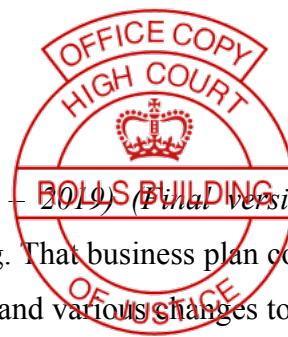


Matavele on behalf of EMATUM and the National Director of Treasury (Ms Lucas) on behalf of the Claimant.

- 174 The proposal in the 6 August 2015 letter (the “**2015 Engagement Letter**”) included that the Claimant would obtain a further three years to repay the debts under the Eurobonds than it had under the 2020 Notes and EMATUM Guarantee. Under these, the Claimant would otherwise become liable for the amount outstanding under the 2020 Notes.
- 175 The Claimant acknowledged by clause 13 of the 2015 Engagement Letter that, in entering into that letter, “*it has not relied on any express or implied, oral or written representation, collateral contract, warranty or other assurance (except as provided for or referred to in the Engagement Letter)*”.
- 176 Paragraph 97 is admitted, save that it is denied that CSI or CSLB contacted Latham & Watkins (London) LLP (“**L&W**”). CSSEL contacted L&W. L&W is a reputable firm of English solicitors and US lawyers. L&W acted on behalf of the Claimant and EMATUM in relation to the EMATUM Exchange.
- 177 Paragraph 98 is denied, save insofar as express admissions are made in answer to its subparagraphs below.
- 178 As to paragraph 98.1:
- 178.1 It is admitted that under the EMATUM Exchange the debt owed by EMATUM and originated by CSI to the 2020 Noteholders was exchanged for sovereign debt of the Claimant. Paragraph 173 above is repeated.
- 178.2 The allegation that the 2020 Notes were “*private debt*” and the Eurobonds were “*public debt*” is vague and not understood in circumstances where EMATUM was ultimately owned and controlled by the Claimant and the 2020 Notes were guaranteed by the Claimant.
- 178.3 It is denied that the debt under the 2020 Notes was “*distressed*”. The Claimant had the ability to continue to pay that debt.
- 179 Paragraph 98.2 is denied:



- 179.1 Given that CSI had on 11 September 2013 transferred absolutely its rights and obligations under the EMATUM Facility Agreement and EMATUM Guarantee to MEF 2020, MEF 2020 had on 11 September 2013 charged and assigned substantially all such rights for the benefit of the Trustee for the 2020 Notes, these transactions were each notified to EMATUM and the Claimant in writing on the day on which they occurred, and MEF 2020 sold the 2020 Notes to investors on terms including that the Trustee would have recourse to the rights under the EMATUM Facility Agreement and EMATUM Guarantee charged and assigned to it (as set out in paragraph 151 above), the rights of the 2020 Noteholders (third parties) had intervened such that it was not possible for the Claimant thereafter to rescind or terminate the EMATUM Guarantee.
- 179.2 Further or alternatively, by virtue of the transactions described immediately above, CSI did not by the time of the EMATUM Exchange hold any exposure to the EMATUM loan. There was no material benefit to CSI and CSLB from any impairment to the effectiveness of a challenge to the EMATUM Guarantee (which is in any event denied) from the EMATUM Exchange.
- 179.3 Further or alternatively, for the reasons set out herein, the EMATUM Guarantee was not in any event open to challenge and was binding on and enforceable against the Claimant.
- 180 Paragraph 98.3 is denied. Paragraph 167 above is repeated. CSSEL received US\$3 million in fees from acting as Joint Dealer Manager on the EMATUM Exchange.
- 181 The first sentence of paragraph 99 is denied. At the very least, the EMATUM Exchange conferred substantial benefits upon the Claimant such that it was in the Claimant's interests:
- 181.1 In June 2015 EMATUM stated that it required an extension and restructuring of the 2020 Notes because it was not earning income as had been predicted in its business plan, vessels had been received later than anticipated (which had affected its ability to generate revenue), it did not have required equipment in place to process tuna (for example, cool-rooms), it lacked sufficient working capital, and the Claimant had not yet decided how it would manage the EMATUM Project. In September 2015, EMATUM provided CSSEL with a business plan for



EMATUM entitled “*Business Plan (2015 – 2019) (Final version)*” dated 1 September 2015 prepared by Ernst & Young. That business plan concluded that, with appropriate support from the Claimant and various changes to maximise its revenue (and adjustments to its debt repayments), EMATUM’s business was viable.

181.2 As to item (i) of paragraph 99:

- (a) It is admitted that the debts incurred by EMATUM and guaranteed by the Claimant would be replaced by bonds issued by the Claimant. Paragraphs 173 and 178.2 above are repeated. It is further denied, insofar as it is alleged, that the 2020 Notes had not been sold on capital markets.
- (b) It is denied that the EMATUM Exchange imperilled the Claimant’s reputation on capital markets. It had the opposite effect. The issue of the 2020 Notes was known on the capital markets and had been widely reported (as pleaded in paragraph 206.3 below) and Moody’s had publicly rated the 2020 Notes (as pleaded in paragraph 153 above). The EMATUM Exchange extended by three years the time for repayment of debt that the Claimant had guaranteed and that EMATUM could not repay in accordance with its obligations. The EMATUM Exchange avoided a call on the EMATUM Guarantee that had been charged and assigned to the Trustee for the benefit of the 2020 Noteholders. In those circumstances, it prevented and/or minimised damage to the Claimant’s reputation on capital markets.

181.3 Item (ii) of paragraph 99 is denied. Paragraph 179 above is repeated.

181.4 As to item (iii) of paragraph 99:

- (a) It is denied that either CSI or CSLB would or did receive fees. Paragraphs 167 and 180 above are repeated. It is admitted that others involved in the transaction would receive fees;
- (b) The allegation that the fees were “*enormous*” is vague and wholly unparticularised. It is denied, insofar as alleged, that CSSEL’s fees were excessive or inappropriate.



182 As to the second sentence of paragraph 99:

182.1 It is admitted that CSI and CSLB had expertise in sovereign debt in capital markets. Paragraph 167 above is repeated. The relevance of CSI's and CSLB's expertise is not understood.

182.2 The second sentence of paragraph 99 is otherwise denied in circumstances where CSI and CSLB did not arrange or manage the EMATUM Exchange.

183 Paragraph 100 is admitted. The Dealer Manager Agreement was signed by Dr Ubisse as the National Director of Treasury. By the Dealer Manager Agreement, the Claimant represented that:

183.1 It was not in breach or violation of any applicable constitutional provision, treaty provision, convention, statute, law, regulation, where this breach would have a material adverse effect on the condition (fiscal, economic or political), prospect or general affairs of the Claimant (clause 7.1.5); and

183.2 No Minister, official, agent, employee, representative or other person associated with or acting on behalf of the Claimant has received, requested or agreed to receive a bribe or other unlawful payment (clause 7.1.2(i)).

184 The Claimant (as the "*New Notes Issuer*") authorised the publication of and expressly accepted responsibility for the information in the Exchange Offer and Consent Solicitation Memorandum for the EMATUM Exchange dated 9 March 2016 (the "**EMATUM Exchange Memorandum**"). That Memorandum expressly stated that:

184.1 None of *inter alia* the Joint Dealer Managers (which included CSSEL) or their affiliates made any representation whatsoever regarding *inter alia* that EMATUM Exchange Memorandum, the "*Exchange Offer*", the "*Proposal*" or the "*Consent Solicitation*" (as defined).

184.2 No person has been authorised to give any information or to make any representation about *inter alia* the Exchange Offer, the Proposal or the Consent Solicitation (other than the representations in that EMATUM Exchange Memorandum) and, if given or made, any information or representation must not



be relied upon as having been authorised by *inter alia* the Joint Dealer Managers or any of their respective agents.

- 184.3 The total foreign direct and publicly guaranteed debt of Mozambique as at 31 December 2014 was US\$8,225 million and as at 31 December 2015 was estimated at US\$9,637 million. (It is averred that those figures both included the debt owed under both the ProIndicus Transaction and the EMATUM Transaction, although this was not expressly stated.)
- 185 The Claimant, by a letter from and signed by Minister Maleiane, as Finance Minister, dated 4 April 2016 expressly certified that the “*economic, market and statistical data ... contained in ... the Offer Materials*” (which was defined in clause 2 of the Dealer Manager Agreement to include the EMATUM Exchange Memorandum and included the figures for the total foreign direct and publicly guaranteed debt of Mozambique set out immediately above) “*(i) has been taken from, and correctly extracted from, the official governmental records of the Offeror ...; (ii) where such data has been converted by the Offeror into US Dollars, ... such conversion has been accurately calculated in accordance with the relevant exchange rate specified in such document or materials, as the case may be, and (iii) such data has been presented in a manner which is not misleading.*”
- 186 The Claimant authorised the publication of and expressly accepted responsibility for the information in the Prospectus for the EMATUM Exchange dated 15 April 2016 (“**EMATUM Exchange Prospectus**”). The EMATUM Exchange Prospectus repeated the substance of each of the statements in paragraphs 184.1–184.3 above (including the amounts set out in paragraph 184.3 above as the foreign direct and publicly guaranteed debt of Mozambique).
- 187 Paragraph 101 is admitted. The 2020 Noteholders approved the EMATUM Exchange on 1 April 2016. The Claimant issued the Eurobonds on 6 April 2016.
- 188 CSI and CSLB understand that the Claimant has subsequently sought to restructure the Eurobonds pursuant to a Consent Solicitation Memorandum dated 27 August 2019, under which the maturity date would be extended to September 2031 and the principal amount of the notes issued would be up to US\$900 million. CSI and CSLB have no first-hand knowledge of whether the restructuring completed on those terms.



(6) Developments in April 2017 in relation to ProIndicus

189 To the best of CSI's and CSAG's knowledge, in April 2017, the Claimant's Parliament approved General State Account for 2015, in the knowledge of operation of the 2013 State Budget Law (and the guarantee limit therein) and other Mozambican laws. The General State Account for 2015 expressly included the ProIndicus Guarantee.

H THE REPUBLIC'S CLAIMS

(1) The ProIndicus Guarantee and the EMATUM Guarantee

(a) The ProIndicus and EMATUM transactions and Minister Chang's authority

190 Pursuant to Article 16 of the SISTAFE Law and Article 3 of Presidential Decree No 2/2010 Minister Chang, given his position as Finance Minister, was authorised to enter into contracts such as the ProIndicus Guarantee (and Confirmations) on the Claimant's behalf (subject to the matters set out immediately below).

191 As to paragraph 102:

191.1 It is admitted that the amounts guaranteed under the ProIndicus Guarantee and the EMATUM Guarantee exceeded the limit on guarantees in Article 11 of the 2013 State Budget Law.

191.2 No admissions are made as to any consequences of this, including as to the Constitution.

191.3 It is denied that the ProIndicus Guarantee and the EMATUM Guarantee were incompatible with and in breach of the SISTAFE Law. The Claimant fails to identify the provision on which it relies. Insofar as it is alleged that there is incompatibility with or breach of Article 15 thereof, this is denied. Entry into the Guarantees did not constitute the incurring of public expenditure within Article 15 (and is instead dealt with in Article 16 and other provisions of the SISTAFE Law).

