IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
BETWEEN:

Claim No. CL-2019-000127

THE REPUBLIC OF MOZAMBIQUE
(acting through its Attorney General)

Claimant

— and —

(1) CREDIT SUISSE INTERNATIONAL
(2) CREDIT SUISSE AG
(3) MR SURJAN SINGH
(4) MR ANDREW JAMES PEARSE
(5) MS DETELINA SUBEVA
(6) PRIVINVEST SHIPBUILDING S.A.L (Holding)
(7) ABU DHABI MAR INVESTMENTS LLC
(8) PRIVINVEST SHIPBUILDING INVESTMENTS LLC
(9) LOGISTICS INTERNATIONAL SAL (OFFSHORE)
(10) LOGISTICS INTERNATIONAL INVESTMENTS LLC
(11) CREDIT SUISSE SECURITIES (EUROPE) LIMITED
(12) MR ISKANDAR SAFA

Defendants

— and —

~~**(1) MR ISKANDAR SAFA**~~
(2) MANUEL CHANG
(3) ANTÓNIO CARLOS DO ROSÁRIO
(4) ARMANDO EMÍLIO GUEBUZA
(5) ARMANDO NDAMBI GUEBUZA
(6) TEÓFILO NHANGUMELE
(7) BRUNO LANGA
(8) GREGÓRIO LEÃO JOSÉ
(9) ISALTINA LUCAS
(10) PROINDICUS SA

Third Parties

(1) FILIPE JACINTO NYUSI

Fourth Party

DEFENCE OF THE SIXTH-TENTH AND TWELFTH DEFENDANTS

A. INTRODUCTION

A1. Preliminary matters

1. This is the Defence of the Sixth-Tenth and Twelfth Defendants to the Re-Amended Consolidated Particulars of Claim served on 27 October 2020 (the "**RACPOC**"), hereafter referred to as follows:

   1.1. The Sixth Defendant: "**PSAL**".

   1.2. The Seventh Defendant: "**ADM**".

   1.3. The Eighth Defendant: "**PISB**".

   1.4. The Ninth Defendant: "**Logistics Offshore**".

   1.5. The Tenth Defendant: "**Logistics International**".

   1.6. The Twelfth Defendant: "**Mr Safa**".

2. Collectively, they are referred to hereafter as the "**Privinvest Defendants**" or "**Privinvest**". Where it is necessary to distinguish Mr Safa from the other Privinvest Defendants, the latter are referred to as the "**Corporate Defendants**".

3. References to Paragraphs are to Paragraphs of the RACPOC, unless otherwise stated or obviously a reference to a Paragraph in this pleading.

4. Save as expressly admitted or denied below, each and every allegation made in the RACPOC is not admitted and the Claimant (the "**Republic**") is required to prove the same.

5. Certain definitions and abbreviations are adopted from the RACPOC and capitalised terms not otherwise defined herein have the meaning given to them in the RACPOC unless otherwise indicated, but no admissions are made thereby. Further:

   5.1. The projects which the Republic acquired by each of the Supply Contracts (i.e. the underlying goods, intellectual property and know-how, and services

supplied by Privinvest, and their use or intended use by the Republic and the SPVs) are referred to as the "**Projects**".

5.2. Each of the Proindicus Facility, EMATUM Facility and MAM Facility are referred to together as the "**Facilities**" or "**Facility Agreements**".

5.3. The Facilities and the Guarantees are together referred to as the "**Financing Transactions**".

5.4. The relevant Supply Contract, Facility and Guarantee for each SPV is referred to as the "**Proindicus Transaction**", "**EMATUM Transaction**" and "**MAM Transaction**" respectively. Privinvest refers to the "**Three Transactions**" in the same sense as the Republic uses at Paragraph 27.

6. Where an admission is made of any particular allegation, it is an admission of fact and not an admission of Privinvest's knowledge of that matter at the material times unless otherwise indicated.

7. Certain allegations in the RACPOC are tendentious and/or irrelevant to the Republic's causes of action, including the substantial recitation of the Republic's own history. Privinvest pleads back to them below, notwithstanding that they are inappropriate and should not form any part of the Republic's pleading.

8. Where reference is made to a Portuguese phrase or definition which may not have a direct analogue in English, the Privinvest Defendants quote the original Portuguese and then define the relevant term.

9. Where relevant persons held offices at the relevant time in the Republic which they no longer hold, they are referred to by their current titles (e.g. former President Guebuza, President Nyusi etc), save where the context requires that they be referred to by the titles they held at the time.

10. The Corporate Defendants' appeal against the Order of Waksman J dated 30 July 2020, rejecting their application for a stay under s.9 Arbitration Act 1996 in respect of the whole of the claims against them, is to be heard on 27-28 January 2021. Nothing in this Defence, nor the act of serving it, should be construed as a step in

the proceedings for the purposes of s.9(3) of the Act or otherwise a waiver of any of the Corporate Defendants' rights to have the claims set out herein arbitrated.

A2. Summary of Defence

11. By this action, the Republic seeks to recover from Privinvest moneys paid to Privinvest for the goods, services, IP and technology transferred and delivered to the SPVs pursuant to the obligations of the Corporate Defendants under the relevant Supply Contracts. The payments were financed using lending from and/or arranged by the First and Second Defendants (hereafter referred to, together with the Eleventh Defendant, as "**Credit Suisse**") and VTB Bank PLC ("**VTB**").

12. In 2011, the Republic was in possession of abundant and highly valuable natural resources (including natural gas deposits and tuna-rich waters). However, it could not effectively exploit them because it lacked the capability to secure its Exclusive Economic Zone (the "**EEZ**") from piracy and illegal fishing. As a result, in or around late 2011, the Republic's executive government decided that it wished to investigate, and in due course procure, a system for patrolling and protecting the EEZ. This became the Proindicus Project. The Proindicus Project was duly approved at the highest level in the Republic, including by then-President Armando Emílio Guebuza, current President (and then-Minister of Defence) Filipe Nyusi, Minister of Finance Manuel Chang, and the Director-General of the Republic's State Security and Intelligence Service (*Serviço de Informações e Segurança do Estado*, otherwise referred to as "**SISE**"), Gregório Leão José. The Proindicus Facility Agreement (and indeed the subsequent Facility Agreements) was also approved by the Central Bank of Mozambique.

13. Privinvest pitched for that Project, and was selected to supply it, using its very considerable expertise in naval shipbuilding and in coastal security and surveillance technology. Properly deployed, the goods and services supplied by Privinvest would have made Proindicus (and thereby the Republic) very substantial sums of money, and met a vital and pre-existing Mozambican public policy need.

14. In the course of the negotiations in 2012, it became apparent that the Republic would not be able to afford the cost of such a Project absent third-party financing. As a

result, Mr Boustani of Privinvest was asked for his assistance in obtaining financing for the Project for the Republic. The Republic was unwilling to take out financing on commercial terms as to term and interest, so Privinvest – together with Credit Suisse and the Republic – agreed a structure (of which Privinvest bore a substantial proportion of the upfront cost) by which the Republic could obtain its desired terms.

15. The Republic elected to proceed with the Proindicus Project. Subsequently, the Republic proposed further ideas to Privinvest which it wished to investigate, and these became the EMATUM and MAM Projects.

16. The Projects were not only approved at the highest level, but they were also widely-publicised at the Republic's initiative, including in the course of a state visit by President Guebuza to France, his visit to Abu Dhabi, and widely-reported parades in Mozambique.

17. The Republic's initial pleading rightly reflected that the Guarantees and the Supply Contracts are intertwined. By amendment, for tactical reasons connected with the s.9 Arbitration Act appeal referred to at Paragraph 10 above, it now seeks to present its case substantially as if the Guarantees are to be taken in isolation from the Supply Contracts. The result is that the Republic's case focuses on the alleged bribery of Mr Chang to sign the Guarantees, even though Mr Boustani had not even met Mr Chang at the time of Proindicus and EMATUM Transactions. Payments in respect of Mr Chang are included within the approximately US$137m alleged payments by Privinvest referred to in Schedule 2. The Guarantees and Supply Contracts, worth in the order of US$2 billion, cannot in fact be isolated in this way. Privinvest supplied (save where the Republic and the SPVs' own conduct made it impossible) all the goods and services that it was obligated to under the Supply Contracts, to the satisfaction of its customer. It continued to supply the assets specified under the Supply Contracts even after those Contracts had concluded, with the final delivery (of certain drones) taking place in the summer of 2020. Strikingly, the Republic does not in this action suggest Privinvest's provision under the Supply Contracts was deficient. Even the Kroll Report which it commissioned (and for which Kroll received instructions from the Attorney-General who brings these proceedings) valued the good and services supplied at approximately US$1.4 billion

(albeit an under-valuation not least as the valuation was based on a disputed methodology and failed to account for the intellectual property and technology transfer). Thus the Republic acquired:

17.1. Under the Proindicus Project, a turnkey suite of patrol, interceptor and strike vessels, manned and un-manned radar stations, patrol aircraft and a command centre with full satellite surveillance, which collectively would have enabled it to secure the EEZ (and in turn prevent piracy, illegal fishing and unauthorised maritime traffic).

17.2. Under the EMATUM Project, a set of fishing vessels, surveillance and off-shore patrol vessels, and equipment for a land operations centre.

17.3. Under the MAM Project, the development of two sites to act as operational as well as service and maintenance bases (for but not limited to the vessels supplied to Proindicus and EMATUM), one of which was capable of ship building, a Naval training school, and a mobile maintenance vessel called "*African Storm*", which was equipped to operate as a floating base for the other vessels supplied, so that it could operate substantial distances offshore. The MAM Project also included comprehensive intellectual property rights and a technology transfer, to enable the Republic to develop its own shipbuilding, ship repair and maintenance industries, as well as to offer logistical support to the growing offshore gas industry.

18. At the same time as the implementation of the Projects, Privinvest also developed a broader investment strategy in Mozambique, which was in turn part of a commercial strategy for investing more widely in Africa. This was consistent with the manner in which it had operated in the past in the UAE, and was also strongly encouraged by a number of Mozambican Officials with whom Privinvest interacted. As a result, once it had established an in-person presence in Mozambique and commenced work on the Projects, Privinvest made various investments in or on account of a wide range of current or potential business ventures, at a time when Mozambique was increasingly attractive to foreign investment. It invested in (and explored investments in), *inter alia*, real estate, a new maritime agency, a diamond mine, a

TV station, a bank and a prepaid mobile phone card business. In addition, it made political campaign donations both to FRELIMO, the Republic's ruling party for over 40 years since independence, and President Nyusi. All of that activity was represented by the Republic's senior officers to Privinvest, and/or was believed by Privinvest, to be lawful under the law of Mozambique. None of this was a *quid pro quo* for the Projects, and no claim in bribery lies from it. The Republic now seeks to recharacterise these initiatives as unlawful or improper, in order to avoid its liabilities and shift them onto Privinvest or the financial institutions involved, whilst retaining the substantial benefit of the Projects.

19. In January 2015, President Nyusi replaced former President Guebuza on the expiry of the latter's second term. A power struggle ensued between them, in particular over control of FRELIMO. As a result, and apparently in order to discredit former-President Guebuza and serve President Nyusi's own political and business objectives, the Republic and the SPVs jettisoned the Projects. They refused to enable Privinvest to complete its work, continued to breach the Supply Contracts, and failed to take the necessary steps to monetise the Projects as intended.

20. In 2016, the Republic (under the Nyusi administration) stopped servicing its debts. In order to justify its failure to monetise the Projects and its defaults, it alleged publicly that the Facilities and Guarantees were secret, and subsequently also alleged that Privinvest had paid bribes to secure the Projects. None of that is true – it is a cynical attempt by the Republic to clawback the money it spent on the Projects, avoid its liability under the Guarantees and avoid its own failure to properly make use of the assets and services provided. The inconsistent foundation of these claims is reinforced by the fact that President Nyusi, currently the head of FRELIMO and the Republic's executive government, was himself at the very centre of the matters now complained of by the Republic – he requested political campaign contributions from Privinvest, met directly with Mr Boustani in relation to those contributions and the Projects more generally, and was directly involved in the conception of the Projects in his then-role as Minister of Defence.

21. The Republic admits that the case it now pleads in England and Wales is based significantly on the US Department of Justice indictment (the "**DOJ Indictment**"),

which led to Mr Boustani being tried in the US District Court for the Eastern District of New York between October and December 2019 (the "**EDNY Trial**"). The Republic relies upon a factual account, and a series of allegations against Privinvest, based not on the knowledge of its own officers and agents, but on the case run by the DOJ against Mr Boustani in New York. That case failed there. Mr Boustani was unanimously acquitted on all counts after a six-week trial involving over 30 expert and fact witnesses, including a count of money laundering on which the trial judge had instructed the jury that "*…the bribery of a public official, in violation of the laws of…Mozambique*" was a specified unlawful activity for the purposes of that charge.

22. As a matter of law, the above gives rise (in summary) to the following defences:

22.1. The Republic's claims are governed by Mozambican, not English, law.

22.2. The payments allegedly made by Privinvest to or for the benefit of various Mozambican Officials were not bribes. They were variously: (i) not made at all, contrary to Schedule 2 to the RACPOC ("**Schedule 2**"); (ii) investments in legitimate businesses; or (iii) campaign contributions. They were all lawful under Mozambican law, and thus no bribery or dishonest assistance can arise.

22.3. The payments made by Privinvest to Mr Langa and Mr Nhangumele (the "**Consultants**") were legitimate payments pursuant to a written Consultancy Agreement. In relation to Mr Ndambi Guebuza, payments made were investments in businesses. Again, the payments to all three were all lawful. In addition, the Republic's case as to how these individuals could have been bribed, when they were not officers of the Republic and owed it no duties, is legally and factually groundless.

22.4. The making of these payments was known about by senior officials within the Republic at the time, including by former President Guebuza and President Nyusi (neither of whom the Republic alleges received any bribes). Their knowledge (as well as that of other Mozambican Officials, in particular Mr Chang, Mr Leão and Mr do Rosário) falls to be attributed to the Republic and as a result, no claims in bribery could arise whether under Mozambican or English law.