192 Paragraph 103 is denied:



- 192.1 No admissions are made as to the consequences as a matter of Mozambican law of the matter set out in paragraph 191.1 above as regards Minister Chang's actual authority to enter into the Guarantees.
- 192.2 Nonetheless, Minister Chang had ostensible authority to enter into the Guarantees, as set out in paragraph 193 below.
- 192.3 Further or alternatively, as set out in paragraphs 113 and 146 above, the Claimant is estopped from contending that Minister Chang was not authorised on behalf of the Claimant to make the ProIndicus Guarantee (and Confirmations) and the EMATUM Guarantee.
- 192.4 Further or alternatively, Minister Chang's entry into the Guarantees was ratified by the Claimant, by virtue of the following, the effect of which was to indicate unequivocally that, notwithstanding any exceeding of the limit in Article 11 of the 2013 State Budget Law (or any other non-compliance with Mozambique law, as to which no admissions are made), the Claimant considered itself bound by the ProIndicus and EMATUM Transactions, including the Guarantees:
- (a) The Parliamentary resolutions and actions set out in paragraphs 155 and 189 above (and/or any similar or related resolutions or actions of the Mozambique Parliament);
 - (b) The inclusion in the EMATUM Exchange Memorandum and related documents of debt including the debt under the ProIndicus Transaction and the EMATUM Transaction, as set out in paragraphs 184–186 above;
 - (c) The payments of interest pursuant to the ProIndicus and EMATUM Facility Agreements as set out in paragraphs 158 and 165 above;
 - (d) In relation to the ProIndicus Transaction:
 - (i) The Claimant's entry into the Amendment Agreement, agreement to be bound by the Amended ProIndicus Facility Agreement and entry into the First Confirmation (as pleaded in paragraphs 120–121 above); and



(ii) The Claimant's entry into the Further Amendment Agreement and agreement to be bound by the Re-Amended ProIndicus Facility Agreement (as pleaded in paragraph 160 above);

(e) In relation to the EMATUM Transaction:

(i) The Claimant issuing the Letter of Intent to the IMF of 20 December 2013 (as pleaded in paragraph 155 above);

(ii) The Claimant's entry into the EMATUM Exchange; and

(iii) The Claimant's subsequent restructuring(s) of the Eurobonds (as set out in paragraph 188 above or otherwise).

192.5 Further or alternatively, by virtue of the matters set out in paragraph 192.4 above, the Claimant has led CSI and CSLB to believe that it considered itself bound by the ProIndicus Guarantee (and Confirmations) and the EMATUM Guarantee. CSI and CSLB reasonably relied to their detriment on this conduct, including when entering into the agreements mentioned immediately above, and/or advancing funds and/or forbearing to call on the Guarantees. The Claimant is therefore estopped from contending that the ProIndicus Guarantee (and Confirmations) and the EMATUM Guarantee do not bind it.

193 Minister Chang had ostensible authority to bind the Claimant to the Guarantees on the following basis:

193.1 Minister Chang was duly appointed as Finance Minister at the time when he signed those documents. Paragraph 44 above is repeated.

193.2 A person holding the office of Finance Minister was the person in the Claimant's government who was authorised to make guarantees on the Claimant's behalf, by virtue of the provisions set out in paragraph 190 above.

193.3 As set out in paragraphs 116 and 148 above, CSI and CSLB at all times believed Minister Chang was authorised to enter into the Guarantees and relied on that belief in themselves entering into the ProIndicus and EMATUM Transactions.

193.4 Further or alternatively:



- (a) The Claimant, Minister Chang as Finance Minister, the National Director of the Treasury and the Deputy National Director of the Treasury, and/or the Bank of Mozambique represented to CSI and CSLB, for and on behalf of the Claimant, that Minister Chang was authorised under Mozambican law to bind the Claimant to the Guarantees and that entry into them was in compliance with and permitted by Mozambican law, as set out in paragraphs 90, 101.8, 103, 106, 110–111, 122, 139, 141 and 143–144 and 162 above; and
- (b) In entering into the Guarantees, CSI and CSLB reasonably relied on those representations, as set out in those paragraphs.

194 Further, Minister Chang, the National Director of the Treasury and the Deputy Director of the Treasury had actual, alternatively ostensible, authority to warrant the authority of Minister Chang to enter into the Guarantees and to make representations in relation to them on behalf of the Claimant, and Minister Maleiane and the National Director of Treasury had actual, alternatively ostensible, authority to make representations on behalf of the Claimant in relation to the EMATUM Exchange. CSI and CSLB will rely in this regard on:

194.1 Article 16 of the SISTAFE Law, Article 3 of Presidential Decree No 2/2010 (as set out in paragraph 190 above) and Presidential Decree No 6/2015; and

194.2 The Claimant's holding out of those persons, on which CSI and CSLB reasonably relied, as authorised to warrant Minister Chang's authority and to deal in relation to those transactions on behalf of the Claimant, including by:

- (a) The appointment by the Claimant of Minister Chang, Minister Maleiane, the National Director of Treasury (from time to time) and the Deputy National Director of Treasury to their respective positions and the seniority of those positions; and
- (b) The acceptance by the Claimant of Minister Chang, Minister Maleiane, the National Director of Treasury (from time to time) and the Deputy National Director of Treasury negotiating and otherwise dealing with CSI and CSLB and/or their agents, as set out in herein.



195 Further, the Bank of Mozambique, by virtue of its position and role as an instrumentality of the Claimant's government, had actual, alternatively ostensible, authority to warrant the authority of Minister Chang to enter into the Guarantees. CSI and CSLB will rely in this regard on the acceptance by the Claimant of the Bank of Mozambique approving the ProIndicus Transaction and the EMATUM Transaction.

196 For the avoidance of any doubt, and as set out in paragraphs 213–215 below, it is denied that CSI or CSLB knew or ought to have known of any want of authority of Minister Chang (howsoever arising).

197 Paragraph 104 is admitted, but it is denied (insofar as it is alleged) that the judgment of the Constitutional Court is binding on CSI or CSLB, who were not parties before it.

(b) *Credit Suisse's alleged knowledge*

198 As to paragraphs 105 to 128 generally:

198.1 The allegation of knowledge in paragraphs 105 to 124 is embarrassing for its want of particularity:

(a) Paragraph 105 makes at least nine allegations of knowledge of disparate matters, including alleged bribery, Mozambican constitutional and statute law, various duties under Mozambican law, the alleged breach of such duties, the scope of Minister Chang's authority as Finance Minister, and the alleged status of the ProIndicus and EMATUM Supply Contracts as "*instruments of fraud*" or "*shams*". Paragraphs 108 to 124 purport to set out the matters that establish this knowledge. The APoC do not explain which of those matters are alleged to establish knowledge of each of the disparate matters of which paragraph 105 alleges knowledge;

(b) Paragraph 107 alleges wilful blindness (and not knowledge) on the part of CSI and CSLB, but fails to identify any individual who is said to have been wilfully blind.

198.2 Paragraphs 125 to 128 fail to explain how the disparate matters of which knowledge is alleged in paragraph 105 are relevant to the myriad legal consequences alleged in the former paragraphs.



199 Without prejudice to the foregoing, insofar as it is understood, paragraph 105 is denied for the reasons given below in response to each of its sub-paragraphs:

199.1 As to paragraph 105.1:

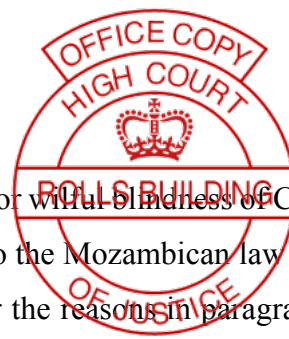
- (a) No admissions are made as to the allegation that bribes had been or were to be paid to “*Mozambican government officials and to Credit Suisse employees*”, of which no proper particulars are given. Paragraphs 55–56 above are repeated;
- (b) The alleged attributed knowledge or wilful blindness of CSI and CSLB to these matters is denied, for the reasons in paragraphs 200–231 below;
- (c) The relevance of any knowledge of CSI or CSLB (which is denied) that bribes had been or would be paid to the Third to Fifth Defendants to the relief said to follow from such knowledge (or this and other knowledge) in paragraphs 125 to 128 is denied.

199.2 As to paragraph 105.2:

- (a) Paragraph 191 above is repeated;
- (b) The alleged attributed knowledge or wilful blindness of CSI and CSLB to the matters in paragraph 105.2 is denied for the reasons in paragraphs 193 above and paragraphs 200–231 below.

199.3 As to paragraph 105.3:

- (a) As to item (i), paragraph 199.2 above is repeated;
- (b) As to items (ii) and (iii):
 - (i) No admissions are made as to the allegations that Minister Chang as Finance Minister entered into the Guarantees following the promise and/or payment of bribes and that he acted “*in breach of his duties to the Republic under Mozambican law*”, of which no proper particulars are given. Paragraph 55 above is repeated;



- (ii) The alleged attributed knowledge or wilful blindness of CSI and CSLB as to these matters (including as to the Mozambican law duties said to have been breached) is denied for the reasons in paragraphs 200–231 below.

199.4 As to paragraph 105.4:

- (a) It is not admitted that the ProIndicus and EMATUM Supply Contracts were instruments of fraud alternatively shams, as set out in paragraphs 100 and 135 above. The knowledge of this matter alleged in paragraph 105.4 is in any event denied. Paragraph 55 above is repeated;
- (b) Further or alternatively, the alleged attributed knowledge or wilful blindness of CSI and CSLB as to these matters is denied, for the reasons in paragraphs 200–231 below.

(c) Purported particulars of Credit Suisse’s alleged knowledge

200 As to paragraph 106:

200.1 As to the first sentence:

- (a) No admissions are made as to the allegation that any of the Third, Fourth or Fifth Defendants received or expected to receive bribes, of which no proper particulars are given, or as to the allegation of knowledge insofar as it is based thereon. Paragraphs 55–56 above are repeated;
- (b) No admissions are made as to the knowledge of any of the Third to Fifth Defendants of the matters pleaded at paragraphs 108–124. Paragraphs 55.4–55.7 above are repeated.

200.2 As to the second sentence, CSI and CSLB repeat their response to paragraph 9 in paragraphs 32–34 above.

201 As to paragraph 107:



201.1 The first sentence is denied. The matters set out in paragraphs 108 to 124 do not establish a sustainable case of wilful blindness of the matters alleged in paragraph 105.

201.2 The second sentence is noted. CSI and CSLB reserve the right to respond if and when the Claimant properly particularises its case.

(i) The parties to the transactions

202 Paragraph 108 is admitted. It is denied that the matters pleaded therein demonstrate knowledge or wilful blindness of the matters alleged in paragraph 105.

203 Save that it is admitted that CSI and CSLB chose to deal with the Sixth and Seventh Defendants, paragraph 109 is denied. Paragraphs 36.4, 79 and 86 above are repeated.

204 Paragraph 110 is denied:

204.1 Insofar as this allegation relates to the MAM Transaction, paragraph 19 above is repeated.

204.2 In practice the economic effect of the ProIndicus and EMATUM loans to SOEs ultimately (and wholly) owned by the Claimant and backed by guarantees issued by the Claimant is no different from a direct borrowing by the Claimant. In each case, the Claimant bore the project risk and CSI and other lenders accepted the sovereign risk in respect of the Claimant.

204.3 The particular structure used (a direct borrowing by the Claimant or the use of SOEs ultimately (and wholly) owned by the Claimant and a state guarantee) was a matter within the Claimant's discretion.

204.4 CSI considered the use of SOEs to be advantageous because it avoided funds intended for the ProIndicus Project and EMATUM Project being added to the Claimant's general funds and being used by the Claimant for other purposes.

(ii) The genesis of the transactions

205 Paragraph 111 is denied. Paragraphs 78, 103, 106 and 148 above are repeated.



(iii) The alleged secrecy of the transactions

206 As to paragraph 112:

206.1 Insofar as this allegation relates to the MAM Transaction, paragraph 19 above is repeated.

206.2 It is denied that the ProIndicus and EMATUM Transactions have not been approved by the Mozambican Parliament. Paragraphs 155, 157 and 189 above are repeated.