22.5. The Republic's claim in conspiracy fails because no such cause of action is recognised in Mozambican law, and (if English law governs, contrary to Privinvest's case) there were no unlawful means used, no combination and no intention to injure. The Republic fails to give any adequate particulars of the nature of the conspiracy (or common design to pay bribes), including when it was formed, by whom it was formed and when various participants joined. It claims that this is because its knowledge of those matters is limited, but this is false. If there was any such conspiracy, President Nyusi (the former Minister of Defence, and current head of both FRELIMO and the Republic's executive government) was fully aware of, and/or participated, in it, and indeed was at the heart of the matters now complained of by the Republic. He received funds from Privinvest, requested campaign contributions from Mr Boustani, met directly with Mr Boustani in relation to the funds he received and the Projects more generally, and was directly involved in the conception of the Projects in his then-role as Minister of Defence. The particulars which the Republic ought to give, if there are any, are within the knowledge of its own President. The Republic's case, suing on unlawful conduct by some of its officers whilst attempting to minimise the role of indistinguishable conduct by its President, reveals the unsound foundations of its case.

22.6. The Republic's claims are an abuse of process, *inter alia* because President Nyusi himself received and/or benefitted from payments made by Privinvest, with the consequence that it is dishonest and/or misleading to now present them as bribes unless the Republic is to suggest that the payments to President Nyusi were also bribes.

22.7. The Republic's claims are, as a matter of Mozambican law, time-barred.

22.8. It was expressly and/or impliedly represented to Privinvest by the Mozambican Officials, former President Guebuza and President Nyusi, that it was lawful and proper both for Privinvest to engage in such business ventures, and to make campaign contributions to President Nyusi, Mr Chang and FRELIMO. Privinvest relied, as it was entitled to, on those representations. In so far as the payments were not in fact lawful, then those representations were false, and

made fraudulently. That conduct is attributable to the Republic, such that Privinvest has equal and opposite claims in deceit. The Republic's claims, if otherwise good, which they are not, would fail for circuity of action.

22.9. Any payments made by Privinvest did not cause the Republic's entry into the Supply Contracts, Facilities or Guarantees. On the contrary, the Republic entered into those agreements pursuant to a national and widely-publicised policy strategy decided by its most senior officers, in the Republic's interests, before Privinvest had any contact with them. It has thus suffered no recoverable loss.

22.10. In any event, the Republic has suffered no recoverable loss because:

22.10.1. That loss would, even if recoverable, arise from its own conduct in deliberately causing the Projects not to succeed, *inter alia* by reason of President Nyusi's decision to jettison them. The Republic cannot recover any losses caused by its change in policy towards the Projects under President Nyusi's government.

22.10.2. It must give credit for the value to it of the Projects. The Republic's loss will therefore be reduced accordingly. Privinvest's case will be that, in circumstances where that value was equal to or greater than the contract price of the Supply Contracts, that loss will be reduced to zero.

A3. Parties

A3(i) The Republic

23. Paragraph 1 is admitted.

24. The header to the RACPOC describes the Republic as "*acting through its Attorney General*". The Republic has averred in Responses 1 and 2 of its Response to Privinvest's Request for Further Information dated 8 October 2020 (the "**First Privinvest RFI Response**") that the Attorney General, Ms Beatriz Buchili, took the decision to bring these proceedings in February 2019, in exercise of her authority under Article 235 of the Constitution and/or Articles 4 and 14 of Law no.4/2017 of

18 January. The Republic's solicitors have previously confirmed that they take instructions in these proceedings from and through the *Procuradoria-Geral da República* (the "**PGR**"), Ms Buchili's office.

25. No admissions are made as to Ms Buchili's authority to bring these proceedings. Further, it is averred that Ms Buchili must have brought these proceedings with the approval, whether *de facto* or *de jure*, of the executive organs of the Republic's government, and in particular, the Republic's current President, Mr Filipe Nyusi.

26. Where necessary, the Privinvest Defendants refer to the physical territory of the Republic as "**Mozambique**", to distinguish it from the juridical entity bringing these proceedings.

A3(ii) Credit Suisse and the CS Deal Team Defendants

27. No admissions are made as to Paragraphs 2, 3 and 3A, which are outside the knowledge of the Privinvest Defendants.

28. Paragraph 4 is noted.

29. As to Paragraphs 5-7 in general:

29.1. No admissions are made as to the specific titles, employing entities and functions of each of the CS Deal Team Defendants, which are outside the knowledge of the Privinvest Defendants.

29.2. It is admitted that in each case, at some time prior to the events described below, the CS Deal Team Defendants were employees of Credit Suisse. Privinvest does not know which specific entity they were employed by. Privinvest's knowledge of the dates on which Mr Andrew Pearse and Ms Detelina Subeva resigned from Credit Suisse are addressed below.

29.3. In each case, the relevant descriptions of the CS Deal Team Defendants' employment are deficient in failing to state the periods in which the CS Deal Team Defendants were employees and/or agents of Credit Suisse. As identified more fully below:

29.3.1. Mr Pearse had informed Privinvest that he had resigned from Credit Suisse prior to the Proindicus Transaction, and that he was free to begin pursuing his own private projects. Privinvest therefore understood that he had no subsisting duties to Credit Suisse; and

29.3.2. Ms Subeva was no longer employed by, and owed no duties to, Credit Suisse by the time of the EMATUM and MAM Transactions.

29.4. It is denied that any of the CS Deal Team Defendants was an agent of Credit Suisse. None of them had the power to bind Credit Suisse to agreements in general, nor did they owe fiduciary duties to Credit Suisse.

30. Privinvest was not and is not aware of any of the specific matters pleaded in Paragraph 5, save that it was aware in general terms that Mr Surjan Singh had succeeded Mr Pearse within Credit Suisse.

31. As to Paragraph 6 specifically:

31.1. The date on which Mr Pearse in fact resigned from Credit Suisse is outside the knowledge of the Privinvest Defendants. According to Mr Pearse's own evidence at the EDNY Trial, he had resigned from Credit Suisse in December 2012.

31.2. Mr Pearse told Privinvest, in early 2013, that he had already resigned from his employment with Credit Suisse (and thereby any and all roles at Credit Suisse) in or around December 2012 or January 2013. Mr Pearse had further represented to Privinvest that he was free to participate in Palomar as he did. Further, the same was impliedly represented by Mr Pearse's proposal for Palomar given to Mr Boustani and Mr Safa, on the basis that he would manage Palomar. Privinvest was entitled to rely, and did rely, on those representations by Mr Pearse, who it understood to be a former banking lawyer at a major international law firm, an FCA-approved person (then in good standing) and a senior banker at a well-recognised investment bank.

31.3. It was mutually intended and agreed from the time that Palomar Holdings Limited ("**PHL**") was acquired as described at Paragraph 59 below that

Mr Pearse would hold a one third interest therein. At the outset one third of the shares in PHL were held by Mr Christopher Langford, then a solicitor acting for Privinvest Holding SAL ("**Privinvest Holding**"), as nominee for Mr Pearse. On 17 September 2013, Mr Pearse became a registered shareholder in PHL, and he became a director of various entities related to PHL as described more fully at Paragraph 65 below. Mr Pearse also joined the board of PHL on 6 August 2013.

31.4. In the premises:

31.4.1. Mr Pearse was no longer an agent or employee of Credit Suisse, nor did he owe Credit Suisse any duties, by the time of the MAM Transaction;

31.4.2. Privinvest does not know, and makes no admissions, as to what duties Mr Pearse owed to Credit Suisse at the time of the EMATUM Transaction. Privinvest understood, and was entitled to understand, that Mr Pearse's work with Palomar on the EMATUM Transaction was not prohibited by any subsisting duties he had to Credit Suisse.

32. As to Paragraph 7:

32.1. Based on Paragraph 26.1 of Credit Suisse's Consolidated Defence & Counterclaim (the "**CS Defence**"), Privinvest presently believes that Ms Subeva resigned from Credit Suisse on or about 22 July 2013.

32.2. As part of the discussions with Privinvest about the acquisition of PHL, Mr Pearse recommended that Ms Subeva be hired, as an experienced financial analyst, by Palomar. Her primary role was to assist in structuring various projects for Palomar, including (but not limited to) managing Palomar's mandate in respect of the Proindicus transaction, as addressed below at Paragraph 199.2 .

32.3. Ms Subeva informed Mr Najib Allam and Mr David Langford on 25 July 2013 that she was no longer employed by Credit Suisse, and that she was thereafter subject to certain restrictive covenants which would come to an end on 21 August 2013. Thereafter she was free to be employed by PHL.

32.4. Thereafter, Ms Subeva became an employee of Logistics Offshore, Abu Dhabi Branch on 21 August 2013. It was initially intended that Ms Subeva would be an employee of Palomar Consulting LLC ("**PCL**") for tax reasons (in particular, to take advantage of favourable tax rates in the UAE), but this would have required regulatory approval for PCL to employ her. Instead, she was seconded thereafter by Logistics Offshore, Abu Dhabi Branch to PCL.

32.5. In the premises, Ms Subeva was no longer an agent or employee of Credit Suisse, nor did she owe Credit Suisse any duties, by the time of the EMATUM and MAM Transactions.

33. Paragraph 8 is noted.

34. As to the first sentence of Paragraph 9:

34.1. It is admitted that each of the CS Deal Team Defendants was involved in the Proindicus Transaction whilst working at Credit Suisse.

34.2. Privinvest did not and does not know how Credit Suisse structures its operations, and therefore precisely what role each of the CS Deal Team Defendants played in each transaction.

34.3. In relation to the EMATUM Transaction:

34.3.1. Mr Pearse had resigned from Credit Suisse prior to the EMATUM Transaction. Privinvest understood that he was not working on the EMATUM Transaction on behalf of Credit Suisse.

34.3.2. Ms Subeva's employment with Credit Suisse came to an end shortly before the EMATUM Transaction concluded. To the best of Privinvest's knowledge, Ms Subeva was not involved in the EMATUM Transaction on behalf of Credit Suisse.

34.4. In relation to the MAM Transaction, both Mr Pearse and Ms Subeva's employment with Credit Suisse had come to an end, and they had no subsisting duties to it at all. For the avoidance of doubt, Credit Suisse did not participate

in the MAM Transaction, and so none of the CS Deal Team Defendants could have played any role in it on Credit Suisse's behalf.

34.5. According to Mr Singh's testimony in the EDNY Trial, his role at Credit Suisse in the EMATUM Transaction was limited to reviewing the documents and certain discussions with other Credit Suisse employees, as well as co-signing the EMATUM Facility Agreement and a Commitment Letter between EMATUM and Credit Suisse on or around 2 September 2013 (in both cases jointly with Madthav Patki). To the best of Privinvest's knowledge, other Credit Suisse employees involved in the EMATUM Transaction included Galina Barakova, Dirk Hentschel and Edward Kelly.

34.6. None of the CS Deal Team Defendants had the capacity to bind Credit Suisse to any agreement and/or the agreements comprising the three transactions. On the contrary, and as pleaded more fully at Paragraph 193.2 below, Credit Suisse entered into the Facility Agreements and Guarantees following full due diligence, and acting with the approval of relevant senior management and committees within the Bank responsible for approving such transactions.

35. The second and third sentences of Paragraph 9 are not particulars of any claim against the Privinvest Defendants made by the Republic, and they do not plead to them.

A3(iii) Other relevant Credit Suisse personnel

36. As described more fully at Paragraphs 154-155 below, it was indicated to Mr Boustani that the Republic would require assistance in arranging financing for the Projects. Therefore, Mr Boustani approached Mr Said Freiha of Credit Suisse's Abu Dhabi offices, who had previously contacted ADM about it becoming a potential client of Credit Suisse. Thereafter, Mr Freiha introduced Privinvest, and thereby the Republic, to Credit Suisse for the purposes of the Projects.

37. On or around 16 January 2013, Mr Safa met with Mr Freiha and Mr Adel Afiouni. Mr Safa was informed by them that this meeting was part of Credit Suisse's process for approval of the Financing Transactions. At this meeting, Mr Safa was told that

the Bank had decided to proceed with the Financing Transactions, and would be ready to fund them by February or March 2013.

38. Mr Afiouni and Mr Freiha were and remained involved in the negotiation of Credit Suisse's financing of the Proindicus and EMATUM Transactions, including Credit Suisse's decision-making processes in relation thereto.

39. The first sentence of Paragraph 9A is therefore admitted in so far as is consistent with the foregoing, but otherwise not admitted.

40. The second and third sentences of Paragraph 9A, and all of Paragraphs 9B and 9C, are not particulars of claim against the Privinvest Defendants and they do not plead to them. However, it is admitted and averred that:

    40.1. Credit Suisse's entry into the Financing Transactions was approved by internal committees at Credit Suisse, including the relevant Credit Committee;

    40.2. Credit Suisse has refused to provide particulars of those approvals.

41. The general allegation in Paragraph 9D that any Credit Suisse employee or agent received a bribe or secret commission from Privinvest is denied. As to the remainder of Paragraph 9D:

    41.1. The first sentence of Paragraph 9D.1.1 is denied, save that it is admitted that Mr Pearse gave such evidence. Mr Freiha introduced Privinvest to Credit Suisse. Mr Afiouni was part of the team dealing with Privinvest and the Republic at Credit Suisse.

    41.2. The second sentence of Paragraph 9D.1.1 is outside Privinvest's knowledge and is not admitted.

    41.3. Paragraph 9D.1.2 is admitted and averred.

    41.4. As to Paragraph 9D.1.3:

        41.4.1. It is admitted that Mr Pearse did give this evidence in the course of Mr Boustani's trial. It is denied that Mr Singh did so.

41.4.2. That evidence was false. Mr Boustani never told Mr Pearse that Mr Afiouni was involved in any business with Privinvest.

41.4.3. The underlying allegation is false. Privinvest does not own and has not owned any company in which Mr Afiouni was a partner, silent or otherwise, nor does it have any interests in any entity in which, to its knowledge, Mr Afiouni also has an interest.

41.4.4. Accordingly, the allegations contained in Schedules 2A and 2B concerning payments to Mr Afiouni are also denied.

41.5. As to the first sentence of Paragraph 9D.1.4, around this time, Mr Afiouni introduced Mr Safa to another banker at Credit Suisse to discuss potential financing opportunities in which both parties might be interested. No admissions are made as to the identity of the additional party to that meeting.

41.6. No admissions are made as to the second sentence of Paragraph 9D.1.4.

41.7. The third sentence is admitted. To the best of Mr Safa's recollection, the discussions focussed on cargo ship financing.

41.8. The fourth sentence is denied. To the best of Mr Safa's recollection, the suggestion that "*Credit Suisse could procure upsizes of the Proindicus Facility*" was not mentioned at this meeting.

41.9. As to Paragraph 9D.2, Paragraphs 41.4.1-41.4.4 above are repeated *mutatis mutandis*. Privinvest does not own and has not owned any company in which Mr Freiha was a partner, silent or otherwise, nor does it have any interests in any entity in which, to its knowledge, Mr Freiha also has an interest.

41.10. No admissions are made to the specific allegations in Paragraph 9D.3.1-3. It is understood from the CS Defence that Mr Schultens was involved in Credit Suisse's participation in the Proindicus Transaction, although Mr Boustani first became aware of his role only after the Proindicus Transaction had been concluded.

41.11. Paragraph 9D.3.4 is noted. Mr Schultens was, at the behest of Mr Pearse, employed by PCL between May 2014 and 9 November 2018, and received ordinary remuneration and bonus payments for his role during that period. It is denied, if alleged, that any such payment constituted a bribe and/or secret commission.

42. Paragraph 9E is admitted and averred.

A3(iv) The Privinvest Defendants and relevant individuals

43. Whilst there is a group of companies which share the trading name "*Privinvest*", those companies do not all share the same single holding structure or management. The relevant corporate entities for the purposes of these proceedings are the Sixth to Tenth Defendants only.

44. As to the first sentence of Paragraph 10:

44.1. The first sentence is denied in so far as it describes the existence of the "*Privinvest Group*", which is inexact. Paragraph 43 above is repeated.

44.2. It is admitted that the summary of the contents of the relevant website is accurate. Further, so far as the Privinvest Defendants are concerned, that description is broadly accurate.

44.3. Save as aforesaid, no admissions are made.

45. As to the second-sixth sentences of Paragraph 10:

45.1. The Sixth Defendant, PSAL, is a Lebanese-incorporated entity, registered with the Commercial Register in Beirut on 28 September 2010.

45.2. The Seventh Defendant, ADM, is a UAE-incorporated company, established by a Memorandum of Association dated 26 June 2008.

45.3. The Eighth Defendant, PISB, is a UAE limited liability company, established on 13 February 2014 upon the conversion of the Abu Dhabi branch of PSAL into PISB.

45.4. The Ninth Defendant, Logistics Offshore, is a Lebanese-incorporated entity, established on 30 May 2000.

45.5. The Tenth Defendant, Logistics International, is a UAE limited liability company, established on 13 February 2014 upon the conversion of the Abu Dhabi branch of Logistics Offshore into Logistics International.

45.6. Save as aforesaid, no admissions are made.

46. As to Paragraph 10A, the Privinvest Defendants do not understand what is meant by the "*Privinvest Group*", and cannot meaningfully respond to this allegation in consequence. For the avoidance of doubt, this Defence responds only to allegations made against, and responds only on behalf of, the Privinvest Defendants, and not any other company affiliated to or connected with them.

47. As to Paragraph 11:

47.1. The term "*primary*" beneficial owner is not understood. At all material times, the ultimate beneficial interests in the Privinvest Defendants were held by Mr Safa, and his brother Akram Safa, with *de minimis* shareholdings held by others in order to comply with the Lebanese law requirements concerning corporate ownership.

47.2. Mr Safa was at the material times the CEO of Privinvest Holding. He was also a director of PSAL and Logistics Offshore, but not any of the other Corporate Defendants.

47.3. All the Corporate Defendants had at the material times their own, differently constituted, boards of directors.

47.4. The Chairman and CEO of PSAL, ADM, PISB and Logistics International was at the material times Mr Boulos Hankach. Mr Hankach had day-to-day control of the Corporate Defendants, and was the most senior officer and employee thereof, prior to his death in 2018.

47.5. It is denied that Mr Safa acted at all material times as the "*Chief Executive Officer*" of the "*Privinvest Group*". As pleaded above, the term "*Privinvest*

Group" is inexact. Although he is occasionally described as such, his executive role in the Corporate Defendants at the material times is as described in Paragraph 47.2 above.

47.6. The term "*controller*" is not understood. Each of the Corporate Defendants has a separate board, and operates in accordance with the relevant corporate laws applicable to the Corporate Defendants in their places of incorporation. Mr Safa was involved in strategic decisions of the Corporate Defendants, but did not manage them on a day-to-day basis.

48. As to Paragraph 11A, Paragraph 47.1 is repeated *mutatis mutandis.* It is further admitted that Akram Safa was at all material times a director of PSAL.

49. As to Paragraph 12:

49.1. Mr Allam was employed by Logistics International as Finance Manager.

49.2. Save as aforesaid, Paragraph 12 is denied.

50. As to Paragraph 13:

50.1. Mr Boustani first met Mr Safa socially in 2004, and remained intermittently in contact with him thereafter.

50.2. Mr Boustani previously worked for Deloitte Touche Tohmatsu Limited.

50.3. In that role, and subsequently, he had developed contacts and business experience in Africa.

50.4. At some point in 2010 or early 2011, Mr Boustani began working for PSAL.

50.5. Mr Boustani thereafter acted as the principal salesman, negotiator and contact for Privinvest's initiatives in Mozambique.

50.6. Save as aforesaid, no admissions are made as to the first sentence of Paragraph 13.

50.7. The second sentence of Paragraph 13 is admitted. He held no formal role in any other Privinvest Defendant.

51. As to Paragraph 13A in general:

51.1. The allegation that Mr Boustani and/or Mr Allam acted under the direction and/or supervision of Mr Safa in their participation in all events described in the RACPOC is deficient for failing to state which events are referred to, and how Mr Safa is alleged to have directed them.

51.2. Mr Boustani and Mr Allam had distinct operational roles in Privinvest, which they were trusted to perform without continuous oversight from Mr Safa.

51.3. Mr Safa at no time had a day-to-day supervisory role over Mr Boustani and/or Mr Allam. On the contrary, Mr Safa largely left operational matters in connection with the Projects to Mr Hankach (the CEO of, *inter alia*, PSAL and ADM) and Mr Boustani, as described at Paragraphs 47.4-47.6 above.

51.4. Mr Safa was involved in strategic decisions within Privinvest. So far as is material to the claims in this action, Mr Safa was aware of and involved in: (i) the decision to pitch for the Projects; (ii) their development and contract price; and (iii) the overall strategy for investing in Mozambique.

51.5. Mr Safa did not have oversight of which specific payment would be made in respect of which investment.

51.6. Save as aforesaid, no admissions are made.

52. As to Paragraphs 13A.1 to 13A.4:

52.1. In each case, the inference drawn by the Republic is denied. Paragraph 51 above is repeated.

52.2. Paragraph 13.A.1 is admitted in so far as is consistent with Paragraph 47 above, but is otherwise denied.

52.3. As to Paragraph 13.A.2, Mr Safa's involvement in the events described in the relevant paragraphs is addressed below in response to those paragraphs.

52.4. Paragraph 13.A.3 is admitted, in so far as Mr Pearse did give that evidence at trial. It is denied that the evidence was accurate. It is denied that Mr Singh gave such evidence.

52.5. As to Paragraph 13.A.4, it is admitted that Mr Boustani gave certain evidence concerning Mr Safa having authorised that certain payments should be made. It is denied that this paragraph is a fair or complete characterisation of Mr Boustani's evidence. It is further denied that this was the complete position, which is as described above at Paragraph 51.

52.6. As to the second paragraph erroneously labelled Paragraph 13A.4, the contents of the email are admitted. It is denied that Mr Boustani was speaking literally or that any inference can sensibly be drawn therefrom.

53. Paragraph 13B is denied in its entirety. None of the unlawful conduct pleaded therein occurred.

54. As to Paragraph 14:

54.1. This paragraph is deficient in failing to particularise: (i) the law which governs the question of attribution to each of the Corporate Defendants; (ii) the basis on which, for each of Mr Safa, Mr Boustani and Mr Allam, their knowledge allegedly falls to be attributed to each Corporate Defendant.

54.2. The Republic has clarified, by Response 5 of the First Privinvest RFI Response, that it advances no case based on foreign law in respect of this paragraph.

54.3. Whether knowledge falls to be attributed to any of the Corporate Defendants as a matter of company law is governed by the law of the place of their incorporation, and not English law.

54.4. Whether knowledge falls to be attributed to any of the Corporate Defendants as a matter of the law of agency is governed by the law governing the agreement

between principal and agent. If any such agreement exists, it is governed by the law of the place in which the alleged principal is incorporated.

54.5. Each of the Corporate Defendants is a company incorporated and/or domiciled in Lebanon (in the case of PSAL and Logistics Offshore) or the UAE (in the case of ADM, PISB and Logistics International). Accordingly, the governing law of the question of attribution of knowledge to the Corporate Defendants is either Lebanese or UAE law.

54.6. The Republic's case is therefore defective in failing to plead the basis for attribution according to the relevant governing law. Pending proper particulars of the Republic's case in this regard, the Privinvest Defendants are unable to respond further to it.

A3(v) Palomar

55. Palomar Capital Advisors AG ("**Palomar Capital**") was a Swiss-incorporated company, initially owned by Mr Markus Kroll, a Swiss lawyer and friend of Mr Pearse.

56. In January 2013, whilst in Maputo, Mr Pearse informed Mr Boustani that he had resigned from Credit Suisse, and was looking for new business opportunities. According to Mr Pearse's evidence in the EDNY Trial, the reason that he proposed to reduce the fee (which was described contemporaneously both as a "*subvention fee*" and as a "*contractor fee*") which it was contemplated Privinvest would pay to Credit Suisse as part of the Proindicus Transaction was in order to ingratiate himself with Mr Boustani and Mr Safa, with a view to doing business with them.

57. Thereafter, Mr Boustani, Mr Pearse and Mr Safa began discussions about the possibility of Mr Pearse creating a joint venture with Privinvest. The purpose of this joint venture was to be a general financial investment and advisory firm, including: (i) providing advisory services in relation to financing of projects to be delivered by Privinvest; and (ii) making investments. The idea was devised by Mr Pearse, and it was presented to Mr Safa and Mr Boustani on the basis that he would hire the relevant personnel and manage it.

58. For this purpose, Mr Pearse proposed that an existing asset management firm should be purchased to take advantage of an existing trading history, infrastructure and relevant authorisations. On or around 12-13 May 2013, and at Mr Pearse's recommendation, Mr Pearse and Mr Safa agreed to acquire Palomar Capital from Mr Kroll. Mr Boustani was involved in discussions about the acquisition, but did not have any share in Palomar.

59. The ownership structure of Palomar Capital at the material times was as follows:

59.1. On 21 May 2013, a BVI-incorporated company called Sunflight Holdings Limited acquired the entire issued share capital of Palomar Capital for CHF 250,000. Sunflight Holdings Limited subsequently changed its name on 24 June 2013 to PHL.

59.2. 100% of PHL's shares were held at the time it acquired Palomar Capital by Christopher Langford.

59.3. On 17 September 2013, Mr Christopher Langford transferred registered title to one third of the shares in PHL to Mr Pearse, and the remaining two thirds to Privinvest Holding.

59.4. On 11 September 2013, PCL was incorporated in the UAE. 100% of PCL's issued share capital was owned by PHL, although 51% of those shares were held by a nominee as required by UAE law.

59.5. On 24 October 2013, PHL and PCL entered into a Share Purchase Agreement, pursuant to which 100% of the shares in Palomar Capital were transferred to PCL for consideration of CHF 550,000. The purpose of this transfer was to avoid further profits being subject to the Swiss withholding tax regime.

59.6. On 31 December 2014, PISB acquired all of Privinvest Holding's shares in PHL.

59.7. Thus, at all material times, Palomar Capital, PHL and PCL represented a joint venture between Privinvest Holding (prior to 31 December 2014) and PISB (after 31 December 2014) on the one hand, and Mr Pearse on the other.

60. A separate holding structure was in place for Palomar Energy Holdings Limited ("**PEHL**") and the Palomar Natural Resources entities ("**PNR**"). Mr Pearse managed that holding structure on a day-to-day basis and, as such, Privinvest is not able to confirm the precise details of that structure for itself. The best particulars it can give of the shareholdings, pending evidence and disclosure, are as follows:

    60.1. PI Dev SAL (Holding), a Lebanese company beneficially owned by Mr Safa and Akram Safa ("**PI Dev**"), owned 66.67% of the shares in PEHL, and Mr Pearse owned the remaining 33.33%.

    60.2. PEHL in turn owned 89% of Palomar Natural Resources (BVI) Ltd. The balance of the shares in that company (11%) were owned by Mr John Buggenhagen (its CEO).

    60.3. Palomar Natural Resources (BVI) Ltd was ultimately the 100% owner of Palomar Natural Resources (Netherlands) B.V. ("**PNR BV**").

    60.4. PNR BV held a 65% stake in the Polish oil and gas concessions. The remaining 35% stake was initially acquired by PNR BV in November 2016, but without the knowledge of PI Dev, Mr Safa or any other Privinvest Defendant. Mr Pearse subsequently told PI Dev in November 2017 (when PI Dev became aware of the acquisition) that it had been acquired using funds contributed by him, Ms Subeva and Mr Schultens. PI Dev insisted that the acquisition (which required the payment of deferred consideration by PNR BV) be reversed, and Mr Pearse therefore caused those shares to be held by NSP Investments Holdings (an investment vehicle understood to be wholly owned by Mr Pearse).

61. The first sentence of Paragraph 15 is admitted.

62. As to the second sentence of Paragraph 15:

    62.1. The term "*group of entities*" is deficient in its lack of particularity, and in particular in failing to state what legal relationship is alleged thereby.

    62.2. Subject to that caveat, the second sentence is admitted in so far as is consistent with the foregoing, but is otherwise denied. In particular, PNR and PEHL had

no connection to the other entities identified, save that they were under common ultimate beneficial ownership.

62.3. Hereafter, the term "**Palomar**" is used in this Defence to denote PHL and its subsidiaries which are the entities which are relevant to the facts of these proceedings.

63. The relevance of the third sentence of Paragraph 15 is not understood. The affiliation of the entities referred to therein is as described in Paragraphs 59-60 above. No admissions are made as to the Republic's current state of knowledge of Palomar's ownership or control. It is denied, in so far as it is alleged, that the Republic was not aware at the material times of the connections between Palomar and Privinvest, for the reasons pleaded at Paragraph 72 below.

64. The fourth sentence is noted. The meaning of the term "**Palomar**" in this Defence is as explained in Paragraph 62.3 above.

65. The directors of the Palomar entities at the material times were as follows:

65.1. Palomar Capital: Olivier Dunant (until 28 October 2013), Christopher Langford (until 28 October 2013), Andrew Pearse (from 25 September 2013), Najib Allam (from 28 October 2013), and Markus Kroll (from 28 October 2013).