206.3 The allegation that the “[t]he transactions ... were to be kept a secret from” aid organisations, foreign donors, Parliament, Mozambican civil society or the citizens of the Claimant is vague and not properly particularised and accordingly it is not possible to plead a response. In any event, as to the ProIndicus and EMATUM Transactions:

- (a) It is denied, insofar as it is alleged, that the Claimant was required by the terms of the Guarantees and ProIndicus and EMATUM Facility Agreements (and amendments) to keep secret the ProIndicus and EMATUM Transactions. On the contrary, under their terms, there was no restriction on the Claimant’s ability to disclose its borrowing to third parties. If it did so or did not do so, that was its choice. By contrast, CSI and CSLB were not permitted under the Guarantees or ProIndicus and EMATUM Facility Agreements (and amendments) to disclose the borrowings and guarantees (at least not without the consent of the Claimant), save in limited circumstances of no present relevance;
- (b) ProIndicus and EMATUM were each incorporated by documents published in the Claimant’s Government Gazette (the *Boletim da República*) that described their (then) proposed activities;
- (c) The EMATUM Project, including the EMATUM Transaction and 2020 Notes, were expressly disclosed by the Claimant to the IMF between 16–30 October 2013, were mentioned in the Claimant’s Letter of Intent to the IMF of 20 December 2013, were discussed in the Mozambique Parliament



in December 2013, and were explained in the EMATUM IMF Report in January 2014, as set out in paragraphs 155–156 above;

- (d) The EMATUM Project (including its financing) was widely reported on in the media in Mozambique and elsewhere from 2013 onwards, was the subject of announcements by the Claimant from time to time and was known on the capital markets;
- (e) Moody's assigned a "B1" rating to, and on 20 September 2013 issued a publicly accessible document describing, the 2020 Notes and the basis for its rating of them (as set out in paragraph 153 above);
- (f) The syndication of the ProIndicus loan and advances and the issue of the 2020 Notes was known on the capital markets to those banks who had shown interest at the time (from March and September 2013 respectively);
- (g) President Guebuza, with the then President of France (Mr François Hollande), in September 2013 attended a public launch of the shipbuilding for the EMATUM Project in France, which was widely reported at the time. Reports of that event included that the EMATUM Project was financed by bonds issued by EMATUM as a state-owned company;
- (h) There was a public demonstration of some or all of the ships the Claimant purchased for the ProIndicus Project on the Claimant's Independence Day in June 2014;
- (i) Questions were asked about the EMATUM Transaction in the Mozambican Parliament on 9 July 2014;
- (j) The Claimant's PGR commenced investigation of the circumstances of this case early in 2015;
- (k) The Offer and Consent Solicitation document for the EMATUM Exchange dated 9 March 2016 stated that it would be registered as a prospectus with the Irish Stock Exchange, and this registration duly occurred. The Eurobonds issued by the Claimant pursuant to the EMATUM Exchange in



April 2016 were (in whole or in part) to be, and duly were, listed on the Irish Stock Exchange;

- (l) In relation to the EMATUM Transaction, paragraph 157 above is repeated;
- (m) The Claimant's Parliament commenced an inquiry into the circumstances of this case and reported in November 2016.

206.4 For the reasons immediately above, insofar as it is alleged that the ProIndicus and EMATUM Transactions were kept secret, this is denied.

206.5 However, no admissions are made as to any other restrictions on disclosure imposed by the Claimant which might have existed, including but not limited to via any form of Mozambique law.

(iv) The allegation that the transactions were to be hidden from the IMF

207 Paragraph 107 above is repeated.

208 The first sentence of paragraph 113 is admitted.

209 The second sentence of paragraph 113 is vague and inadequately particularised and accordingly it is not possible to plead a response. No admissions are made. Without prejudice to this:

209.1 Insofar as this allegation relates to the MAM Transaction, paragraph 19 above is repeated.

209.2 It is denied that the ProIndicus and EMATUM Transactions have not been approved by the Claimant's Parliament. Paragraph 206.2 above is repeated.

209.3 It is admitted that the Claimant was an emerging market state.

209.4 The Claimant (and neither CSI nor CSLB) was responsible for observing and fulfilling the Claimant's obligations to the IMF and the World Bank.

209.5 It is denied that the ProIndicus and EMATUM borrowings were to be "*secret*". Paragraph 206.3(a) above is repeated. Accordingly, if the Claimant wished (or considered it was required) to disclose the borrowings to the IMF, this was not



prohibited by anything in the Guarantees or the ProIndicus and EMATUM Facility Agreements (and amendments). By contrast, without the Claimant's consent, CSI and CSLB could not do so. Is it further denied, if and to the extent alleged, that the ProIndicus and EMATUM Transactions were in fact kept secret. The remainder of paragraph 206.3 above is repeated.

- 209.6 It is denied that CSI or CSLB knew or reasonably should have known that the ProIndicus or EMATUM Transactions would imperil the Claimant's IMF or World Bank funding. The Claimant repeatedly told CSI and, further, expressly and repeatedly represented and warranted that entering into the Guarantees would not have that effect and expressly acknowledged that CSI and CSLB entered into the ProIndicus and EMATUM Transactions on the basis of those representations and warranties, as set out in paragraphs 103, 106–107, 110–111, 122, 137, 141 and 143–144 and 162 above.
- 210 The third sentence of paragraph 113 is admitted. CSI and CSLB were not permitted under the Guarantees or ProIndicus or EMATUM Facility Agreements (and amendments) to disclose the borrowings and guarantees to the IMF (at least not without the consent of the Claimant). If and insofar as some duty to disclose them to the IMF is alleged, its existence is denied. By contrast, the Claimant was entitled to disclose them to the IMF if it chose to do so.
- (v) The alleged absence of any English law solicitors of the Republic
- 211 The first sentence of paragraph 114 (including paragraphs 114.1 to 114.2) is admitted and averred, save that it is denied that ProIndicus borrowed, and thus that the ProIndicus Guarantee applied to "*borrowings*", of "*up to US\$900 million*": the highest amount borrowed was US\$672 million in total.
- 212 The second sentence of paragraph 114 is denied:
- 212.1 Reputable English law solicitors S&S advised the Claimant in relation to both the ProIndicus Transaction and the EMATUM Transaction, as set out in paragraphs 94–96 and 131 above.
- 212.2 Reputable English law solicitors L&W advised the Claimant in relation to the EMATUM Exchange, as the Claimant itself pleads in paragraph 97.



(vi) The Constitution, the SISTAFE Law and the State Budget Law 2013

213 Paragraph 115 is admitted.

214 As to paragraph 116:

214.1 It is admitted that the 2013 State Budget Law did not refer to the ProIndicus or EMATUM Transactions but it is denied that this is relevant to their validity.

214.2 As to the remainder of paragraph 116, paragraph 191.1 above is repeated.

215 CSI and CSLB believed at all material times that the Guarantees complied with and were permitted under Mozambican law. Further or alternatively, Minister Chang as Finance Minister, the Claimant's representatives at the Ministry of Finance including the National Director of the Treasury and Deputy National Director of Treasury, and the Bank of Mozambique expressly told or represented to CSI that the ProIndicus and EMATUM Transactions were permitted under Mozambican law and CSI and CSLB reasonably relied upon those representations when entering into the ProIndicus and EMATUM Transactions, as set out in paragraphs 90, 101.8, 103, 106, 110–111, 122, 139, 141 and 143–144 and 162 above.

(vii) The alleged absence of the Attorney General from the process

216 The first sentence of paragraph 117 is denied. Paragraph 101 above is repeated.

217 The second sentence of paragraph 117 is admitted. However:

217.1 There was no legal requirement in Mozambique to inform the Attorney General of the transaction, as the Claimant was aware at the time. Paragraph 101.4 above is repeated.

217.2 So far as CSI and CSLB are aware, there was at no point any suggestion made in relation to the EMATUM Transaction that an opinion from the Attorney General should be obtained, and none is alleged by the Claimant.

(viii) The terms of the ProIndicus and EMATUM Facilities

218 The first sentence of paragraph 118 is denied insofar as it alleges that CSI and CSLB determined the terms of the ProIndicus and EMATUM Facility Agreements. In fact, the



terms were agreed with the Claimant and ProIndicus (in relation to the ProIndicus Facility Agreement) and EMATUM (in relation to the EMATUM Facility Agreement). It is further denied that paragraph 118 presents a fair summary of the Facility Agreements (on which CSI and CSLB will rely for their full terms and effect) and that, taken as a whole, the terms of the ProIndicus or EMATUM Facility Agreements constituted a red flag to CSI or CSLB. CSI's and CSLB's responses below to the decontextualised references in the sub-paragraphs of paragraph 118 are without prejudice to the generality of this denial.

219 Paragraph 118.1 is admitted, save that it is denied that the provision is referred to in the market in the terms pleaded and, insofar as the allegation concerns the MAM Transaction, paragraph 19 above is repeated. CSI and CSLB will refer to the clauses in question for their full meaning and effect.

220 The first sentence of paragraph 118.2 is admitted. CSI and CSLB will refer to the clauses in question for their full meaning and effect. As set out fully in paragraphs 90, 101.8, 103, 106, 108, 110–114, 122, 139, 141, 143–147, 162, 192.4–192.5 above and Schedule 1 hereto, extensive representations and warranties of authority and compliance with IMF obligations were set out in the Guarantees and were made by Minister Chang as Finance Minister, the National Director of the Treasury and Deputy National Director of the Treasury, and the Bank of Mozambique, and CSI and CSLB reasonably relied on those representations in entering into the ProIndicus and EMATUM Transactions, and/or advancing funds and/or forbearing on calling on the Guarantees.

221 The second sentence of paragraph 118.2 is argument based on an incomplete and/or selective understanding of the facts and is denied. Paragraphs 107 and 207–210 above are repeated.

222 As to paragraph 118.3:

222.1 Insofar as this allegation relates to the MAM Transaction, paragraph 19 above is repeated.

222.2 It is admitted that no security was taken from ProIndicus or EMATUM. A negative pledge was provided by ProIndicus (ProIndicus Facility Agreement clause 19.5(a)), EMATUM (EMATUM Facility Agreement clause 19.5(a)), and



the Claimant (ProIndicus Guarantee clause 6.6 and EMATUM Guarantee clause 6.3). By the negative pledge, each promised not to create or permit to subsist any “Security” (defined so as to include any form of security or equivalent right, in the case of the Claimant excluding “Project Financing” as defined) over all or any of its present or future revenues or assets.

222.3 The taking of security was unnecessary in circumstances where: the Claimant provided the Guarantees; ProIndicus, EMATUM and the Claimant each gave negative pledges; and ProIndicus and EMATUM were ultimately owned and controlled by the Claimant.

(ix) The terms of the ProIndicus and EMATUM Guarantees

223 Paragraphs 119 and 120 are admitted and averred (save insofar as inconsistent with paragraphs 8 and 16 of Schedule 1 hereto, which accurately set out those terms). These undertakings reflect that CSI and CSLB reasonably believed that the entry into and performance of the Guarantees was in accordance with applicable Mozambican law and that the Claimant would ensure this remained the case and CSI and CSLB reasonably relied on this in entering into the ProIndicus and EMATUM Transactions. As set out fully in paragraphs 90, 101.8, 103, 106, 108, 110–114, 122, 139, 141, 143–147, 162, 192.4–192.5 above and Schedule 1 hereto, extensive representations and warranties of authority and compliance with IMF obligations were set out in the ProIndicus and EMATUM Guarantees (and Confirmations) and were made by Minister Chang as Finance Minister, the National Director of the Treasury and Deputy National Director of the Treasury, and the Bank of Mozambique, and CSI and CSLB reasonably relied on those representations in entering into the ProIndicus and EMATUM Transactions, and/or advancing funds and/or forbearing on calling on the Guarantees.