65.2. PHL: Christopher Langford from 1 November 2010 to 28 August 2015, Najib Allam and Andrew Pearse from 6 August 2013.

65.3. PCL: The General Manager was PHL, represented by Najib Allam.

66. As a matter of practical reality, Palomar was managed, staffed and operated by Mr Pearse, who had proposed and implemented the idea for Palomar.

67. Palomar's business in the period material to this claim was not limited to its mandates in connection with the Projects, and included a number of other projects.

68. The first sentence of Paragraph 15A is admitted. The directors of the companies forming Palomar are described more fully above at Paragraph 65.

69. The second sentence of Paragraph 15A is admitted.

70. The third sentence of Paragraph 15A is denied. Neither Ms Subeva nor Mr Schultens was an employee of Palomar Capital. Paragraphs 32.4 and 41.11 above are repeated.

71. No admissions are made as to the fourth sentence of Paragraph 15A.

72. No admissions are made as to the first sentence of Paragraph 15B. The description of Palomar's originations, corporate structure or functions as "*opaque*" is tendentious and is not understood. In any event, many of those matters were and are either public record or known to the Republic, because:

    72.1. On 25 April 2013, Mr Boustani emailed Mr Gopo, Mr Matlaba and Mr Ngale (all of whom acted for Proindicus, and thereby the Republic, and, in Mr Gopo's case, was using a .gov.mz email address) referring to the "*Palomar Group*" as a subsidiary of Privinvest.

    72.2. In 2015 and/or 2016, Mr Adriano Maleiane (the Republic's Minister of Finance since January 2015) appointed Palomar as an adviser to the Republic's government in connection with the restructuring of the EMATUM Transaction (pursuant to which the meetings referred to at Paragraph 94 occurred).

    72.3. Many of the matters pleaded at Paragraphs 59, 60 and 65 above are matters of public record and/or can be obtained from relevant corporate registries (and those matters are sufficient for the Republic to understand the corporate structure of Palomar).

    72.4. There were press reports in 2016 concerning the ownership and control of Palomar, to which Privinvest responded.

    72.5. In the course of participating in the Kroll Report, Privinvest explained the role and ownership of Palomar.

73. It is not clear whether the sub-paragraphs of Paragraph 15B are intended only as allegations in support of the Republic's case as to Palomar's origins, structure and functions, or as independent allegations supporting the Republic's causes of action. In so far as it is the latter, and without prejudice to Privinvest's position that the

relevance of many of these allegations is too unclear to admit of a proper response, Privinvest pleads to the factual allegations as follows.

74. It is admitted that the matters set out in Paragraph 15B.1 are derived from Mr Pearse's testimony. That testimony was accurate only to the extent set out below.

75. Paragraph 15B.1.1 is denied in so far as it relates to Mr Boustani, who was not a beneficial owner of Palomar, but otherwise admitted. Akram Safa was also a beneficial owner.

76. The first sentence of Paragraph 15B.1.2 is denied because the agreements in connection with both the EMATUM and MAM Transactions were entered into by PHL, and the funds were received by and distributed as dividends from PHL. The circumstances and basis of those payments were as set out below at Paragraph 338. The second sentence is denied.

77. As to Paragraph 15B.1.3, it is admitted that this payment was made, but denied that it amounted to a bribe or secret commission. The circumstances and basis of this payment are as set out below at Paragraph 338.5. That US$15.6m was part of the US$34m referred to in Paragraph 15B.1.2.

78. The first sentence of Paragraph 15B.1.4 is admitted save that it is PNR BV that holds interests in oil and gas concessions in Poland (which previously held them together with NSP Investments Holdings, as set out at Paragraph 60.4 above, and now holds them with the US Department of Justice following Mr Pearse's forfeiture thereof). It is denied that PNR BV held those assets on behalf of Mr Pearse. Mr Pearse was a shareholder in PEHL, which ultimately held part of an interest in PNR BV through various intermediate companies.

79. As to the second sentence of Paragraph 15B.1.4, it is denied that Mr Pearse has been paid any bribes or secret commissions by Privinvest. This paragraph is otherwise not admitted.

80. The first sentence of Paragraph 15B.1.5 is denied. PNR acquired a 100% interest in Bridgecreek Resources LLC, a Colorado-incorporated company, on or about 17 December 2013. Palomar, as defined above, had no interests in these assets.

81. The second sentence of Paragraph 15B.1.5 is denied. The true ownership of the oil fields in New Mexico was as described above.

82. The third sentence of Paragraph 15B.1.5 is denied, in so far as Mr Pearse did not receive any bribes or secret commissions from Privinvest. The sentence is otherwise not admitted.

83. As to the fourth sentence of Paragraph 15B.1.5:

    83.1. It is not understood how Mr Pearse's indirect interests in the relevant assets could have constituted bribes and/or secret commissions. Mr Pearse's use of the funds he received through Palomar could not itself constitute a bribe or secret commission, Mr Pearse having already received the funds, clear of any encumbrance.

    83.2. The relevance of these assets representing the traceable proceeds of those funds is not understood. The Republic has confirmed in Response 5 in the Second Privinvest RFI Response that it does not assert any entitlement to itself trace into those proceeds.

    83.3. It is denied that any bribes and/or secret commissions were paid to Mr Pearse. No admissions are made as to how Mr Pearse funded his share of the costs of that acquisition, and therefore whether the funds used are traceable to prior payments received from Palomar or Privinvest.

84. Paragraph 15.B.2 is admitted.

85. Paragraph 15.B.3 is admitted. The email made clear that 10% would not be an invariable figure which Palomar charged, but would vary according to the extent of Palomar's role in a transaction.

86. As to Paragraph 15B.4, Palomar's role in the transactions is pleaded more fully at Paragraph 87 below. Paragraph 15B.4 and its sub-paragraphs are admitted so far as is consistent with that pleading, and otherwise denied. It is denied that Palomar "*purported*" to have such a role – it did have such a role.

87. As to Paragraph 15B.5:

87.1. Palomar was established for various purposes. Paragraph 57 above is repeated.

87.2. It is admitted that those purposes included arranging financing for the possible future EMATUM Transaction, and subsequently expanded to include the MAM Transaction.

87.3. It is denied that it was intended at the outset that Palomar would derive additional revenues from the Proindicus Transaction. Palomar and Proindicus's relationship was intended at the outset to be only in respect of the subsequent intended monetisation of the assets and services supplied as a result of the Proindicus Project.

87.4. It is denied that Palomar was operated by Mr Safa or Mr Boustani. It was operated solely by Mr Pearse.

87.5. It is denied, in so far as it is alleged, that any of the foregoing involved any impropriety or unlawfulness.

88. No admissions are made as to Paragraph 15B.6.

A3(vi) Relevant individuals in the Republic

89. The Projects were principally operated by and through the Republic's intelligence service, SISE. In particular, and as pleaded in further detail below at Paragraphs 90.2 and 128-130, Mr Leão (in his capacity as Director-General of SISE) appointed Mr do Rosário to supervise the Projects on behalf of the Republic and SISE.

90. Paragraph 16 is admitted. Further:

90.1. Mr do Rosário was a key point of contact for Privinvest in relation to the Projects, and in particular the Supply Contracts;

90.2. Mr do Rosário had actual authority on behalf of the Republic to negotiate the Projects and the Transactions, and to conclude contracts on behalf of the SPVs. Pending disclosure, that is to be inferred from: (i) his senior role within SISE; (ii) the express delegation by Mr Leão of responsibility for the Projects to him; and (iii) the designation of SISE as the entity responsible for the Projects, and

the issues of maritime security which drove them, by the Republic's Joint Command of Defence and Security Forces ("*Comando Conjunto das Forças de Defesa e Segurança*") (the "**CCFDS**") (as pleaded below at Paragraph 128).

90.3. Alternatively, in light of the same facts and matters, together with other senior officers of the Republic's awareness of Mr do Rosário's role in dealing with Privinvest and their acquiescence in the same (communicated *inter alia* to Mr Safa and Mr Boustani at numerous meetings with President Guebuza and other senior ministers), Mr do Rosário had apparent authority on behalf of the Republic to negotiate the Projects and the Transactions, and to conclude contracts on behalf of the SPVs.

91. Paragraph 17 is noted. Further:

91.1. The term SPVs is convenient nomenclature although, for the avoidance of doubt, the nature of the Projects was such that it was intended that each of the SPVs would subsequently offer commercial services using the goods and know-how provided by Privinvest. As such, the term "special purpose" should not be understood to mean that the Supply Contracts and Facility Agreements were the only commercial contracts into which it was envisaged the SPVs would enter.

91.2. The use of such special purpose vehicles is not unusual within the Republic as a mechanism for the state to acquire and own assets and operate businesses.

92. Each of the SPVs was established by a Public Deed, executed by a government notary dated, respectively, 21 December 2012 (Proindicus), 2 August 2013 (EMATUM) and 3 April 2014 (MAM). Each of these Deeds was published in the Official Gazette of Mozambique, which is a public document.

93. The SPVs were ultimately wholly-owned by the Republic, as follows:

93.1. Each of Monte Binga S.A. ("**Monte Binga**") and Gestão de Investimentos, Participações e Serviços, Limitada ("**GIPS**") owned 50% of the shares in Proindicus.

93.2. Monte Binga is understood to be wholly-owned by the Ministry of Defence.

93.3. GIPS is wholly-owned by the Serviços Sociais do Serviço de Informaçãoes e Segurança do Estado ("**SERSSE**"), which is in turn understood to be wholly-owned by SISE.

93.4. As a result, Proindicus is ultimately owned as to 50% each by SISE and the Ministry of Defence.

93.5. GIPS holds 33% of the shares in EMATUM. The Instituto de Gestão das Participações do Estado ("**IGEPE**") holds 34% of the shares in EMATUM. IGEPE is understood to be wholly-owned by the Ministry of Finance. The remaining 33% of the shares in EMATUM are held by Empresa Mocambicana de Pesca S.A. ("**EMOPESCA**"), which is owned by IGEPE and the Fisheries Development Fund, a branch of the Ministry of Fisheries.

93.6. EMATUM is thus ultimately owned by the Ministry of Finance, SISE and the Ministry of Fisheries, although the precise proportions of each are unknown.

93.7. Each of Proindicus and EMATUM owns 1% of the shares in MAM. The remaining 98% of the shares are held by GIPS.

93.8. As a result, MAM is ultimately owned almost entirely by SISE, with very small percentages of its shares belonging to each of the Ministries of Defence, Finance and Fisheries.

94. On 9 April 2020, the Public Prosecutor of Maputo (who is a subordinate of the Attorney General) presented petitions for the dissolution of each of the SPVs. Further:

94.1. On 16 October 2020, the Maputo City Court issued a decision to dissolve Proindicus, with the effect that it is now in liquidation.

94.2. On the same date, the Maputo City Court issued a like decision in respect of MAM.

94.3. On 30 October 2020, the Maputo City Court issued a like decision in respect of EMATUM.

94.4. The effect of these decisions is that the shareholders of each SPV are now required to appoint a liquidator, who will in due course prepare a list of liabilities and sell off the SPVs' assets.

95. Paragraphs 18-21 are admitted, save that it is denied that Ms Isaltina Lucas was properly characterised as Mr Chang's "*deputy*" at the time of the Transactions. She was in this period National Director of the Treasury. At the time, she also served as a member of the board of EMATUM. She was subsequently promoted to be Deputy Minister of Finance.

96. The list of relevant officers of the Republic is seriously and materially incomplete. In particular, the RACPOC does not make any reference to President Nyusi. President Nyusi's involvement in the Projects is described more fully at Paragraphs 97-98, 127-128, 188, 193.4, 256, 279, 379.4 and 379.6 below. As to his roles in the government of the Republic:

96.1. President Nyusi was, from 2008 until 14 March 2014, the Minister of Defence in President Guebuza's Cabinet. In that capacity, he had overall responsibility for the Republic's national security, and supervised both the *Forças Armadas de Defesa e Segurança* (the "**Defence and Security Forces**") and SISE.

96.2. In September 2012, President Nyusi was elected to the Central Committee of FRELIMO.

96.3. On 1 March 2014, the Central Committee of FRELIMO selected President Nyusi as its candidate for the 2014 presidential election.

96.4. A presidential election in the Republic took place on 15 October 2014, and President Nyusi won (as has every FRELIMO presidential candidate since the Republic's independence). He was inaugurated on 15 January 2015.

96.5. It has been reported that former President Guebuza and President Nyusi had privately agreed that, although Mr Guebuza could not run for re-election to the

Presidency, he would remain as leader of FRELIMO. However, President Nyusi subsequently reneged on that deal and insisted that former President Guebuza also resign as leader of FRELIMO. He did so on 29 March 2015, enabling President Nyusi to then hold both offices.

96.6. This episode reportedly gave rise to considerable and ongoing personal and political animosity between President Nyusi and former President Guebuza.

97. President Nyusi was at all material times aware of the Projects, the financing thereof, and the nature of the goods and services supplied by Privinvest, in particular because:

97.1. He was a member of the CCFDS, which decided to procure the Proindicus Project;

97.2. He was Minister of Defence at a time when his ministry owned 50% of Proindicus and a stake in MAM;

97.3. He asked Mr Chang to sign the Guarantees, as pleaded below at Paragraph 188;

97.4. He had supervisory responsibility for the Mozambican Navy, which was critically involved in all three projects, and in particular the MAM Project;

97.5. He met and spoke with Mr Boustani on a number of occasions, including at Paris-Le-Bourget Airport on 1 August 2014, following a request from Mr do Rosário to Mr Boustani (which Mr Boustani was told in turn reflected a request from President Nyusi himself).

98. Further, in light of those matters and President Nyusi's receipt of payments as described in Section C3(i) below, it is to be inferred that President Nyusi was aware of the payments being made by Privinvest to the Mozambican Officials; alternatively, in general terms, that such payments were being made.

99. Paragraph 22 is noted.

100. Paragraph 23 is admitted. Mr Ndambi Guebuza was a private businessman at the time of the Transactions, and had substantial private business interests in Africa, as

well as expertise doing business in Mozambique and with the Republic and its agencies.

101. Paragraph 24 is admitted. Mr Nhangumele was an experienced businessman, who had worked for BP in Mozambique and had been involved in hosting the All-African Games in Maputo in September 2011. He was understood by Mr Boustani to be affiliated with a business called Mulepe Lda ("**Mulepe**"), along with Mr Cipriano Mutota, who was a serving SISE officer.