(x) The alleged absence of any Swiss law lawyers for the Claimant

224 The first sentence of paragraph 121 is admitted, save that it is denied insofar as alleged that the ProIndicus and EMATUM Supply Contracts at the time they were entered into concerned transactions with a price of more than US\$1.4 billion. The values of the Supply Contracts when they were entered into were US\$366 million and US\$785.4 million and there were subsequent increases, as set out in paragraph 119 above.



225 No admissions are made as to the second sentence of paragraph 121, as to which the Claimant is put to strict proof.

(xi) The terms of the ProIndicus and EMATUM Supply Contracts

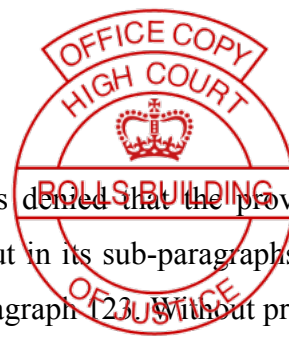
226 It is admitted that CSI reviewed the ProIndicus and EMATUM Supply Contracts before entering into the ProIndicus and EMATUM Transactions, in order to understand them and to inform CSI's and CSLB's decision about whether to do so. It is admitted that CSI and CSLB expected ProIndicus and EMATUM to repay their loans. Save as aforesaid paragraph 122 is denied.

227 The first sentence of paragraph 123 is denied. CSI and CSLB will rely on the full terms and effect of the ProIndicus and EMATUM Supply Contracts, of which paragraph 123 gives a selective and misleading impression. Read as a whole, the ProIndicus and EMATUM Supply Contracts provide no support for the allegation in the first sentence of paragraph 123. Without limiting the generality of the foregoing:

227.1 The ProIndicus and EMATUM Supply Contracts each stated, and referred to attached Annexes further detailing, the assets, the quantity of each asset and the additional services that were to be supplied (ProIndicus Supply Contract Article II and Annexes, EMATUM Supply Contract Article II and Annexes) and stated a total price (ProIndicus Supply Contract Article VII, EMATUM Supply Contract Article VII).

227.2 The ProIndicus Supply Contract provided in Article II for the delivery (and in several cases also the installation and setting to work) of items including 6 manned radar stations, 10 unmanned radar stations, 1 central command cite, 12 interceptors, 4 sets of infrastructure equipment for ports, offshore patrol vessels, maritime patrol aircraft and satellite surveillance. The EMATUM Supply Contract provided in Article II for the provision of 21 longliners, 3 trimarans, 3 bait fishing trawlers, centre equipment, an intellectual property licence, on-board spare parts, and basic operator training.

227.3 There was no reason on the face of the ProIndicus and EMATUM Supply Contracts to doubt that there was a reasonable relation between the price and the bespoke turnkey assets and services to be supplied.



228 As to the second sentence of paragraph 123, it is denied that the provisions of the ProIndicus and EMATUM Supply Contracts set out in its sub-paragraphs provide any support for the assertion in the first sentence of paragraph 123. Without prejudice to the generality of this:

228.1 The term set out in paragraph 123.1 is admitted. It provides no support for the assertion in paragraph 123 in circumstances where:

- (a) The ProIndicus Supply Contract and EMATUM Supply Contract provided for the Seventh Defendant and Sixth Defendant respectively (as to which paragraph 36.4 above is repeated) to give a guarantee against non-delivery materially in accordance with the relevant Supply Contract by the Sixth Defendant and the Seventh Defendant respectively and attached such guarantees (ProIndicus Supply Contract Article VIII(G) and Annex 2; EMATUM Supply Contract Article VIII(F) and Annex 3);
- (b) CSI understood that the delivery schedule for the ProIndicus Project was such that a large proportion of the proceeds of the financing would be used to purchase equipment early therein.

228.2 The term set out in paragraph 123.2 is admitted. The assertion that the suppliers' entitlement to sub-contract the works demonstrates that no honest and reasonable government official could have countenanced the terms of the contracts is not understood and is in any event denied.

228.3 The term set out in paragraph 123.3 is admitted. The assertion that the suppliers' entitlement to increase the price to cover increased costs or expenses "*as a result of the operation of the provisions of this Contract*" demonstrates that no honest and reasonable government official could have countenanced the terms of the contracts is not understood and is in any event denied. The basic price under both contracts was a "*fixed price for the ... Assets and the supply of the Services*" (ProIndicus Supply Agreement Article VIII(A); EMATUM Supply Agreement Article VIII(A)).

228.4 The term set out in paragraph 123.4 is admitted. The assertion that the fact the delivery timetable was indicative only for the EMATUM Supply Contract



demonstrates that no honest and reasonable government official could have countenanced the terms of the contracts (apparently also the ProIndicus Supply Contract dated January 2013) is not understood and is in any event denied.

(xii) Subvention fees

229 As to the first sentence of paragraph 124, it is admitted and averred that CSI (and not CSLB) received subvention fees. These were deducted from the loan proceeds paid to the Sixth and Seventh Defendants. Save as aforesaid, no admissions are made.

230 The second sentence of paragraph 124 is noted.

231 The third and fourth sentences of paragraph 124 are denied.

231.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

231.2 Paragraph 100.2(a) above is repeated. Subvention fees were in substance prepayments of interest, were used or considered in other deals at the time, reduced the interest rate (and thus interest) payable by the Claimant under the ProIndicus and EMATUM Transactions, and were absorbed by the Sixth and/or Seventh Defendant (at least in part).

231.3 Further or alternatively:

(a) As set out above, having entered into the ProIndicus Transaction, CSI transferred parts of its interest thereunder to “*New Lenders*” under the ProIndicus Facility Agreement (and amendments) and Guarantee (and Confirmations) and, when it did so, passed on the subvention fees approximately pro rata as a discount. In relation to the EMATUM Project, CSI substantially passed on the subvention fees (as a discount in price) to the purchasers of the 2020 Notes.

(b) CSLB did not receive subvention fees. It did not stand to gain from greater amounts being advanced to ProIndicus or EMATUM.



(d) *The alleged legal consequences for the ProIndicus and EMATUM Guarantees*

232 Paragraph 125 is denied. Paragraphs 190–194 above are repeated. The ProIndicus Guarantee (and Confirmations) give rise and the EMATUM Guarantee gave rise to valid, legal and binding obligations on the Claimant.

233 Paragraph 126 is denied. The Claimant’s case on illegality is unparticularised and not understood. The allegation that the Guarantees were “*tainted by illegality*” under Mozambican and English law so as to be unenforceable is not, in law, a sustainable plea. In the circumstances, the Claimant does not plead further to this allegation pending clarification by the Claimant of its case in this regard.

234 The entitlement to declaratory relief alleged in paragraph 127 is accordingly denied.

235 The first sentence of paragraph 128 is denied:

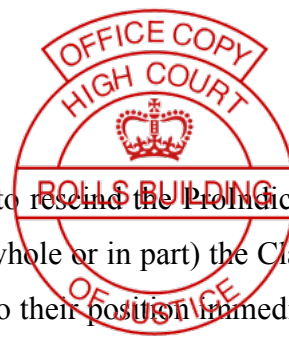
235.1 The alleged right to rescind the ProIndicus Guarantee is denied:

- (a) The allegation that such a right could arise from the alleged bribery of, or CSI’s or CSLB’s alleged knowledge of any bribes paid to, the Third to Fifth Defendants or any of them or from any of the other knowledge alleged in paragraph 105 (save for bribery of the Mozambican Officials or any of them) is not sustainable in law;
- (b) The allegation of bribery of the Mozambican Officials (or any of them) is (i) not properly particularised, (ii) in any event denied if and insofar as the Claimant alleges that CSI or CSLB offered or paid any bribes to any of the Mozambican Officials (but, for the avoidance of any doubt, CSI and CSLB do not understand such an allegation to be made against them), and (iii) not admitted otherwise. Paragraph 55 above is repeated;
- (c) As to the knowledge of bribery of any of the Mozambican Officials alleged:
 - (i) It is not admitted that the Third, Fourth and/or Fifth Defendants knew of any such bribery when the ProIndicus Guarantee or the First Confirmation was made or that the Third Defendant knew of any such bribery when the Second Confirmation was made (by which time the



Fourth and Fifth Defendants had left CSLB). Paragraphs 55.2–55.7 above are repeated;

- (ii) In any event, it is denied that any such knowledge of the Third, Fourth and/or Fifth Defendants is to be attributed to CSI or CSLB. Paragraph 55.7 above is repeated;
 - (iii) The allegation of wilful blindness of CSI and CSLB as to such matters at the time when the ProIndicus Guarantee was (or insofar as alleged the Confirmations were) made is denied. Paragraphs 56 and 200–231 above are repeated;
 - (iv) It is denied, insofar as alleged, that any attributed knowledge or wilful blindness that arose after the ProIndicus Guarantee, the First Confirmation and the Second Confirmation each was made gives rise to any right to rescind the respective instrument;
- (d) Further or alternatively, it is denied that the Claimant is entitled to rescind the ProIndicus Guarantee or the Confirmations as alleged:
- (i) In accordance with the terms of the ProIndicus Facility Agreement (in particular clause 21.7) and the ProIndicus Guarantee (by which the Claimant amongst other things agrees to be bound by that clause and that the Guarantee enures for the benefit of all “*Finance Parties*” from time to time), third parties have received “*transfers*” and become “*Lenders*” under the Facility Agreement and thereby acquired rights and interests under the ProIndicus Guarantee and the Confirmations. The current extent of the rights and interest of such further “*Lenders*” is set out in paragraph 128 above. No allegations are made by the Claimant as against the other Finance Parties. In the premises, and in any event due to the existence of the rights of those other Finance Parties, the Claimant is not entitled to rescind the ProIndicus Guarantee or the Confirmations (further or alternatively to the seemingly broad rescission claimed);



- (ii) Further or alternatively, in order to rescind the ProIndicus Guarantee and the Confirmations (either in whole or in part) the Claimant would be required to restore the parties to their position immediately prior to the making of the ProIndicus Guarantee and the Confirmations, i.e. to restore the corresponding amount of the funds that were advanced to ProIndicus pursuant to the ProIndicus Facility Agreement and the further advances, which the Claimant has not offered to do;
- (e) Further or alternatively, the Claimant has affirmed the ProIndicus Guarantee and the Confirmations in circumstances where (it is to be inferred) it was aware of the facts said to give rise to a right to rescind:
- (i) The ProIndicus Project was reported in the media in Mozambique and elsewhere, was publicly acknowledged by the Claimant, has been investigated by the Claimant's PGR since early 2015 and has been investigated and in 2016 reported on by the Claimant's Parliament. Paragraphs 206.3(f), (h), (j) and (m) above are repeated;
- (ii) Paragraph 192.4(a) and (d) above are repeated;
- (iii) The Claimant's Ministry of Finance directed the Bank of Mozambique to make substantial payments of interest or principal and interest on behalf of ProIndicus under the ProIndicus Facility Agreement in March 2016 (see paragraph 165 above);
- (iv) The Claimant stated, without qualification, in the EMATUM Exchange Memorandum of 9 March 2016, and publicly in the 4 April 2016 letter and in the EMATUM Exchange Prospectus of 15 April 2016, all of which were signed by the Claimant's Finance Minister (Minister Maleiane), that its foreign borrowed and guaranteed debt was in certain amounts as at 2014 and 2015, and those amounts in fact included both the amounts guaranteed under ProIndicus loan and the EMATUM loan (as set out in paragraphs 184–186 above). The Claimant thereby acknowledged and treated those debts as binding upon it;



- (v) The Claimant did not purport to rescind the ProIndicus Guarantee (or Confirmations) until March 2019;
- (f) Further or alternatively, for the same reasons, the Claimant has delayed unduly in seeking rescission, which should therefore be refused;
- (g) Further or alternatively, it would, in all the circumstances pleaded herein, be disproportionate and/or unfair and/or otherwise inappropriate for the Claimant to rescind the ProIndicus Guarantee or the Confirmations.

235.2 The alleged right to terminate the ProIndicus Guarantee is denied:

- (a) Paragraphs 235.1(a), (b) and (c) above are repeated *mutatis mutandis* in relation to the alleged right to terminate the ProIndicus Guarantee;
- (b) Further or alternatively, it is denied that any attributed knowledge or wilful blindness would in law give rise to a right to terminate the ProIndicus Guarantee. No basis for the asserted right to terminate is in any case pleaded;
- (c) Further or alternatively, it is denied that any right to terminate the ProIndicus Guarantee on the basis of CSI's and CSLB's knowledge as alleged could be exercised in circumstances where the ProIndicus Guarantee could not be rescinded for the reasons set out in paragraph 235.1 above;
- (d) Further or alternatively, the Claimant has affirmed the ProIndicus Guarantee. Paragraph 235.1(e) above is repeated.

235.3 The further allegation that the ProIndicus Guarantee and its confirmations are "*alternatively ... void ab initio*" is not understood. No particulars are given. CSI and CSLB reserve the right to plead further if the Claimant properly explains this allegation.

236 The second sentence of paragraph 128 is denied. For the reasons set out above, the Claimant had no right to rescind or terminate the ProIndicus Guarantee and the Confirmations, or was not entitled to exercise such right, or the Court should in its



discretion not permit the same, as at 15 March 2019 or otherwise. The purported notices of 15 March 2019 are of no legal effect.

(2) Alleged claim for bribery

237 As to paragraph 129:

237.1 The allegations that the Privinvest Defendants paid bribes to any of the Third to Fifth Defendants or the Mozambican Officials are not admitted. Paragraph 55 above is repeated.

237.2 It is noted that no allegation is made that CSI or CSLB or the Third, Fourth or Fifth Defendant paid any bribe to the Mozambican Officials (or any of them).

237.3 It is denied, insofar as it is alleged, that any bribery by the Privinvest Defendants of any of the Third to Fifth Defendants could, in law, give rise to any cause of action in bribery of the Claimant against CSI or CSLB.

238 The first sentence of paragraph 130 is not properly particularised. The Claimant fails to specify any act by CSI or CSLB that is said to give rise to their alleged liability in tort. CSI and CSLB repeat their responses to paragraphs 50 to 101 and 105 to 124 set out above. So far as this relates to the MAM Transaction, paragraph 19 above is repeated.

239 The second sentence of paragraph 130 is not properly particularised and is denied. Paragraphs 32–34 above are repeated.

240 The first sentence of paragraph 131 is denied:

240.1 Insofar as any allegation is made as to the MAM Transaction (including without limitation as to causation or loss), paragraph 19 above is repeated.

240.2 Insofar as any allegation is made as to the bribery of the Third, Fourth and/or Fifth Defendants, paragraph 237.3 above is repeated.

240.3 The allegation that CSI and CSLB were “*involved in*” any alleged bribery is wholly unclear and unparticularised and CSI and CSLB reserve the right to respond thereto if and when proper particulars therefore are provided. Without prejudice to the generality of the foregoing, it is denied.



240.4 As to the allegation that CSI and CSLB facilitated or assisted in bribery by the Prinvest Defendants of any of the Mozambican Officials:

- (a) Paragraph 237 above is repeated;
- (b) As to the knowledge alleged:
 - (i) It is not admitted that the Third, Fourth and/or Fifth Defendants knew of any such bribery. Further or alternatively, if they had such knowledge, it is not admitted that they did so before the ProIndicus Guarantee, the First or Second Confirmation or the EMATUM Guarantee were made. Paragraphs 55.4–55.7 above are repeated;
 - (ii) The allegation that any such knowledge is to be attributed to CSI or CSLB is denied. Paragraph 55.7 above is repeated;
 - (iii) The allegation of wilful blindness of CSI and CSLB as to such knowledge is denied. Paragraphs 56 and 200–231 above are repeated;
- (c) Further or alternatively, it is denied that the alleged attributed knowledge or wilful blindness would, in law, establish any liability of CSI or CSLB:
 - (i) Any allegation that any liability could arise from CSI's and CSLB's alleged attributed knowledge or wilful blindness of alleged bribes paid to the Third, Fourth or Fifth Defendants, or of any of the knowledge alleged in paragraph 105 other than knowledge of bribery of the Mozambican Officials (or any of them), is not sustainable in law;
 - (ii) Further, it is denied, insofar as it is alleged, that the alleged attributed knowledge or wilful blindness of bribery of any of the Mozambican Officials amounts in law to an intention that would make CSI or CSLB liable for assistance of bribery by the Prinvest Defendants.

241 The second sentence of paragraph 131 is denied in its totality because, for the reasons above, the Claimant's allegation that CSI and CSLB are liable in tort for bribery fails. Without prejudice to the generality of that:



241.1 It is admitted that, if and insofar as the Claimant establishes that CSI or CSLB is liable for the bribery of the Mozambican Officials (which is denied) but not otherwise, the remedies specified in paragraph 131 are in principle available.

241.2 For the avoidance of doubt, if the Third, Fourth and/or Fifth Defendants accepted bribes (as to which no admissions are made), it is denied that the Claimant is entitled to the remedies specified in paragraph 131 in respect of those bribes.

(3) Alleged claim for conspiracy by unlawful means

242 The first sentence of paragraph 132 is denied:

242.1 It is denied that CSI's or CSLB's conduct was wrongful or that its conduct encompasses any unlawful means. Paragraph 244 below is repeated.

242.2 The alleged conspiracy and combination to defraud the Claimant and to conceal the alleged fraud and its proceeds from the Claimant is wholly unparticularised. Any combination by CSI or CSLB is denied.

242.3 As to the alleged intention to injure the Claimant:

(a) This is wholly unparticularised. Any such intention is denied;

(b) If and insofar as the Claimant relies on the attributed knowledge and wilful blindness alleged in paragraph 105 (which is not clear), it is denied that (save for knowledge of bribery of the Mozambican Officials) this would, in law, amount to an intention to harm the Claimant that establishes unlawful means conspiracy.

243 The second sentence of paragraph 132 is denied. The alleged conspiracy is unparticularised and denied. Paragraph 242.2 above is repeated.

244 As to paragraph 133, the unlawful means pleaded are denied or irrelevant as against CSI and CSLB, as set out in answer to the sub-paragraphs below:

244.1 As to paragraphs 133.1, 133.4, 133.5 and 133.6, the alleged causes of action in bribery, dishonest assistance, knowing receipt, and deceit are denied for the



reasons given in answer to those allegations (see Parts H(2), (4)–(6) and (8) herein).

- 244.2 As to paragraph 133.2, it is denied that CSI and CSLB entered into the ProIndicus Guarantee and EMATUM Guarantee with the alleged attributed knowledge or wilful blindness, for the reasons in Part H(1) herein.
- 244.3 As to paragraph 133.3, paragraphs 99–100, 133–135 and 226–228 above are repeated. Further, the entry by “*Suppliers*” (as defined, namely, certain of the Privinvest Defendants) into the “*Supply Contracts*” (as defined) is not, and not alleged to be, conduct of CSI or CSLB.
- 245 As to paragraph 134:
- 245.1 The alleged conspiracy and unlawful means are denied. Paragraphs 242–244 above are repeated.
- 245.2 It is denied that any of the matters set out in the sub-paragraphs to paragraph 134 amounts to concealment, for the reasons given in answer to its sub-paragraphs below.
- 245.3 Save as aforesaid, paragraph 134 is unparticularised and denied.
- 246 As to paragraph 134.1:
- 246.1 CSI and CSLB repeat their answer to paragraphs 94 to 101 in Part G(5) herein.
- 246.2 It is denied that CSI or CSLB arranged or managed the EMATUM Exchange. CSSEL acted as Joint Dealer Manager (with VTB Capital plc) in respect of the EMATUM Exchange.
- 247 Paragraph 134.2 is denied. Paragraph 60 above is repeated.
- 248 As to paragraph 134.3:
- 248.1 This paragraph is not understood and appears to be irrelevant to the Claimant’s case.



248.2 The Claimant does not allege that CSI or CSLB had any duty to disclose any matters pleaded in the APoC. It is denied that, in those circumstances, non-disclosure by CSI and CSLB of any such matters could, in law, amount to concealment.

249 The first two sentences of paragraph 135 are denied, for the reasons given in answer to paragraphs 152 to 155.

250 The third sentence of paragraph 135 is denied:

250.1 Insofar as any allegation is made as to the MAM Transaction (including without limitation as to causation or loss), paragraph 19 above is repeated;

250.2 Otherwise, for the reasons set out in paragraphs 242–249 above.

(4) Alleged breach of Mozambican Officials’ duties to the Claimant

251 As to paragraph 136:

251.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

251.2 CSI and CSLB understand that the breach of Mozambican law duty alleged (and which is said to found the claims of dishonest assistance and knowing receipt) is the receipt of bribes by the Mozambican Officials. CSI and CSLB respond on that basis and reserve the right to respond further if the Claimant seeks to allege some further breach of Mozambican law duty.

251.3 The alleged acceptance of bribes by the Mozambican Officials as set out in Schedule 2 to the APoC said to have facilitated the ProIndicus Transaction and the EMATUM Transaction is not properly particularised and not admitted. Paragraph 55.2 above is repeated.

251.4 The allegation that the ProIndicus Transaction and the EMATUM Transaction “*failed to comply with the Constitution and the law*” is so vague that CSI and CSLB cannot plead to it. Insofar as the Claimant relies on the allegations in paragraphs 102 to 104, CSI and CSLB repeat their answer to those paragraphs.



251.5 As to the alleged duties under Mozambican law and their nature, CSI and CSLB repeat paragraph 72 above.

(5) Alleged claim for dishonest assistance

252 The first sentence of paragraph 137 is denied:

252.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

252.2 The alleged breaches of Mozambique law duty by the Mozambican Officials as pleaded in paragraph 136 are not admitted. Paragraph 251 above is repeated.

252.3 Paragraph 72 above is repeated.

252.4 As to paragraph 137.1, the allegation that CSI's and CSLB's "*involvement in and/or facilitation and/or assistance in the bribery alleged at paragraphs 129–131*" constituted assistance by CSI and CSLB is not properly particularised. CSI and CSLB repeat their answer to paragraphs 129 to 131. Insofar as it is understood, this allegation is denied for those reasons.

252.5 As to paragraph 137.2, the allegation that the matters stated constituted assistance by CSI and CSLB is denied:

(a) Insofar as that paragraph alleges entry into the MAM Transaction or knowledge of the same. Paragraph 19 above is repeated; and

(b) Otherwise, for the reasons for which it is denied that CSI or CSLB had the knowledge alleged at paragraphs 105 to 124 in Part H(1) herein.