102. Paragraph 25 is admitted. Mr Langa was a contact of Mr Nhangumele's, and was presented to Privinvest as being able to assist with in-country lobbying efforts in connection with the Projects.

A4. The summary of the Republic's case

103. Privinvest does not plead to the summary of the Republic's case at Paragraphs 26-29, because it pleads to the detail of that case below.

A5. The Republic's knowledge of the underlying factual matters

104. As to Paragraphs 30-33 in general, the Republic makes certain allegations about its state of knowledge of the underlying factual matters with which its claim is concerned. As to that:

104.1. This allegation is deficient for failing to particularise the individuals within the Republic whose knowledge is being referred to.

104.2. No admissions are made as to the knowledge of whichever persons the Republic intends to refer to thereby.

104.3. The present knowledge of President Nyusi falls to be attributed to the Republic for the reasons pleaded at Paragraph 379.5 below. President Nyusi was aware of the facts and matters on which the Republic's claim is now based at the time they occurred. Paragraphs 96-98 above are repeated.

104.4. Further, the knowledge of certain former officers of the Republic, including former President Guebuza and the Mozambican Officials, also falls to be

attributed to the Republic. On the Republic's own case, those individuals were aware of the facts and matters on which the Republic's claim is now based at the time they occurred.

104.5. In the premises, the first sentence of Paragraph 30 is denied.

105. The second and third sentences of Paragraph 30 are noted.

106. As to the fourth sentence of Paragraph 30:

106.1. The allegation that the Privinvest Defendants have not yet publicly confessed or explained their participation in any wrongdoing is incoherent, because there was and is no wrongdoing to confess.

106.2. The Privinvest Defendants have made clear publicly that they deny any wrongdoing whatsoever on their part in connection with the Projects. They also participated fully and voluntarily in the Kroll Report process, as pleaded below at Paragraph 107. It is therefore denied that the Privinvest Defendants have not explained their participation in the Projects.

106.3. It is admitted that Ms Subeva, Mr Pearse and Mr Singh have pleaded guilty to certain federal offences in the United States. More particularly:

106.3.1. On 20 May 2019, Ms Subeva pleaded guilty to one count of conspiracy to commit money laundering in violation of 18 USC §1956(h), and not guilty to three other counts in the indictment against her.

106.3.2. On 19 July 2019, Mr Pearse pleaded guilty to one count of conspiracy to commit wire fraud in violation of 18 USC §11359, and not guilty to three other counts in the indictment against him.

106.3.3. On 6 September 2019, Mr Singh pleaded guilty to one count of conspiracy to commit money laundering in violation of 18 USC §1956(h), and not guilty to three other counts in the indictment against him.

106.3.4. Mr Pearse (by a Cooperation Agreement dated 2 July 2019) and Mr Singh (by a Cooperation Agreement dated 30 August 2019) agreed to

plead guilty to the aforementioned counts, in exchange for: (i) a promise by the United States not to prosecute them on any other counts arising out of the Facilities, and in Mr Pearse's case, a 2012 securities transaction involving "*AkBar's and Alfa Bank*"; (ii) a promise that, if Mr Pearse and Mr Singh cooperated fully, the government would file a memorandum at the time of sentencing recording that cooperation; and (iii) an acknowledgment that Mr Pearse and Mr Singh would receive between one and three levels of reduction in their sentencing under the relevant sentencing guidelines.

106.3.5. Ms Subeva, according to the transcript of the hearing referred to at Paragraph 106.3.1 above, also entered into a written Cooperation Agreement with the United States, but Privinvest has not had sight of a copy of that Cooperation Agreement.

106.3.6. It is denied, if alleged, that Ms Subeva, Mr Pearse or Mr Singh's pleas are admissible as evidence of the facts alleged therein in the trial of this action.

106.4. Save as aforesaid, no admissions are made.

107. The first sentence of Paragraph 31 is admitted. Kroll were engaged prior to 5 November 2016. The Kroll Report was delivered to the PGR on or about 12 May 2017. Privinvest participated in full and voluntarily in Kroll's investigations leading up to the Kroll Report. Neither Kroll nor the PGR formally published the full Kroll Report, but it was subsequently leaked online.

108. The findings of the Kroll Report included *inter alia* that:

108.1. The SPVs had received US$70m from their shareholders to cover interest payments and operational expenses, together with US$18.2m paid by Privinvest for operational expenses.

108.2. There were considerable failings by the management of the SPVs in meeting contractual obligations and providing the necessary infrastructure for the Projects.

108.3. The majority of assets provided in connection with each of the Projects had been provided by Privinvest, and their existence was verified by Kroll.

108.4. For the avoidance of doubt, Privinvest does not accept the accuracy of the Kroll Report's conclusions or its methodology, but will rely as necessary on it as evidence of the assets that were in fact delivered by Privinvest.

109. Paragraph 32 and the first sentence of Paragraph 33 are admitted, save that no admissions are made as to who the Republic understands "*Privinvest Co-Conspirator 2*" denotes. It is denied in so far as it is alleged that the contents of the DOJ Indictment are admissible as evidence of the truth of the facts and matters alleged therein.

110. The second sentence of Paragraph 33 is noted.

111. As to the third sentence of Paragraph 33, Paragraph 106 above is repeated.

112. The fourth sentence of Paragraph 33 is admitted and averred. The EDNY Trial is the only set of legal proceedings to date concerned with the Projects which have reached a final decision or judgment. As set out at paragraph 21 above, the EDNY Trial resulted in Mr Boustani's acquittal on all counts.

113. The Republic's summary of its own knowledge, if it is intended to refer to the knowledge of the PGR itself, is in any event materially incomplete. On 25 March 2019 (more than 3 months before the Particulars of Claim in this action were originally served), the PGR filed an indictment with the Judicial Court of the City of Maputo, 6th Criminal Section (the "**Maputo Indictment**"). The Maputo Indictment has subsequently been updated on 19 August 2019, upon the dismissal by the Judicial Court of the City of Maputo of certain pre-trial applications made by the defendants. The Maputo Indictment records, *inter alia*, that:

113.1. The PGR's investigation into the alleged offences was commenced in 2015 (based on the reference number given to the PGR's investigation), and supplemented by a further investigation in 2016;

113.2. Twenty defendants are named in the Maputo Indictment, including some of the Mozambican Officials;

113.3. The PGR set out a detailed account of the alleged payments made by Privinvest to the defendants to the Maputo Indictment, and how those payments were then allegedly used by the defendants thereto;

113.4. In August 2018, President Nyusi gave a statement to the PGR in the course of its investigation. In that statement, President Nyusi stated that: (i) he was not aware of the Guarantees or any other instrument by which the Republic assumed obligations in respect of debts owed to Credit Suisse; (ii) he was unaware of the existence of EMATUM and MAM; (iii) he had no control or oversight over the process of negotiating or approving the Projects. In light of the matters pleaded at Paragraphs 188, 193.4, 256, 379.4 and 379.6below, that evidence was substantially false.

B. THE PROJECTS

B1. The Republic

114. The relevance of Paragraph 34 is not understood. The Republic has asserted in Response 9 of the First Privinvest RFI Response that these are matters of background and context. In the premises, Privinvest does not plead to them.

115. The first sentence of Paragraph 35 is admitted. Those elections have been heavily criticised by international observers, and the principal opposition party in the Republic (*Resistência Nacional Moçambicana* or "**RENAMO**"), for not being free or fair.

116. The second sentence of Paragraph 35 is admitted and averred. Further:

116.1. FRELIMO's parliamentarians invariably vote with the executive government, and in practice are not independent of the executive;

116.2. The majority which FRELIMO has obtained at each and every parliamentary election consequently grants the executive considerable power,

and entails that the National Assembly does not represent an effective check on FRELIMO or the executive government;

116.3. In so far as any of its allegations depend on the proposition that it would have acted differently in connection with the Projects or the Guarantees if they had not been secret from the National Assembly (which, for the avoidance of doubt, they were not), the Republic is put to proof that the National Assembly would not have approved the Projects and the Guarantees on direction from the executive government. Pending evidence and disclosure, Privinvest will rely on the fact that the National Assembly incorporated the debts under the Guarantees (and/or successor financial instruments) into the State Account in August 2016 (in the case of EMATUM), and December 2017 (in the case of Proindicus and MAM).

117. As to Paragraph 36, the relevance of these allegations to the claims against the Privinvest Defendants is limited (as clarified by the Republic in Paragraph 11 of the First Privinvest RFI Response). As to those contentions:

117.1. Paragraph 11.1 of the First Privinvest RFI Response is admitted, save as to the allegation that Mr Boustani and Privinvest were acting as intermediaries. Paragraph 426 below is repeated.

117.2. Paragraph 11.2 of the First Privinvest RFI Response is denied. Privinvest was entitled to assume, and did assume, that the Republic's officers and agents (including its President, Minister of Finance and Minister of Defence) would ensure compliance with the Republic's laws to ensure that any agreements made were made *intra vires*.

117.3. As to Paragraph 11.3.1 of the First Privinvest RFI Response:

117.3.1. It is admitted that, in general terms, Privinvest was aware that an offence of bribery or similar would have existed in Mozambican law.

117.3.2. It is denied that Privinvest was aware of any particular provisions of Mozambican legislation concerning bribery.

117.3.3. Further, it was expressly represented to Mr Boustani that it was lawful both for Privinvest to go into business with serving government officials, and for it to make campaign contributions to them, as pleaded at Section E4 below. Alternatively, the same was impliedly represented by certain Mozambican Officials, as particularised below at Paragraphs 385 and 390.

117.3.4. Save as aforesaid, this paragraph is denied.

117.4. As to Paragraph 11.3.2 of the First Privinvest RFI Response:

117.4.1. It is admitted that, in general terms, Privinvest was aware that government officials in the Republic would owe certain duties to the Republic.

117.4.2. It is denied that Privinvest was therefore aware of any particular provisions of Mozambican law concerning campaign contributions and/or going into business with government officials.

117.4.3. Save as aforesaid, this paragraph is denied.

118. Paragraphs 37-38C are particulars of the claim against the Privinvest Defendants only so far as described in Paragraph 117 above, and Privinvest does not plead to them further.

119. As to Paragraph 39, Privinvest pleads at Sections D2 to D3 below to the specific provisions of Mozambican law relied on.

120. As to Paragraphs 40-41, no admissions are made. It is denied (contrary to Response 14 of the First Privinvest RFI Response) that these allegations are relevant to the Republic's causes of action.

121. Paragraph 42 is admitted and averred.

122. Paragraph 43 is not admitted.

123. Paragraphs 44-45 are pleaded to below at Section D4, in the context of Privinvest's broader case as to the content of Mozambican law.

B2. Background

124. Mozambique (and, in particular, the EEZ off its coastline granted to it as a matter of international law pursuant to Articles 55-57 of the UN Convention on the Law of the Sea) has certain abundant natural resources. In particular, it has substantial natural gas reserves (primarily in the Rovuma Basin), heavy sand deposits (in Nampula Province) and territorial waters which are rich in tuna and other fish.

125. Prior to late 2011, the Republic had been unable properly to exploit these resources. In common with other African countries, Mozambique faced a serious and ongoing risk of piracy. Further, the Republic was unable properly to police its territorial waters. That meant it could neither provide adequate security to foreign companies interested in exploiting those natural resources, nor prevent illegal fishing. The Republic's inability to do so led to a loss of potential revenue to it, including from its inability to ensure security of transit (and charge for doing so), revenue from international companies working offshore, and from its inability to conduct licensed fishing (and prevent illegal fishing).

126. In order to resolve these difficulties, the CCFDS met at some point in 2011.

127. The CCFDS included among its membership former President Guebuza (in his capacity as Commander-in-Chief of the Mozambican Armed Forces), President Nyusi (in his then capacity as Minister of Defence), the Minister of the Interior, Mr Leão (in his capacity as Director-General of SISE) and the Chief of Staff of the Armed Forces.

128. The CCFDS instructed SISE to commission studies and solicit proposals which would meet the concerns of protecting the Republic's national security and sovereignty, and in turn improving its trade position and international reputation.

129. There had previously been a number of similar proposals made to and within the Republic. In particular, INAMAR (the Republic's agency for maritime affairs) had considered a number of other possible proposals to supply similar systems for the protection of Mozambique's territorial waters and EEZ.

130. Mr Leão directed that Mr do Rosário should commission those studies.

B3. Negotiation of the Projects

131. In or about early 2011, the connection was first made between Privinvest and the Republic, through Ms Basetsana "*Bassy*" Thokoane. Ms Thokoane was a former agent in the South African intelligence services, and had connections in Mozambique.

132. As to Paragraph 45A:

132.1. On 8 May 2011, Mr Boustani emailed Mr Safa a draft letter to then President Guebuza. The draft stated that:

> "*With this in mind, I look forward to our meeting as soon as it is convenient for you to discuss investment opportunities in the Republic of Mozambique and to develop mutual beneficial endeavours.*"

132.2. This paragraph is otherwise denied. Mr Safa first in fact met President Guebuza on a trip to Mozambique in January 2013.

133. Privinvest understands from the Maputo Indictment that, around this time, Ms Thokoane had been introduced to Mr Cipriano Mutota, Mr Langa and Mr Nhangumele. Ms Thokoane approached Mr Boustani in early 2011, and suggested that he might be interested in presenting Privinvest as a candidate for what later become the Proindicus Project.

134. As a result of these discussions, Mr Boustani travelled to Mozambique in March 2011, where he was introduced to Mr Mutota by Ms Thokoane, and in turn to Mr Nhangumele by Mr Mutota. Mr Mutota informed Mr Boustani of the decisions taken by the CCFDS, described at Paragraph 128 above. Paragraph 46 is admitted so far as is consistent with the above.

135. Mr Boustani travelled to Mozambique again in September 2011, and held meetings with the Ministry of Science and Technology, and INAMAR.

136. During the early stages of the negotiations, it was intended that Mulepe (referred to in Paragraph 101 above) would be a party to the commercial transaction between

the Republic and Privinvest, including through the possible establishment of a joint venture between Privinvest and Mulepe.

137. The general allegation in the first sentence of Paragraph 47 is admitted so far as is consistent with the response to its sub-paragraphs which follow. Privinvest will refer to the emails at trial for their full meaning and effect.