252.6 As to paragraph 137.3, the allegation that the entry by "*Suppliers*" (as defined, namely, certain of the Prinvest Defendants) into the "*Supply Contracts*" (as defined) constituted assistance by CSI and CSLB is denied. This is not, and is not alleged to be, conduct of CSI or CSLB.

253 Paragraph 138 is denied for the reasons given in paragraph 252 above. Without prejudice to the generality of this, any entitlement to compensation is further denied for the reasons in Part I herein.



(6) Alleged claim for knowing receipt

254 As to paragraph 139:

254.1 It is denied insofar as it alleges that CSI and CSLB received any fee income or other payments in respect of the MAM Transaction. Paragraph 19 above is repeated.

254.2 It is not properly particularised insofar as it alleges that “[b]y reason of the matters pleaded herein” it would be unconscionable for CSI or CSLB to retain any “fee income or other payments” CSI and CSLB have received “directly or indirectly from” the Claimant in respect of the ProIndicus Project and the EMATUM Project.

254.3 It is denied that CSI and CSLB received any fee income from the Claimant (that is, “directly”) in respect of the ProIndicus Project or the EMATUM Project.

254.4 It is admitted and averred that CSI and CSLB received fee income “indirectly” from the Claimant, that is, from and on behalf of ProIndicus and EMATUM in relation to the ProIndicus and EMATUM Transactions. By this allegation, the Claimant admits that it is to be equated with ProIndicus and EMATUM for the purposes of the relief to which it says it is entitled. CSI and CSLB admit and aver the same.

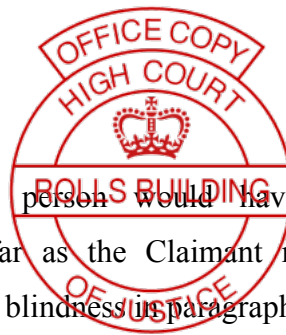
255 Paragraph 140 is inadequately particularised and, insofar as it is understood, is denied for the reasons given herein in answer to paragraphs 62 to 101, 136 and Schedules 1 and 2 to the APoC. Without prejudice to the generality of this:

255.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

255.2 The alleged breaches of Mozambique law duty by the Mozambican Officials as pleaded in paragraph 136 are not admitted. Paragraph 251 above is repeated.

255.3 Paragraph 72 above is repeated.

255.4 The allegations that CSI and CSLB knew of any breach of duty by the Mozambican Officials and that they wilfully and recklessly failed to make such



enquiries as an honest and reasonable person would have made are unparticularised and denied. If and insofar as the Claimant relies on the allegations of attributed knowledge or wilful blindness in paragraphs 107 to 108, these are denied for the reasons given in answer in Part H(1) herein.

(7) Alleged proprietary claims

256 Paragraphs 141 and 142 are not properly particularised and, insofar as they can be understood, are denied for the reasons for which the claims for dishonest assistance and knowing receipt are denied in Parts H(5)–(6) herein. Further or alternatively, any such claims are limited to the value of fees “*indirectly*” received by CSI or CSLB from the Claimant (and not from any third party).

(8) Alleged claim in deceit in relation to the EMATUM Exchange

257 As to paragraph 143:

257.1 It is denied that CSI, CSLB or CSSEL made, and that CSI or CSLB procured, authorised, encouraged or adopted the making by CSSEL, of the alleged implied representations in paragraphs 143.1 to 143.3 (the “**Alleged Implied Representations**”):

- (a) Paragraph 167 above is repeated;
- (b) Further or alternatively, the Dealer Manager Agreement (as set out in paragraph 183 above) and the EMATUM Exchange Memorandum (as set out in paragraph 184 above) are inconsistent with CSSEL and its affiliates making any representation in relation to the EMATUM Exchange. By those provisions, in documents to which the Claimant was party and for which it accepted responsibility respectively, the Claimant expressly represented that CSSEL and its affiliates made no representations in relation to the EMATUM Exchange;
- (c) Further or alternatively, the reasons given in response to paragraph 144 (in paragraph 258 below) are repeated.

257.2 Without prejudice to the generality of that denial:



- (a) The alleged procurement, authorisation, encouragement and/or adoption by CSI and CSLB of Alleged Implied Representations by CSSEL is wholly unparticularised;
- (b) The Alleged Implied Representations are vague and inadequately particularised;
- (c) Insofar as any representation is alleged in relation to the MAM Transaction (which is unclear), paragraph 19 above is repeated.

258 Paragraph 144 is denied. None of the Alleged Implied Representations arose from items (i) to (vi) of that paragraph. Without prejudice to the generality of that denial:

258.1 As to item (i):

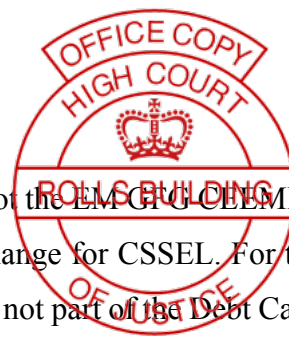
- (a) Paragraph 168 above is repeated;
- (b) It is noted that the Claimant does not purport to rely on any alleged statement at any of the alleged meetings. The relevance thereof is accordingly denied.

258.2 As to item (ii), the 2015 Engagement Letter does not, and is not alleged to, contain any statement that gives rise to any of the alleged implied representations set out in paragraphs 143.1 to 143.3. By clause 13 of the Standard Terms attached to that letter (as set out in paragraph 175 above) the Claimant expressly agreed that it had not relied upon any representations other than those in the Engagement Letter.

258.3 As to item (iii), paragraph 176 above is repeated. The facilitation of L&W to represent the Claimant in relation to the EMATUM Exchange did not give rise to any of the Alleged Implied Representations.

258.4 As to item (iv):

- (a) The reference to “*Credit Suisse’s fixed income team*”, and to members thereof being “*involved*” in the EMATUM Exchange, is unparticularised, vague and not understood. Pending proper particularisation by the Claimant of those persons it says to have been “*involved*” in the EMATUM Exchange (to the knowledge of the Claimant), no admissions are made;



- (b) The Debt Capital Markets team (and not the EMATUM Exchange team) had responsibility for the EMATUM Exchange for CSSEL. For the avoidance of any doubt, the Third Defendant was not part of the Debt Capital Markets team;
- (c) To the best of CSI's and CSLB's knowledge, the Third Defendant did not play any active role, and did not communicate with the Claimant in relation to, the EMATUM Exchange after April 2015. It is denied that the Third Defendant drafted the EMATUM Exchange Prospectus (or any part of it) or carried out due diligence for the EMATUM Exchange. The Third Defendant on a small number of occasions provided information on request to the Debt Capital Markets team;
- (d) Further or alternatively, no admissions are made as to whether (if and insofar as it is alleged) the Claimant knew of the involvement of the Third Defendant and/or any other "*members of Credit Suisse's fixed interest team*" (as to which no admissions are made) in the EMATUM Exchange. The Claimant is put to strict proof of the same;
- (e) Further or alternatively, it is denied that any involvement of the Third Defendant and/or any other "*members of Credit Suisse's fixed interest team*" (as to which no admissions are made) in the EMATUM Exchange gave rise to any of the Alleged Implied Representations.

258.5 As to item (v):

- (a) It is admitted that Standard & Poor's downgraded the Claimant's long-term foreign currency sovereign credit rating to "CC" on 15 March 2016;
- (b) It is admitted that by letter dated 23 March 2016 CSLB in its capacity (by then) as "*Lender*" (as defined) under the ProIndicus Facility Agreement agreed to waive any default which may have arisen as a result of that downgrade;
- (c) It is denied that the aforesaid waiver gave rise to any of the Alleged Implied Representations.



258.6 As to item (vi):

- (a) Paragraph 167 above is repeated;
- (b) The allegation that CSI, CSLB or CSSEL “tolerated” Palomar acting as advisers to the Claimant is not understood and, insofar as it can be understood, is denied. It was for the Claimant to engage advisers as it saw fit. It was not for CSI, CSLB or CSSEL to approve the Claimant’s advisers;
- (c) Further and in any event, it is denied that Palomar acting as advisers to the Claimant and engaging the Fourth and Fifth Defendants gave rise to any of the Alleged Implied Representations.

259 Paragraph 145 is denied:

259.1 Paragraph 167 above is repeated.

259.2 The alleged knowledge and intention of CSI and CSLB that the Claimant would rely on the Alleged Implied Representations is wholly unparticularised. The Claimant fails to identify any person on behalf of CSI or CSLB said to have known of the alleged making of the Alleged Implied Representations or to have known and intended that the Claimant would rely on them.

259.3 Further or alternatively, it is denied that CSI or CSLB knew that the Alleged Implied Representations were made and, further, that CSI or CSLB intended that the Claimant would rely on the Alleged Implied Representations when considering the restructuring of EMATUM. Paragraphs 257–258 above are repeated, including in particular paragraphs 257.1(b) and 258.2 above. By the terms of the 2015 Engagement Letter, the Dealer Manager Agreement and the EMATUM Exchange Memorandum there referred to, CSSEL indicated that it and its affiliates made no representations in relation to the EMATUM Exchange or, if they did, they should not be, and were not intended to be, relied upon.

260 As to the allegation of inducement and reliance on each of the Alleged Implied Representations in paragraph 146, no admissions are made. Without prejudice to this:



- 260.1 Those allegations are wholly unparticularised. The Claimant fails to identify any individual by whom it is said to have understood the Alleged Implied Representations to have been made and who was induced by them to enter into the EMATUM Exchange.
- 260.2 Paragraphs 257–258 above are repeated, including in particular paragraphs 257.1(b) and 258.2 above. The terms and purport of the 2015 Engagement Letter, the Dealer Manager Agreement and the EMATUM Exchange Memorandum there referred to are inconsistent with the Claimant relying upon any alleged representation by CSI and CSLB.
- 261 The first sentence of paragraph 147 is denied. None of the Alleged Implied Representations was made. Paragraphs 257–258 above are repeated. Without prejudice to the generality of that denial:
- 261.1 No admissions are made as to paragraph 147.1. Paragraph 55 above is repeated.
- 261.2 Paragraph 147.2 is denied:
- (a) As to item (a), it is denied that CSI or CSLB had the knowledge alleged at paragraphs 105 to 124. The response to those paragraphs in Part H(1) herein is repeated;
 - (b) As to item (b):
 - (i) Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated;
 - (ii) The allegation that the businesses of ProIndicus and EMATUM had failed is wholly unparticularised. No admissions as to this are made and the Claimant it put to strict proof of its allegations. In any event, it is denied that it would follow from any failure of the businesses of ProIndicus or EMATUM that CSI or CSLB had reason to believe that the EMATUM Guarantee was “*tainted by bribery*”;
 - (c) As to item (c), it is denied that the circumstance that the Fourth and Fifth Defendants had been engaged by Palomar (as to which paragraph 41.5



above is repeated) gave CSI or CSLB reason to believe that the EMATUM Guarantee was “*tainted by bribery*”. Paragraphs 171–172 above are repeated.

261.3 Insofar as it can be understood, paragraph 147.3 is denied. Paragraph 179 above is repeated.

262 Paragraph 148 and each of its sub-paragraphs is denied.

262.1 Paragraph 167 above is repeated.

262.2 The Alleged Implied Representations were not made. Paragraphs 257–258 above are repeated.

262.3 Further or alternatively, paragraph 148 is denied also for the reasons given in response to its sub-paragraphs below.

263 As to paragraph 148.1:

263.1 It is not admitted that the Third Defendant knew that the Alleged Implied Representations or any of them were made or, if so, that they were false.

263.2 For the avoidance of any doubt, it is admitted that as set out herein the Third Defendant was involved in the ProIndicus and EMATUM Transactions.