138. As to Paragraph 47.1, it is admitted that Mr Nhangumele wrote to Mr Boustani on that date. The quotation in Paragraph 47.1 is partial and misleading. The full paragraph reads:

> "*There is increasing expectation in the upcoming visit to Abu Dabi* [sic]*, given the new impetus that has been given to the deal. The team that I am assembling is very crucial for the success of the deal since are the ones who will produce the report which will determine whether or not the project will take off. To secure that the project is granted a go-ahead by the HoS* [Head of State]*, a payment has to be agreed before we get there, so that we know and agree, well in advance, what ought to be paid and when. Whatever advance payments to be paid before the project, they can be built in the project, and recovered.*"

139. Mr Boustani and Mr Nhangumele were discussing the payment of a genuine success fee (which at the time would have been payable to Mulepe), and not a bribe.

140. The text and timing of each of the emails at Paragraphs 47.2 and 47.3 is admitted. Those emails will be referred to for their full context and effect at trial.

141. Following these early meetings, Mr Nhangumele informed Mr Boustani that Privinvest would need to produce a technical and commercial proposal for the transaction. Mr Boustani asked Mr David Harpazi, a consultant to Privinvest, to do so.

142. Mr Harpazi prepared a commercial proposal for a coastal surveillance and protection system at some point in late 2011, which was sent to the Republic in December 2011 as set out at Paragraph 150 below.

143. Mr Boustani was thereafter informed by Mr Nhangumele that the Republic wished to conduct due diligence on Privinvest. For that purpose, it was agreed that Mr do Rosário would (accompanied by Mr Nhangumele, Mr Ndambi Guebuza and Mr Langa) visit certain of Privinvest's shipyards. That group visited Kiel in

Germany (where one of Privinvest's affiliated entities owned a shipyard) in December 2011, and ADM's yard in Abu Dhabi in January 2012.

144. The first sentence of Paragraph 48 is therefore admitted.

145. As to the second sentence of Paragraph 48, it is admitted that Logistics Offshore listed these employment roles for Messrs Nhangumele, Langa and Ndambi Guebuza, and they did not hold them. This practice is extremely common in the UAE, where the relevant website for applications for visas lists only a narrow list of options for relevant jobs. It is admitted that these employment roles were necessary for them to obtain employment visas, and therefore to travel to Abu Dhabi without necessitating visa applications on each visit. It is denied that the purpose of listing the employment roles was to enable the opening of bank accounts.

146. As to the first sentence of Paragraph 49:

146.1. It is denied that any understanding was reached between Mr Boustani and Mr Nhangumele as to the payment of bribes.

146.2. The understanding reached was as to the necessary and lawful consultancy payments which were at that time envisaged, and not as to the payment of bribes.

146.3. It is denied that the understanding reached concerned a payment of US$50m. No such sum was ever intended to be, or was in fact, paid.

147. The second sentence of Paragraph 49 is denied. Paragraph 146 above is repeated. Further and in any event, payments to the Consultants could not constitute bribes in law.

148. As to Paragraph 49.1, it is admitted that Mr Nhangumele emailed Mr Boustani on this date, and that the text quoted therein is accurate. The email will be referred to for its full meaning and effect at trial. Save as aforesaid, no admissions are made.

149. As to Paragraph 49.2:

149.1. It is denied that Mr Boustani forwarded the email within Privinvest. At 12.45am on 29 December 2011, Mr Boustani forwarded it to Mr Harpazi.

149.2. It is admitted that Paragraph 32(b) of the DOJ Indictment refers to Mr Boustani as having said "*50M for them and 12M for* [Privinvest Co-Conspirator 1] *(5%) ==> total of 62M on top.*"

149.3. Save as aforesaid, Paragraph 49.2 is denied.

150. On 31 December 2011, Mr Boustani sent Mr Nhangumele an email, which said "*Brother Teo, The EEZ Proposal addressed to HoS. Awaiting your feedback.*" That email attached:

150.1. A document entitled "*Mozambique EEZ Monitoring and Protection Solution…Top Level Solution Description.*" This document (which ran to some 49 pages) set out in detail all the assets it was proposed that Privinvest would supply in relation to the Proindicus Project.

150.2. A Price Proposal, pursuant to which the Republic would pay ADM (which it was envisaged at that stage would be the supplier) US$352,650,067, with 45% payable upfront and the remainder payable on delivery of various items.

150.3. A letter from Mr Safa to President Guebuza. Mr Safa stated that "*ADM is honoured to serve the Mozambique Government's requirement in protecting its valuable natural resources.*" He also explained the four "*buildings blocks*" of the turnkey solution which Privinvest was to provide to the Republic, and proposed a meeting between them as soon as convenient for President Guebuza.

151. Privinvest understood that Mr Nhangumele then provided these documents to President Guebuza, through his political connections.

152. Paragraph 49A is admitted. Paragraph 150 above is repeated.

B4. The genesis of the financing structure

153. On 27 January 2012, the Republic provisionally approved what became the Proindicus Transaction. This was communicated to Mr Boustani by Mr Nhangumele.

154. However, Mr Nhangumele indicated to Mr Boustani that: (i) the Republic's presently available cash resources would not enable it to pay the purchase price under the envisaged Proindicus Supply Contract; and (ii) the Republic would welcome it if Privinvest (which would be better placed to do so) secured commercial funding terms for the Republic from banks.

155. As a result, Mr Boustani approached Credit Suisse, through Mr Freiha. Mr Freiha introduced Mr Boustani to Mr Afiouni, Mr Singh and in due course to Mr Pearse. After a call, Mr Boustani sent Mr Freiha an email on 20 February 2012, setting out at a high-level the necessary components of financing for the Project.

156. As to Paragraph 50, it is admitted that Mr Boustani approached a number of financial institutions, including Credit Suisse, about providing finance to the Republic for the Proindicus Transaction. As pleaded above, he did so at the Republic's request. Save as aforesaid, no admissions are made.

157. Paragraph 51 is admitted. The letter was sent in draft to Mr Boustani by Mr Singh on 22 February 2012, and amended following discussions with Mr Boustani. A final version was sent by Credit Suisse to Mr Boustani on 27 February 2012. The terms proposed in the letter were:

157.1. That Credit Suisse would provide US$350m of financing, of which US$150m would be by way of a bilateral loan from Credit Suisse.

157.2. The margin on the loan would be LIBOR + 6.5%, with Credit Suisse's fees at 2.85%.

157.3. The loan would mature after 5 years, with a 2-year grace period on repayment and then equal annual instalments.

157.4. The offer was subject to contract, and was specifically described as being subject to Credit Suisse completing all legal and financial due diligence which were satisfactory to it as to form and substance. It was also conditional on the receipt of all necessary board, governmental and regulatory approvals.

157.5. The letter was signed by Markus Niemeier and Madthav Patki, in their capacities as Managing Directors, Fixed Income.

158. As to Paragraph 52, it is admitted that Mr Boustani sent an email on this date to Credit Suisse. Privinvest will refer to that email for its full meaning and effect at trial. Save as aforesaid, no admissions are made.

159. No admissions are made as to the first sentence of Paragraph 53. Mr Safa was not aware of ever having been so-designated by Credit Suisse prior to the DOJ Indictment being made public.

160. No admissions are made as to the second sentence of Paragraph 53.

161. Paragraph 53A is admitted. Privinvest will refer to this exchange of emails for their full meaning and effect at trial.

162. On 12 June 2012, Mr Freiha sent Mr Nhangumele a term sheet, indicating the broad terms on which Credit Suisse would be willing to transact:

162.1. The First Defendant ("**CSI**") or an affiliate was willing to provide up to US$350m of finance.

162.2. The funds would be split into two tranches, the first of US$150m being provided by Credit Suisse on closing, and the second of US$200m being provided by a syndicate of international banks arranged by Credit Suisse as and when the Project required funding.

162.3. The maturity date would be 5 years from drawdown, with a 24-month grace period on repayment, followed by annual repayment in instalments of 20%, 25%, 25% and 30%.

162.4. Interest would be at USD LIBOR + 6.25%, with a 2.75% Arranger Fee payable to Credit Suisse.

163. On 26 June 2012, in response to an indication from the Republic that Credit Suisse's terms were too expensive, Mr Singh suggested to Mr Boustani that there might be a way to reduce the interest rate through the payment of a subvention fee by the contractor (ie. Privinvest). Mr Singh indicated to Mr Boustani (as did Mr Freiha) that this was a practice which Credit Suisse had previously used to reduce the costs to borrowers through subsidy from the contractors. Mr Pearse's evidence in the EDNY Trial confirmed that Credit Suisse had indeed used Contractor Fees in this way.

164. The proposal referred to at Paragraph 150 above was subsequently revised in early July 2012, resulting in a "*Top Level Solution Description*" being prepared by David Harpazi by 10 July 2012. That proposal split the Project into two potential phases, with Phase 1 being "*Basic*" and Phase 2 being "*Advanced*". The assets to be provided included radar stations, a central command centre, interceptor vessels and maritime patrol aircraft, a training centre and infrastructure in ports. It was thus similar although not identical to the ultimate content of the Proindicus Supply Contract.

165. As to the first sentence of Paragraph 53B, Paragraphs 141-142 above are repeated.

166. The second and third sentences of Paragraph 53B are admitted. The contents of that proposal were as pleaded at Paragraph 164 above.

167. The fourth sentence of Paragraph 53B is admitted.

168. The first sentence of Paragraph 53C is admitted, save that the attached proposal was the same as that referred to in the second sentence of Paragraph 53B.

169. The second sentence of Paragraph 53C is admitted.

170. The third sentence of Paragraph 53C is denied. These figures were references to the anticipated costs of paying fees to the Consultants, as well as Ms Thokoane and any relevant agents who assisted Privinvest in executing the transactions.

171. On 31 August 2012, Mr Chang wrote to Mr Safa, indicating that:

171.1. The Republic had received Privinvest's proposal dated 31 December 2011;

171.2. The relevant government departments of the Republic had unanimously expressed their consent to Privinvest's proposal, and wished for it to be implemented;

171.3. The costs involved were beyond the Republic's present financial capacity. Mr Chang therefore requested that Privinvest identify a source of financing on terms that interest would be payable at a rate of 1.9% per annum, with a 5-year grace period and a maturity of 20 years; and

171.4. The formal letter of award for the Proindicus Project would be subject to securing the relevant financing.

Paragraph 54 is admitted so far as is consistent with the foregoing.

172. The letter was received by Privinvest on 3 September 2012, by being emailed to Mr Boustani from Mr Nhangumele. Mr Nhangumele described the letter as "*giving you a mandate to negociate* [sic] *and the parameters for the finance of the project.*"

173. Paragraph 55 is admitted, save that it is denied (to the best of Mr Safa's recollection) that he attended the meeting.

174. No admissions are made as to the first sentence of Paragraph 56, being outside Privinvest's knowledge.

175. The second sentence of Paragraph 56 is admitted. The senior executive referred to was Mr Fawzi Kyriakos-Saad, who was Head of Credit Suisse EMEA. No admissions are made as to whether Mr Kyriakos-Saad had in fact said this to Mr Pearse.

176. The third sentence of Paragraph 56 is denied. The document referred to is understood from the EDNY Trial to be a due diligence report prepared by or for Credit Suisse. If the Republic avers that this claim was true or had any factual foundation, the same is denied.

177. On 13 September 2012, Mr Safa wrote to Mr Chang, indicating that:

177.1. Privinvest had continued its efforts to identify appropriate funding sources;

177.2. However, the terms proposed by Mr Chang were those which would typically be used in inter-governmental financing (ie. at concessional rates), rather than commercial funding;

177.3. Credit Suisse appeared to be an appropriate funder, given the terms it was willing to offer;

177.4. Credit Suisse would be willing to provide financing on the following terms: (i) interest would be payable at LIBOR + 3.2% per annum; (ii) a one-time syndication fee of 1.65%; (iii) the funds would be advanced for a six-year initial term, with no principal repayable for 2 years, and thereafter repayable in five tranches of differing proportions; and

177.5. In light of the ability of the Republic to generate revenue from the Proindicus Transaction, it would be able to afford to pay the interest and principal on these terms.

178. These terms were reflected in a term sheet sent by Mr Pearse to Mr Boustani on 19 September 2012. A further term sheet was finalised on or around 12-13 October 2012, offering substantially the same terms, save that it referred to the Borrower as a newly-formed SPV to be legally and beneficially owned by five ministries of the Republic, and introduced the concept of the Proindicus Guarantee and associated terms.

179. On 3 December 2012, Mr Safa wrote to then-President Guebuza, indicating that:

179.1. The team assigned by the Republic had requested Privinvest to seek financing for the Proindicus Project, which it had subsequently done.

179.2. Since the letter referred to at Paragraph 177 above, there had been no further formal communication from the Republic.

179.3. The terms being offered by Credit Suisse were reflected in the term sheet of 13 October 2012.

179.4. Privinvest's main objective was to commence a strategic relationship with the Republic, which could extend beyond the Proindicus Project to other infrastructure and strategic sectors.

179.5. It was necessary to complete the transaction as soon as possible, to avoid any hurdles with financing arising from the new fiscal year. Privinvest was confident that this could be done, and Mr Safa would be honoured to travel to Mozambique to close the Project.

Paragraph 57 is therefore admitted.

180. On 14 December 2012, Mr Chang wrote to Mr Safa, explaining that the terms were acceptable to the Republic, but requesting that the capital repayment structure be amended so that the principal was repayable in increasing tranches (from 3% in Year 1 to 30% in Year 6).

181. Mr Chang also noted that, because of the constraints on the Republic's borrowing on commercial terms imposed by the IMF, an alternative solution would be devised using an SPV which would be "*dully* [sic] *and specifically established to handle this project...*". He further confirmed that the Government of the Republic would provide guarantees to enable the Financing Transactions.

182. As to Paragraph 58:

182.1. No admissions are made as to the factual allegations set out therein, which are outside the knowledge of the Privinvest Defendants.

182.2. In so far as it is alleged that an appropriation ought to have been made for the Proindicus Transaction, no admissions are made.

182.3. So far as Privinvest is able to discern, this paragraph is not a particular of any claim made against Privinvest, and it is therefore unnecessary for Privinvest to plead to it.

182.4. To the extent necessary, Privinvest will say that it had no knowledge of the alleged unlawfulness arising from the fact that the Proindicus Transaction was not contained in the State Budget Bill. It was represented to Privinvest, *inter*

alia by reason of Paragraph 181 above, that the use of SPVs and Sovereign Guarantees was a lawful solution to the issue of any IMF borrowing limits.

183. Paragraph 59 is admitted in so far as consistent with Paragraphs 180-181 above

184. Clause 6.1 of the Proindicus Facility Agreement provided for repayment as follows: 10% of the principal 24 months from the Utilisation Date, 15% of the principal 36 months thereafter, 20% of the principal 48 months thereafter, 25% of the principal 60 months thereafter, and the remaining 30% on the Termination Date (after 72 months). Save that this represented a compromise between the terms offered by Credit Suisse in September 2012 and Mr Chang's request in December 2012, the terms of the Proindicus Facility Agreement were on materially similar terms to those which Privinvest had communicated to the Republic in September 2012.

185. As to Paragraph 60, Paragraph 182 above is repeated.

186. Paragraph 61 is admitted. Further, the indicative terms provided that:

186.1. The Arranger Fee was 1.65% of the total commitment, payable at the time of drawdown (reduced from 2.75% in earlier drafts);

186.2. The Interest Rate was USD LIBOR + 3.2%, down from 6.25% in the previous drafts.

187. These reductions in fees had been made possible by Privinvest's agreement to pay a "*subvention fee*", which was subsequently embodied in the Contractor Fee Letter pleaded below at Paragraph 224.

188. On 14 January 2013, President Nyusi wrote to Mr Chang, in his capacity as Minister of National Defence (and in the name of the Defence and Security Forces). The letter stated that:

188.1. During 2012, the Defence and Security Forces had researched and selected a system to monitor and protect the EEZ, having analysed several proposals;

188.2. The Proindicus Project involved financial resources beyond the Republic's general budget;

188.3. Credit Suisse had therefore been identified as willing to provide the necessary financing;

188.4. Mr Chang was therefore asked to sign the attachment to the letter (which Privinvest infers was the Proindicus Guarantee) on behalf of the Republic to enable the Proindicus Transaction to proceed.

189. Each of the Facility Agreements and Guarantees was also approved by the Central Bank of Mozambique ("*Banco de Moçambique*"), acting by its Director, Silvina de Abreu:

189.1. On 8 March 2013, Mr Matlaba (in his capacity as President of the Board of Directors of Proindicus) requested the Central Bank to approve the Proindicus Facility Agreement. That approval was granted in an official letter from Ms de Abreu on 14 March 2013, together with an opinion setting out that the Facility was approved.

189.2. On 11 June 2013, Proindicus asked the Central Bank to approve the US$250m upsize in the Proindicus Facility Agreement. It approved the increase by an opinion dated 12 June 2013.

189.3. Ms de Abreu communicated the Central Bank's approval of the EMATUM Facility Agreement by a letter to Mr Henrique Gamito (in his capacity as CEO of EMATUM) on 21 August 2013.

189.4. Ms de Abreu communicated the Central Bank's approval of the MAM Facility Agreement by a letter to Mr do Rosário on 20 May 2014.

189.5. In each case, the Central Bank was also fully aware that the Guarantees had been granted, and nevertheless gave its approval to the transactions as a whole.

B5. The structure of the Projects

190. The Projects were each intended as a turnkey solution to an identified need or problem possessed by the Republic – that is, Privinvest was responsible for both designing and constructing the relevant assets to be delivered, installing the assets

on site, integrating them in order to create an integrated solution, maintaining the assets for (in most cases) two years from their delivery, providing training and spare parts, and granting intellectual property rights and implementing a technology transfer to enable their continued use thereafter.

191. Each of the Projects had a stand-alone purpose, as identified below. Further, the Projects were developed over time to complement each other. The benefits from the three Projects being implemented together included:

191.1. The security for the Republic's EEZ generated by the Proindicus Project would protect the vessels supplied under the EMATUM Project.

191.2. Certain of the vessels supplied as part of the EMATUM Project would also assist with the surveillance to be supplied by the Proindicus Project, as well as providing their own safety and monitoring for EMATUM.

191.3. The shipbuilding and maintenance facilities created by the MAM Project could be used to construct vessels for which the intellectual property had been transferred in the EMATUM Project, and repair, service and supply the vessels supplied as part of both the Proindicus and EMATUM Projects. African Storm and the shipyard could also act as supply, repair and maintenance facilities for the offshore oil and gas industry facilities being secured by the Proindicus vessels.

192. As to the Republic's allegations about the pricing under the Supply Contracts at Paragraphs 64, 79 and 87, Privinvest will say as follows:

192.1. The Supply Contracts were priced in accordance with Privinvest's own internal approach to pricing projects. This was in general terms as follows:

192.1.1. The Corporate Defendants, their subsidiaries or associated companies and sub-contractors would each calculate a "*prix de revient*" (roughly translated, "*unit cost*") for the work which they would conduct;

192.1.2. These companies would then apply the relevant multipliers to those costs, considering the relevant fixed costs, margin and associated risks. The

formula of applying a multiplier to a unit cost is a standard approach to pricing;

192.1.3. These costs were drawn together by Mr Hankach, to produce the overall costs for a particular project;

192.1.4. Mr Hankach would then discuss these costs with Mr Safa, who would consider the relevant *prix de revient* and multipliers for Mr Safa's final approval. Once approved, the price would then be put to the customer.

192.2. Privinvest did not, normally, attempt to produce market comparisons for its projects, because: (i) it is rare to be able to make like-for-like comparisons in circumstances where vessels, goods, services and integrated systems are never identical between companies; and (ii) pricing is commercially confidential and therefore reliable information on comparisons is very rarely available.

192.3. Privinvest did not conduct such a comparison in relation to the Projects. The Projects were novel, turnkey and bespoke, such that there was no direct benchmark against which they could be priced. In consequence, references to the "*market price*" of the subject matter of the Supply Contracts are inapt. There is no such market price for bespoke systems such as the Projects.

192.4. Privinvest was entitled, as a contractual counterparty, to negotiate the best price that the Republic and/or the SPVs were willing to pay.

193. In support of its case that the Supply Contracts were legitimate and *bona fide*, Privinvest will rely *inter alia* on the following:

193.1. The Projects met a pre-existing need identified by the Republic's own most senior officials, including the CCFDS. That need had also been referred to publicly in the media and by experts for some years.

193.2. Due diligence is understood to have been conducted on them by both Credit Suisse (including persons other than the CS Deal Team Defendants, Mr Freiha and Mr Afiouni, whose conduct is not impugned by the Republic) and VTB (who loaned a total of just over USD 1bn across the Three Transactions).

Between January and April 2016, Credit Suisse conducted further due diligence in preparation for the EMATUM Exchange. As described in the testimony of Mr Andrew Burton of Credit Suisse, Credit Suisse proceeded with the EMATUM Exchange only after control processes including: (i) approval from Credit Suisse's Investment Banking Committee; (ii) approval from Credit Suisse's Reputational Risk Committee; and (iii) the commissioning of an external report to value, and Credit Suisse's Coverage team inspecting, the vessels underlying the EMATUM Transaction.

193.3. They were implemented as described below at Paragraphs 197, 204, 232-234 and 260-261, to the satisfaction of the customer.

193.4. Further, the SPVs and the Republic repeatedly expressed their satisfaction with the work done by Privinvest. By way of example, on 18 May 2017, the new Director-General of SISE, General Lagos Henriques Lidimu (who had been appointed by President Nyusi to replace Mr Leão, and was understood to be a close ally of President Nyusi) wrote to PISB on behalf of SISE, indicating that PISB had exceeded SISE and MAM's expectations in relation to the MAM Supply Contract, indicating their ongoing commitment to making MAM an important state entity, and asking PISB remain actively involved with MAM's board in extending the term of the Supply Contract.

193.5. Even after the Supply Contracts had expired, Privinvest continued to make efforts to complete the supply of goods and services under the Supply Contracts, absent any contractual obligation to do so, most recently in the summer of 2020 when the Ministry of Defence took delivery of drones which had been stored in Mozambique for years awaiting collection.

193.6. Privinvest, Palomar and the SPVs all worked on possible methods of revenue generation for the SPVs, including:

193.6.1. Privinvest introduced Proindicus to AEGIS Defence Services, the well-known private security company, and attended several meetings between AEGIS and Proindicus concerning the monetisation of the Proindicus Project.

193.6.2. Mr Boustani also assisted Proindicus with attempts to obtain contracts with both ENI and Anadarko, the oil and gas companies.

193.6.3. The SIMP Concession Agreement, as defined below.

193.6.4. The following matters which emerged from press reports after the SPVs' contracts with Privinvest had terminated:

193.6.4.1. In December 2017, it was reported that Erik Prince would enter into a partnership with EMATUM to use its 24 tuna-fishing vessels, and was considering investing in MAM (and that Mr Prince had so announced).

193.6.4.2. In May 2018, it was reported that the Prime Minister of the Republic, Carlos Agostinho do Rosário, had announced in Parliament that the joint entity would be called "*Tunamar*" (and that Mr Prince was also likely to partner with Proindicus).

193.6.4.3. Around this time, Privinvest received copies of studies of EMATUM's assets by Lancaster 6, a company connected with Mr Prince, who determined that they were valuable.

B6. Proindicus

194. The purpose of the Proindicus Project was as follows:

194.1. The Republic had serious problems maintaining security and sovereignty in its EEZ. Paragraphs 124-130 above are repeated.

194.2. The Proindicus Supply Contract would supply to the Republic an integrated system to monitor maritime traffic within its EEZ, and if necessary to protect the EEZ against illegal fishing, unlawful transportation and piracy.

194.3. Proindicus would therefore be able to: (i) ensure that the Republic maintained sovereignty over its EEZ and therefore promote investment in the Republic; (ii) generate revenue by selling protection services to international oil and gas companies operating in that EEZ (in lieu of those companies

employing private security firms), and through fishing licences; and (iii) offer the security necessary to enable the exploitation of the Republic's fish stocks (as subsequently reflected in the EMATUM Project).

195. The Proindicus Supply Contract was signed for PSAL by Mr Boustani and for Proindicus by Mr Raufo Irá, who was stated to be its Chairman. It provided *inter alia* that:

195.1. By Article II, Proindicus acknowledged and agreed that it must deliver those materials, items and objects (including appropriate infrastructure, facilities, land and buildings) and procure the supply of those services which were its sole responsibility under Annex 3 (Scope of Supply).

195.2. Further by Article II, Proindicus agreed that its provision of those assets and services was a condition of the Supply Contract, and acknowledged that if it failed to perform its obligations thereunder completion might be delayed. Proindicus's obligations were more fully set out in Annex 4, Section 5, and included that relevant personnel who were appropriately skilled would be made available to PSAL, Proindicus would ensure that sites in Mozambique were safe, make available proper buildings, space and infrastructure, and provide accommodation, transportation and working permits for PSAL's experts and personnel during supervision of the Proindicus Project.

195.3. By Article IV, PSAL was entitled to subcontract any part of the works under the Supply Contract, subject to an obligation to use reasonable endeavours to ensure that the works were undertaken in accordance with the Supply Contract.

195.4. By Article VIII(B), the Project would last three years from the Supply Contract's effective date. That date was the date on which PSAL received full payment under the Supply Contract, which was in the event 22 March 2013.

196. The Proindicus Supply Contract was subsequently subject to four Change Orders, which amended it as follows:

196.1. By Change Order No.1, dated 29 April 2013, the parties agreed to change the scope of supply to include 24 additional Interceptors (i.e. for a total of 32),

a further OPV patrol vessel (i.e. for a total of three), three WP18s and four additional aircraft. It was further agreed that the contract price would increase by US$250m, payable in three tranches, and that certain further amendments would be made, conditional on the payment of the further tranches. However, these tranches were never paid, and so these provisions never took effect.

196.2. By Change Order No.2, dated 15 May 2013, it was agreed that the Tranche 2 and Tranche 3 payments would be removed from the Supply Contract, which Credit Suisse had indicated was necessary to enable the financing of the Project. Certain changes were effective immediately, and the remaining changes became effective on the payment of Tranche 1 on 26 June 2013. Change Order No.2 was expressed as superseding Change Order No.1.

196.3. By Change Order No.3, dated 17 May 2013, it was agreed that the sum of US$250m above the contract price would be payable in two tranches, of US$100m and US$150m respectively. By Article 3 of the Change Order, the increase in supply would take effect only if the Tranche 2 payment of US$150m was made on or by 30 November 2013. Further changes were made to the scope of supply.

196.4. By Change Order No.4, dated 28 June 2013, it was agreed to vary the scope of supply and timetable to deal with the eventuality that Credit Suisse was unable to raise sufficient funds to cover the payments under Tranche 2 on or by 30 November 2013. Change Order No.4 also replaced the annexes to the original Supply Contract with new appendices, which further varied the scope of supply.

197. Under the Proindicus Supply Contract (as varied by Change Orders 1-4), it was provided that PSAL would supply the following:

197.1. 16 radar stations. Article D provided that 6 of these would be installed as manned stations, and 10 as unmanned stations. Annex 3, Section 2.1, provided that these would include 1 X-band radar, 1 S-band radar, 1 mast for their installation, 1 kit of C2 consoles including software, 1 AIS-receiver, 1 set of

satellite communications equipment, 2 sets of VHF-Radio equipment, 1 day and night PTZ camera and 1 emergency generator for power supply.

197.2. 36 DV15 interceptor vessels. Annex 6 provided for the technical specifications of these vessels. The DV15s were required to be either 15 or 16.04m in length, with a half-loaded speed of either 50 or 52 knots, capable of carrying 4 crew, and having a range of 300 or 350 nautical miles.

197.3. Three WP18 strike-craft vessels; Annex 8 provided that these were to be 18.2m in length with a draft of 0.8m, a range of 280 nautical miles and a maximum speed at half load of 62 knots.

197.4. Three HSI32 offshore patrol vessels. Annex 5 provided for the technical specifications of the HSI32s, including a length of 32m, a maximum speed of 43 knots and a range of 580 nautical miles (at 33 knots), and a crew of 12.

197.5. Six light maritime patrol aircraft, whose technical details were supplied in Annex 7.

197.6. A Central Command and Control Site, and training centre.

197.7. Training on the operation and maintenance of the vessels, aircraft and surveillance system. As provided for in Annex 4, Section 3.8.3, these would include theory training for operators of the C2 systems, a seamanship course and an air patrol officer course, each for 6 people over 30 days.

197.8. A satellite surveillance system, with appropriate technical support, for a period of three years.

198. The provision of goods and services provided for thereunder did (and/or would have, but for Proindicus' breaches of its obligations thereunder) fulfilled the purpose described at Paragraph 194 above.