263.3 Paragraphs 32 and 142 above are repeated.

263.4 No admissions are made as to any receipt of bribes by the Third Defendant (as to which paragraph 55.1 above is repeated) or as to whether the Third Defendant is liable to the Claimant as alleged (as to which paragraph 6.3 above is repeated).

263.5 Further or alternatively, in so far as the Claimant alleges that the Third Defendant’s knowledge is to be attributed to CSI or CSLB, this is denied. Paragraphs 55.7 and 259.1 above are repeated.

264 As to paragraph 148.2:

264.1 It is not admitted that the Claimant is unable to particularise the relevant individuals of CSI or CSLB who are alleged to have been were wilfully blind.



- 264.2 CSI and CSLB are not able properly to plead to paragraph 148.2 (which alleges wilful blindness) in the absence of such particularisation. Insofar as paragraph 148.2 can be understood, it is denied. As to the Claimant's reliance on the matters alleged in paragraph 147.2(a)–(c), CSI and CSLB repeat their answer in paragraph 261.2 above.
- 265 As to paragraph 148.3:
- 265.1 It is noted that the Claimant's allegation of recklessness is limited to the first and second Alleged Implied Representations in circumstances where it alleges in paragraph 148.2 wilful blindness as to all three Alleged Implied Representations. This is incoherent and demonstrates that there is no basis for the allegation of wilful blindness as to the third Alleged Implied Representation.
- 265.2 Paragraph 147.2 is denied in paragraph 261.2 above. It is accordingly denied that CSI or CSLB knew of the matters in paragraph 147.2(a)–(c) (save insofar as such knowledge is admitted in paragraph 261.2 above or paragraphs herein to which it refers) and it is accordingly denied that CSI or CSLB should have taken any steps to ascertain the "*true position*" (as to which, for the reasons herein, no admissions are made).
- 265.3 In the premises, it is denied that CSI or CSLB was reckless as to the first and second Alleged Implied Representations.
- 266 Save that it is denied that the Alleged Implied Representations were made, the first sentence of paragraph 148.4 (including the alleged failure to correct the Alleged Implied Representations) is not admitted for the reasons herein.
- 267 The second sentence of paragraph 148.4 is denied. Paragraph 167 above is repeated. In any event, paragraphs 32–34 above are repeated.
- 268 The first sentence of paragraph 149 is denied for the reasons herein. As to the second sentence of paragraph 149:
- 268.1 The implicit allegation that the Claimant could successfully have challenged the EMATUM Guarantee is denied. Paragraph 179 above is repeated.



268.2 No admissions are made otherwise, including as to the wholly unparticularised allegation that the Claimant would have negotiated more favourable terms.

269 Paragraph 150 is denied.

(9) Interest

270 Paragraph 151 is denied:

270.1 For the reasons herein, the Claimant has no entitlement to damages or compound that could attract interest.

270.2 Further or alternatively, the entitlement to compound interest is wholly unparticularised and Claimant has no entitlement to compound interest in any event.

I CAUSATION AND LOSS

(1) Alleged financial conditions in 2016

271 Paragraph 152 is not admitted, save that it is admitted that the three transactions were the subject of public and international scrutiny.

272 The first sentence of paragraph 153 is admitted.

273 As to the second sentence of paragraph 153:

273.1 Insofar as any allegation is made in relation to the MAM Transaction, paragraph 19 above is repeated.

273.2 The allegation that support was undermined by the lending for the ProIndicus Project and the EMATUM Project is not admitted.

273.3 The allegation that the lending was “*secret and illegal*” is unparticularised argument and denied for the reasons set out in paragraphs 206.2–206.3 above.

273.4 No admissions are made otherwise, including as to items (i), (ii) and (iii).



(2) Alleged particulars of losses

274 Paragraphs 154 and 155 are not properly particularised. No particulars at all are given of causation. The Claimant says that losses will be particularised in future. CSI and CSLB will plead to those matters if and when proper particulars are given. Pending proper particularisation, CSI and CSLB deny causation of and liability for the losses alleged and indemnification claimed in paragraphs 154 and 155.

275 Without prejudice to the generality of the foregoing, insofar as it is possible to understand or infer the Claimant's case:

275.1 As to any allegations of causation and loss in relation to the MAM Transaction, paragraph 19 above is repeated.

275.2 As to the claim for all liability the Claimant has and payments the Claimant has made or is liable to make in connection with the ProIndicus and EMATUM Projects in paragraph 154.1, no admissions are made as to the implicit allegation that these two Projects would not have gone ahead at all but for the alleged wrongdoing of CSI and CSLB. This depends on the basis (if any) of any liability of CSI or CSLB (which is denied) and on the actions that the Claimant and others would have taken, which are (i) entirely unparticularised and (ii) not within CSI's or CSLB's knowledge.

275.3 As to the claims for all payments made by the Claimant under the Eurobonds in paragraph 154.2 and for all fees and expenses incurred by the Claimant in the EMATUM Exchange in paragraph 154.3:

- (a) No admissions are made as to the implicit allegation that the EMATUM Exchange would not have gone ahead at all but for the alleged wrongdoing of CSI and CSLB. This depends on the basis (if any) of any liability of CSI or CSLB (which is denied) and on the actions that the Claimant would have taken, which are (i) entirely unparticularised and (ii) not within CSI's or CSLB's knowledge;
- (b) It is denied in any event that any such losses were caused by any alleged wrongdoing of CSI or CSLB. They are the results of new intervening acts, namely, (1) the Claimant's decision to issue the Eurobonds pursuant to the



EMATUM Exchange and/or (2) in the case of any losses arising from the date on which it occurred, the Claimant's further restructuring of the Eurobonds (pleaded in paragraph 188 above).

275.4 As to the claim for macro-economic losses in paragraph 154.4, such losses (which are entirely unparticularised) appear to have been caused by matters other than CSI's or CSLB's alleged wrongdoing and in any event to be too remote to be recoverable.

J LIMITATION

276 Further or alternatively, if and insofar as any of the Claimant's causes of action accrued prior to 27 February 2013 (six years prior to the claim being issued), alternatively prior to any applicable limitation period (or any limitation period that is applied in equity by analogy), they are time-barred under the Limitation Act 1980. The Claimant is not entitled to pursue any such claims against CSI or CSLB. Due to the Claimant's failure properly to particularise its claim as set out herein, CSI and CSLB are not presently able to plead further to this matter. They reserve the right to do so if and when the Claimant properly particularises its case.

K ALLEGED ENTITLEMENT TO RELIEF

277 For the foregoing reasons, it is denied that the Claimant is entitled to the relief claimed or any relief as against CSI and CSLB.

278 Further or alternatively, if and to the extent that CSI and CSLB are liable to pay damages or compensation to the Claimant (which is denied), for the reasons in the Counterclaim below (which are incorporated herein), the Claimant is liable to CSI and CSLB to at least the same extent. Accordingly, the claims against CSI and CSLB fail for circuity of action and/or set-off.

COUNTERCLAIM

279 CSI and CSLB repeat the terms of their Defence as set out above.

L DECLARATORY RELIEF

280 For the reasons set out in the Defence:



280.1 CSI and CSLB (acting in its own right) are entitled to and claim a declaration that the ProIndicus Guarantee and Confirmations are valid, binding and enforceable in their entirety.

280.2 Alternatively, CSLB is entitled to and claims a like declaration in respect of those parts of the ProIndicus Guarantee and Confirmations which it has the benefit of and is entitled to enforce by virtue of its Commitment and the associated debts to it, as set out in paragraph 128 above.

M DECEIT BY THE CLAIMANT

281 As pleaded at paragraphs 110–111, 122, 143–144 above and 162 above and Schedule 1 hereto:

281.1 By clauses 5.1 to 5.5 of the ProIndicus Guarantee (as set out in paragraphs 2–6 of Schedule 1 hereto) and clauses 5.1 to 5.5 of the EMATUM Guarantee (as set out in paragraphs 11–15 of Schedule 1 hereto), the Claimant expressly made the representations to CSI and CSLB set out in paragraph 110 above.

281.2 The Claimant agreed in each of the Confirmations that the above representations were deemed also to be made (by reference to facts and circumstances then existing) on the date of each Confirmation and “*Amendment Agreement*” (as defined therein), and thereby repeated those representations.

281.3 CSI and CSLB (as “*Finance Parties*” under the relevant documents) entered into the ProIndicus Transaction and the EMATUM Transaction respectively in reliance on the Claimant’s representations and warranties, as the Claimant acknowledged by ProIndicus Guarantee clause 5.5 and EMATUM Guarantee clause 5.5 (in relation to those documents). This reliance was reasonable.

282 Further and in any event, as pleaded in paragraphs 114, 122, 147 and 162 above, by appointing Minister Chang as Finance Minister and allowing him to sign the ProIndicus and EMATUM Guarantees (and the Confirmations), the Claimant made the representations set out in those paragraphs, and CSI and CSLB reasonably relied on these representations in entering into the ProIndicus and EMATUM Transactions.



283 Further and in any event, as pleaded in paragraphs 103, 106 and 108 above (in relation to the ProIndicus Transaction) and paragraph 141 above (in relation to the EMATUM Transaction), the Claimant made the representations set out in those paragraphs and CSI and CSLB entered into the ProIndicus Guarantee and Facility Agreement and the EMATUM Guarantee and Facility Agreement respectively in reasonable reliance on those representations.

284 On the Claimant's own case as pleaded in the APoC, each of the above representations was false. In the event that the Court finds that any or all of the above representations was false, CSI and CSLB will say that:

284.1 At the various times that they were made, each of the representations was known by the Claimant to be false or alternatively the Claimant was reckless as to whether they were true. In particular, CSI and CSLB will say that the knowledge and actions of Minister Chang, who was at all times material to this Counterclaim the Claimant's Finance Minister and was ultimately responsible for negotiating the ProIndicus Guarantee and Confirmations and EMATUM Guarantee for and on behalf of the Claimant, and of the National Director of Treasury (Ms Lucas), are to be attributed to the Claimant for this purpose and/or that the Claimant is vicariously liable for their actions in the course of their roles. Minister Chang knew that the representations above were false, or was reckless as to their falsity, and intended that CSI and CSLB rely on them. Ms Lucas was at least reckless as to the falsity of the representations, and intended that CSI and CSLB rely on them. Pending further information and disclosure, the best particulars CSI and CSLB can give of their knowledge and intention are that they are to be inferred from their positions, seniority and responsibilities, which included: for Minister Chang (i) managing the Claimant's relationship with the IMF and (ii) ultimate responsibility for and administration of the Claimant's Ministry of Finance and entry into loans and guarantees; and for Ms Lucas assisting Minister Chang in relation to those responsibilities as National Director of Treasury.

284.2 For the avoidance of doubt, CSI and CSLB reserve the right to allege that other Ministers and/or officials and/or agents and/or employees of the Claimant also knew that the representations were false and/or intended CSI and CSLB to rely on them.



- 284.3 The Claimant intended CSI and CSLB to rely upon the above representations when entering into the ProIndicus Guarantee and Confirmations and the EMATUM Guarantee, and CSI and CSLB duly did so.
- 285 Insofar as CSI and CSLB have suffered loss and damage by reason of any matters which are the subject of the representations set out above, CSI and CSLB are entitled to and claim damages accordingly. Without limitation, the heads of loss and damage suffered by CSI and CSLB include:
- 285.1 Any amounts which CSI and CSLB might be found liable (contrary to the terms of their Defence) to pay the Claimant.
- 285.2 The value of CSLB's Commitment if and insofar as (i) that is not repaid in due course by ProIndicus in accordance with the terms of the ProIndicus Facility Agreement and (ii) the ProIndicus Guarantee (or relevant part of it) is held not to be valid, binding, and enforceable (contrary to the terms of CSI and CSLB's Defence).
- 286 Further, CSI and CSLB are entitled to and claim interest pursuant to section 35A Senior Courts Act 1981 at such rate and for such period as the Court thinks fit.



AND CSI AND CSLB COUNTERCLAIM:

- 1) A declaration that the ProIndicus Guarantee and Confirmations are valid, binding and enforceable in their entirety.
- 2) Alternatively, a declaration that those parts of the ProIndicus Guarantee and Confirmations of which CSLB has the benefit and is entitled to enforce by virtue of its Commitment are valid, binding, and enforceable.
- 3) Damages as aforesaid.
- 4) Interest pursuant to section 35A Senior Courts Act 1981 at such rate and for such period as the Court thinks fit.
- 5) Such further or other relief as the Court thinks fit.

HELEN DAVIES QC

TONY SINCLA

DAVID HEATON

STATEMENT OF TRUTH

CSI and CSLB believe that the facts stated in this Defence and Counterclaim are true. I am duly authorised to sign this statement of truth on CSI's and CSLB's behalf.

Signed: *D. Bissek*

Name: *DAMIAN BISSEKER*

Position: *MANAGING DIRECTOR*

Date: *21st JANUARY 2020*

SERVED this *21st* day of *JANUARY 2020* by Linklaters LLP of
One Silk Street, London EC2Y 8HQ

SCHEDULE 1: PROVISIONS IN THE PROINDICUS GUARANTEE



The relevant terms in the ProIndicus Guarantee and the EMATUM Guarantee on which CSI and CSLB rely include the following:

The ProIndicus Guarantee

- 1 By ProIndicus Guarantee clause 2.4, the Claimant agreed that its obligations under the ProIndicus Guarantee will not be affected by any act, omission, matter or thing which, but for that provision, would reduce, release or prejudice any of its obligations under the ProIndicus Guarantee or prejudice or diminish those obligations in whole or in part, including (without limitation) (1) any incapacity or lack of powers, authority or legal personality of any person and (2) any unenforceability, illegality or invalidity of any obligation under the “*Finance Documents*” (defined to include the ProIndicus Guarantee), to the intent that the Claimant’s obligations under the ProIndicus Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no unenforceability, illegality or invalidity.

- 2 By ProIndicus Guarantee clause 5.1, which incorporated by reference (and with modifications) the provisions of clauses 17.3(a), 17.4 and 17.5 of the ProIndicus Facility Agreement, the Claimant expressly represented and warranted that:
 - (a) The obligations expressed to be assumed by it in the ProIndicus Guarantee are legal and valid obligations binding on it and enforceable in accordance with their terms;
 - (b) It had the power and authority to enter into the ProIndicus Guarantee and to perform its obligations thereunder;
 - (c) All action required to authorise the execution of the Guarantee and the performance of its obligations under the Guarantee had been duly taken;
 - (d) “*The execution of the Transaction Documents and the exercise of the rights and performance of the obligations of ... the [Claimant] under those Transaction Documents do not and will not breach any restriction on the borrowing, guaranteeing or similar powers of ... [the Claimant] or conflict with: (a) the constitution of Mozambique, ... (c) any applicable law or regulation*”.



3 By ProIndicus Guarantee clause 5.2, the Claimant expressly represented and warranted that:

- (a) The “*Treaty Obligations*” (as defined in clause 1.1, which included any obligation of the Claimant under any treaty, agreement or other arrangement with the IMF, African Development Bank or World Bank) did not contain any provision which, expressly or impliedly, limited the ability of any “*Obligor*” (as defined in clause 1.1 of the ProIndicus Facility Agreement to mean ProIndicus and the Claimant, which was incorporated by clause 1.2 of the ProIndicus Guarantee) to enter into, deliver or perform its obligations under the “*Finance Documents*” (as defined in clause 1.1 of the ProIndicus Facility Agreement to include the ProIndicus Guarantee, which was incorporated by clause 1.2 of the ProIndicus Guarantee) to which it was a party; and
- (b) No negative sanctions had been or could be applied against the Claimant under the “*Treaty Obligations*” or other similar arrangements as a result of any “*Obligor*” entering into, delivering or performing its obligations under the “*Finance Documents*” to which it was a party.

4 By ProIndicus Guarantee clause 5.3, the Claimant expressly represented and warranted that: “*To the extent required by law, provision has been made or will be made for all amounts due and payable, or that will fall due and payable to the Finance Parties under this Guarantee during the next fiscal year, in the current annual budget statements of [the Claimant] and those annual budget statements do not place any restriction upon the ability of the [Claimant] to meet its obligations hereunder*”.

5 By ProIndicus Guarantee clause 5.4, the Claimant expressly represented and warranted that the Claimant was in compliance in all respects with its obligations to the IMF and World Bank.

6 By ProIndicus Guarantee clause 5.5:

- (a) The Claimant made the representations and warranties set out in paragraphs 2–5 of this Schedule 1 on the date of the ProIndicus Guarantee and repeated them on the date of the “*Utilisation Request*” (as defined), the first day of each “*Interest*



Period” (as defined), and every three, six and nine months after the first day of each “*Interest Period*”; and

- (b) The Claimant acknowledged that the “*Finance Parties*” (as defined, which included CSI and CSLB) entered into the ProIndicus Facility Agreement and the ProIndicus Guarantee in reliance on the Claimant’s representations and warranties.
- 7 By ProIndicus Guarantee clause 6.4, the Claimant undertook to deliver to the Facility Agent within 60 days after its being made available by the IMF a copy of each letter of intent (attaching the memorandum of economic and financial policies and the technical memorandum of understanding) (defined as a “**Letter of Intent**”) or any other periodic documentary reporting requirement which replaced the requirement for such Letter of Intent under the terms of the financial support arrangements between the Claimant and the IMF.
- 8 By ProIndicus Guarantee clause 6.5, the Claimant undertook:
- (a) To ensure that its annual budget statements would not place any restriction upon the ability of any “*Obligor*” to meet its obligations under the “*Finance Documents*”; and
 - (b) Not to, and to procure ProIndicus not to, justify any failure to pay an amount when due under the “*Finance Documents*” by virtue of the corresponding allocation not having been included in the Claimant’s annual budget statements.
- 9 By ProIndicus Guarantee clause 6.6, which incorporated by reference (and with modifications) the provisions of clause 19.1 of the ProIndicus Facility Agreement, the Claimant expressly undertook:
- (a) To obtain, comply with and do all that is necessary to maintain in full force and effect all “*Authorisations*” (defined to include *inter alia* authorisations, consents and approvals) required in or by any law or regulation of Mozambique; and
 - (b) To do all other acts, conditions and things required to be done, fulfilled or performed,



to enable it lawfully to enter into and perform its obligations under the ProIndicus Guarantee and to ensure the legality, validity and enforceability of the ProIndicus Guarantee in Mozambique.

The EMATUM Guarantee

- 10 By EMATUM Guarantee clause 2.4, the Claimant agreed that its obligations under the EMATUM Guarantee will not be affected by any act, omission, matter or thing which, but for that provision, would reduce, release or prejudice any of its obligations under the EMATUM Guarantee or prejudice or diminish those obligations in whole or in part, including (without limitation) (1) any incapacity or lack of powers, authority or legal personality of any person and (2) any unenforceability, illegality or invalidity of any obligation under the “*Finance Documents*” (defined to include the EMATUM Guarantee), to the intent that the Claimant’s obligations under the EMATUM Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no unenforceability, illegality or invalidity.
- 11 By EMATUM Guarantee clause 5.1, which incorporated by reference (and with modifications) the provisions of clauses 17.3(a), 17.4 and 17.5(a) of the EMATUM Facility Agreement, the Claimant expressly represented and warranted that:
- (a) The obligations expressed to be assumed by it in the ProIndicus Guarantee are legal and valid obligations binding on it and enforceable in accordance with their terms;
 - (b) It had the power and authority to enter into the EMATUM Guarantee and to perform its obligations thereunder;
 - (c) All action required to authorise the execution of the EMATUM Guarantee and the performance of its obligations under the EMATUM Guarantee had been duly taken;
 - (d) “*The execution of the Finance Documents and the exercise of the rights and performance of the obligations of ... the [Claimant] under those Finance Documents do not and will not breach any restriction on the borrowing,*



guaranteeing or similar powers of ... [the Claimant] or conflict with: (a) the constitution of Mozambique, ... (c) any applicable law or regulation”.

- 12 By EMATUM Guarantee clause 5.2, the Claimant expressly represented and warranted that:
- (a) The “*Treaty Obligations*” (as defined in clause 1.1, which included any obligation of the Claimant under any treaty, agreement or other arrangement with the IMF, African Development Bank or World Bank) did not contain any provision which, expressly or impliedly, limited the ability of any “*Obligor*” (as defined in clause 1.1 of the EMATUM Facility Agreement to mean EMATUM and the Claimant, which was incorporated by clause 1.2 of the EMATUM Guarantee) to enter into, deliver or perform its obligations under the “*Finance Documents*” (as defined in clause 1.1 of the EMATUM Facility Agreement to include the EMATUM Guarantee, which was incorporated by clause 1.2 of the EMATUM Guarantee) to which it was a party; and
 - (b) No negative sanctions had been or could be applied against the Claimant under the “*Treaty Obligations*” or other similar arrangements as a result of any “*Obligor*” entering into, delivering or performing its obligations under the “*Finance Documents*” to which it was a party.
- 13 By EMATUM Guarantee clause 5.3, the Claimant expressly represented and warranted that: “*To the extent required by law, provision has been made or will be made for all amounts due and payable, or that will fall due and payable to the Finance Parties under this Guarantee during the next fiscal year, in the current annual budget statements of [the Claimant] and those annual budget statements do not place any restriction upon the ability of the [Claimant] to meet its obligations hereunder”.*
- 14 By EMATUM Guarantee clause 5.4, the Claimant expressly represented and warranted that the Claimant was in compliance in all respects with its obligations to the IMF and World Bank.
- 15 By EMATUM Guarantee clause 5.5:



- (a) The Claimant made the representations and warranties set out in paragraphs 11–14 of this Schedule 1 on the date of the EMATUM Guarantee and repeated them on the date of the “*Utilisation Request*” (as defined) and the first day of each “*Interest Period*” (as defined); and
- (b) The Claimant acknowledged that the “*Finance Parties*” (as defined, which included CSI and CSLB) entered into the EMATUM Facility Agreement and the EMATUM Guarantee in reliance on the Claimant’s representations and warranties.

16 By EMATUM Guarantee clause 6.2, the Claimant undertook:

- (a) To ensure that its annual budget statements would not place any restriction upon the ability of any “*Obligor*” to meet its obligations under the “*Finance Documents*”; and
- (b) Not to, and to procure EMATUM not to, justify any failure to pay an amount when due under the “*Finance Documents*” by virtue of the corresponding allocation not having been included in the Claimant’s annual budget statements.

17 By EMATUM Guarantee clause 6.3, which incorporated by reference (and with modifications) the provisions of clause 19.1 of the EMATUM Facility Agreement, the Claimant expressly undertook:

- (a) To obtain, comply with and do all that is necessary to maintain in full force and effect all “*Authorisations*” (defined to include *inter alia* authorisations, consents and approvals) required in or by any law or regulation of Mozambique; and
- (b) To do all other acts, conditions and things required to be done, fulfilled or performed,

to enable it lawfully to enter into and perform its obligations under the EMATUM Guarantee and to ensure the legality, validity and enforceability of the EMATUM Guarantee in Mozambique.