199. Subsequently, the following relevant agreements were entered into:

199.1. On 17 February 2014, the Republic and Proindicus entered into a Concession Agreement for the Integrated Monitoring and Protection System

(the "**SIMP Concession Agreement**"). The Integrated Monitoring and Protection System, known as SIMP (from the Portuguese "*Sistema Integrado de Monitoria e de Protecção*"), had itself been established by a Decree of the Council of Ministers dated 31 December 2013. By the SIMP Concession Agreement, the Republic granted Proindicus exclusive rights as a concessionaire to provide the SIMP for a period of 30 years, which gave Proindicus legal power to charge for the provision of offshore security and monitoring services needed by private companies. The Concession Agreement would thus have permitted Proindicus to generate significant revenue.

199.2. On 22 May 2013, Palomar Capital and Proindicus entered into an Agreement (the "**Palomar-Proindicus Agreement**") which provided for Palomar to act as Financial Adviser to Proindicus, by performing the services set out in Schedule 1 thereto. These included identifying international maritime fleet owners and negotiating security agreements with them, negotiating and enforcing agreements with offshore gas exploitation and exploration companies to receive marine security, negotiating agreements between Proindicus and Mozambican port authorities to implement container traffic charges, implement any necessary collection and enforcement infrastructure to facilitate the efficient and timely collection of all revenues relating to the EEZ, the appropriate dispersal of funds to any lenders of Proindicus, and investment management services.

199.3. Palomar Capital issued a Progress Report on 16 November 2014, indicating serious failings on the part of Proindicus to assist Palomar Capital in its role under the Palomar-Proindicus Agreement. On 3 December 2014, Proindicus requested Palomar Capital to terminate the Agreement, and on the same date, a Termination Deed was signed between Proindicus and Palomar Capital, bringing to an end the Palomar-Proindicus Agreement.

200. Paragraph 62 is admitted. This letter, and the subsequent payment, resulted from a request from Mr do Rosário (on behalf of Mr Leão) to Mr Boustani that Privinvest contribute to the initial costs of operating Proindicus, because it had no budget allocated by the Republic. Mr Boustani, with Mr Safa's consent and consistent with

Privinvest's commitment to the success of the Projects, agreed to make this payment for the purpose of funding operating expenditure.

201. The first sentence of Paragraph 63 is admitted, save that it is denied that Proindicus only "*purported*" to enter into the Proindicus Supply Contract.

202. The second sentence of Paragraph 63 is admitted, save that: (i) the allegation that it was so provided only "*on the face*" of the Proindicus Supply Contract is not understood; (ii) the Proindicus Supply Contract was subsequently varied, as described at Paragraph 196 above.

203. As to the third sentence of Paragraph 63:

203.1. It is admitted that Mr Langford was involved in the drafting of the Proindicus Supply Contract on the instructions of Mr Safa.

203.2. It is denied that this is of any relevance.

204. PSAL (and, after PSAL's Abu Dhabi Branch was converted into PISB, PISB, which effectively took over performance of the Proindicus Supply Contract) complied with each of its obligations under the Proindicus Supply Contract, save in so far as it was prevented from doing so by the conduct of the Republic and Proindicus. More particularly:

204.1. The equipment necessary for the construction and connection of all 16 radar stations required (together with the equipment necessary for the construction and connection of a further two spare radar stations) was delivered to Mozambique within the contract period and was distributed to the storage locations in Pemba, Nacala, Beira and Maputo. Proindicus failed, in breach of Article II, to prepare foundations for sufficient sites for the radar stations, such that by 22 March 2016, only 9 of the 16 stations were deployed. Notwithstanding that, Privinvest offered to stay on and install further stations, to which the Republic and Proindicus did not agree.

204.2. PSAL delivered all the vessels and aircraft in accordance with the Contract. In breach of Article II, Proindicus failed to ensure sufficient safe mooring and storage facilities for the assets, preventing their appropriate usage.

204.3. The Central Command and Control Site was created (although Proindicus did not select a site for it until October 2013, such that its delivery was delayed).

204.4. PSAL provided training on the use of the radar stations, vessels and aircraft. However, in breach of Article II, Proindicus either failed to supply trainees, or those trainees were not suitably qualified, such that the training was not completed in full. Nonetheless, sufficient training was provided such that the Project was able to be operated from completion.

205. As to the first sentence of Paragraph 64:

205.1. The allegation that the Proindicus Supply Contract was an instrument of fraud is not understood. It is denied that it represents any free-standing basis for treating a contract as void or unenforceable (or may constitute an unlawful means for the purposes of the Republic's claim in conspiracy) as a matter of English law.

205.2. The relevance of the allegation that the Proindicus Supply Contract is an instrument of fraud (or a sham) is in any event unclear. In Response 26 of the First Privinvest RFI Response, the Republic contends that the Proindicus Supply Contract was illegal and contrary to public policy. However, it also states in the same Response that it does not contend that the Proindicus Supply Contract was void, a nullity or otherwise invalid.

205.3. The relevance of the allegation is therefore limited to the allegation that the entry into the Proindicus Supply Contract constituted an unlawful means for the purposes of the Republic's conspiracy claim, and the Republic has so clarified at Response 26.3.2 of the First Privinvest RFI Response. It is denied that entry into and/or performance of an agreement or purported agreement is capable of constituting an unlawful means for the purposes of an action in conspiracy.

Entry into a contract which is an instrument of fraud and/or a sham is not a freestanding legal wrong.

205.4. The allegation is in any event denied. The Proindicus Supply Contract was a genuine and legitimate agreement concluded between the parties. Paragraph 193 above is repeated.

206. The second sentence of Paragraph 64 is denied. PSAL contracted to supply, and did supply, valuable goods and services pursuant to the Proindicus Supply Contract. Paragraphs 194 and 204 above are repeated.

207. As to Paragraph 64 in general:

207.1. The allegations contained in Paragraphs 64(ii), (iii), (iv) and (v) are matters which were readily apparent on the face of the Supply Contract or other documents available to the Republic. The Republic and its officers (including former President Guebuza, President Nyusi and Mr do Rosário) were all aware of the relevant terms of the Proindicus Supply Contract.

207.2. It is not open to the Republic to contend that the Proindicus Supply Contract was a sham and/or an instrument of fraud on the basis of facts and matters which it was contemporaneously aware of.

207.3. The Proindicus Supply Contract was negotiated and agreed with the Republic and Proindicus. It was not and could not have been imposed on the Republic and Proindicus unilaterally.

207.4. PSAL owed no duty of care to Proindicus and the Republic in respect of the Proindicus Supply Contract, which was an arm's length transaction between commercial parties.

208. As to Paragraph 64(i), there was no bribery, and so the Privinvest Defendants had not purchased the loyalty of the counterparty.

209. As to Paragraph 64(ii), Paragraph 224 above is repeated. The payment of contractor fees was legitimate.

210. As to Paragraphs 64(iii) and 123, it is denied that no honest and reasonable government official could have countenanced the terms of the Proindicus Supply Contract, or that it was one-sided. More particularly:

210.1. The Republic's case proceeds on the basis of analysing terms alleged to be unfavourable in isolation. This approach is misconceived. The Supply Contracts fall to be analysed on the basis of the totality of their terms and the benefits thereby obtained by the Republic, set against the obligations imposed on it. In the round, the Supply Contracts would have permitted the Republic to generate extensive revenue, more than recouping their costs, notwithstanding the features identified in these paragraphs.

210.2. Moreover, certain features of the Supply Contracts were disadvantageous, taken in isolation, to Privinvest, including:

210.2.1. The Contract Price was fixed, notwithstanding the considerable uncertainty about the amount of work required and the attendant possibility of costs overruns.

210.2.2. The Proindicus and EMATUM Supply Contracts both contained corporate guarantees from other entities connected with the Privinvest Defendants. By Article VIII(G) and Annex 4 of the Proindicus Supply Contract, ADM gave a guarantee to satisfy any claims brought by Proindicus against PSAL, up to a value of US$366m (reducing over time). By Article VIII(F) of the EMATUM Supply Contract, Privinvest Holding was to give a guarantee to satisfy any claims brought by EMATUM against ADM, up to a value of US$785.4m (reducing over time). Ultimately, this guarantee was given by PISB.

210.3. As to Paragraph 123.1, the first sentence is admitted. The second sentence is denied. The entire purchase price was payable upfront because there were very high initial costs to Privinvest of commencing work on the Supply Contracts, including project mobilisation, purchasing materials and paying sub-contractors, and given the ambitious timeframe in which the Republic wanted project delivery to occur. Those commercial terms were thus negotiated on an

honest and reasonable basis. Further, Credit Suisse insisted that it should be paid upfront, because it wanted Privinvest and not its borrower to bear the commercial risk of cost overruns on the Project, and also because it would have to hold capital for future, undisbursed funds under the Proindicus Facility Agreement, whereas once funds had been disbursed, Credit Suisse could sell the debt and thereby de-risk it. Moreover, in circumstances where Privinvest did tender supply of the full scope of assets and services paid for under the Supply Contract, subject to the SPVs' own breaches which prevented some of that provision, any risk to the Republic arising from this provision did not in fact arise.

210.4. As to Paragraph 123.2, it is admitted that PSAL was entitled to subcontract any or all of the works to third parties. It is denied that this was not a term an honest or reasonable government official would countenance, because: (i) this is normal market practice; (ii) to the knowledge of the Republic and Proindicus, there were numerous associated companies of PSAL with the relevant expertise to do this work, including Logistics Offshore, Logistics International, ADM and Constructions Méchaniques de Normandie ("**CMN**"); (iii) PSAL assumed all risk of sub-contractors failing to perform their obligations, such that Proindicus was not thereby exposed to any greater risk under the Contract.

210.5. As to Paragraph 123.3, the first sentence partially and misleadingly quotes from the Proindicus Supply Contract. The full provision is as follows:

> "*The given price is quoted in US dollars and is a fixed price for the indicative times of delivery of the Assets and the supply of the Services during the run of the Project; it does not cover any offset commitments, V.A.T., duties, levies and / or taxes (or any additional expenses, costs, losses or damages suffered by the Contractor as a result of the Customer's breach of the terms hereof or any other increased costs or expenses as a result of the operation of the provisions of this Contract).*
>
> *All such expenses, costs, losses or damages as aforesaid shall be at Customer's sole cost and account and shall be repaid forthwith upon written demand being made therefore.*"

210.6. The relevant provision therefore addresses circumstances where PSAL experiences increased costs or expenses as a result of Proindicus's breach of

contract, or costs increases as a result of the operation of provisions of the Supply Contract. Such a provision is commercially reasonable.

210.7. As to Paragraph 123.4, it is admitted that the delivery timetable was indicative only, but subject to the overarching obligation on PSAL to supply all goods and services within the three-year duration of the Supply Contract. This flexibility was necessary because PSAL's ability to supply was dependent in part on Proindicus's cooperation and performance of its own obligations, and the overall 3-year timetable for Privinvest to design, build, install and make operational all of the relevant assets was already tight, particularly bearing in mind the dangers posed in working in many parts of the country where assets were to be delivered/installed.

211. Paragraph 64(iv) is denied. Paragraph 192 above are repeated.

212. Paragraph 64(v) is denied. No particulars are given as to why the changes in assets were inappropriate and/or less valuable. In so far as the Republic intends to refer to the allegations in Paragraph 71, they are addressed at Paragraph 226 below.

213. As to Paragraph 64(vi):

213.1. It is admitted that Privinvest made the payments referred to.

213.2. These were not payments made to "*prop up*" Proindicus, whatever that phrase is supposed to mean. They were made to support Proindicus in funding its operational expenditure at a time when it was otherwise unable to do so, and because Privinvest wanted the Projects to succeed.

213.3. Save as aforesaid, this sentence is denied.

214. As to Paragraph 64(vii):

214.1. It is denied that the services were selected by PSAL. They were agreed between the parties to the Proindicus Supply Contract.

214.2. The distinction between the services being selected to justify the level of lending under the Proindicus Facility and to satisfy a genuine need on the part

of the Republic is not understood. In doing its due diligence, Credit Suisse would and did require to be satisfied that the contract price under the Proindicus Supply Contract reflected genuine provision of goods and services. As a result, it was a necessary concomitant of obtaining the Proindicus Facility that genuine goods and services were to be provided.

214.3. It is admitted that, in determining the scope of supply under the Proindicus Supply Contract, the parties had regard to the level at which Credit Suisse was willing to lend under the Proindicus Facility. As the Republic was not able to fund the cost of the Proindicus Project itself, the level at which Credit Suisse was willing to lend limited or influenced the contract price, and therefore the scope of goods and services to be supplied. Since the Proindicus Project was expected to generate considerable benefits for the Republic (and revenues which would enable Proindicus to service the debt under the Proindicus Facility), Proindicus and the Republic rationally wished to maximise the supply under the Proindicus Supply Contract.

214.4. There was a genuine need for the assets and services to be provided under the Proindicus Supply Contract. It is therefore denied that the assets and services were not selected so as to make the Proindicus Transaction feasible. The Proindicus Project could and would have operated successfully, but for the acts and omissions of the Republic and Proindicus.

214.5. Save as aforesaid, no admissions are made.

215. Paragraphs 64A and 65 are admitted. For the avoidance of doubt, Mr Boustani's reason for sending this correspondence was that it was true – Mr Boustani had been told by Mr Nhangumele that no public tender was required in connection with defence and security projects, and that SISE and the Ministry of Defence wanted the Projects to be classified, and therefore become public only upon the conclusion of the Supply Contracts. In consequence, it would not have been appropriate to request an opinion from the Attorney General.

216. No admissions are made as to Paragraphs 66-67.

217. No admissions are made as to Paragraph 67A, which is outside the knowledge of the Privinvest Defendants.

218. The first sentence of Paragraph 68.1 is admitted, save that it is denied that Mr Chang was only purportedly acting on behalf of the Republic.

219. The second sentence of Paragraph 68.1 is admitted and averred. The other signatory was Mr Tim Malton. No allegations of wrongdoing have been made in any forum against Mr Malton.

220. The third sentence of Paragraph 68.1 is admitted. Privinvest relies on Paragraph 109 of the CS Defence, to the effect that Mr Singh signed pursuant to a specific authority and not any broader authority on behalf of Credit Suisse.

221. The first sentence of Paragraph 68.2 is admitted.

222. The second sentence of Paragraph 68.2 is admitted. The other signatory for Proindicus was Mr Matlaba, the Chairman of the Board of Directors of Proindicus at the time.

223. The third sentence of Paragraph 68.2 is admitted. Paragraph 220 above is repeated.

224. As to Paragraph 69:

224.1. The idea of a contractor or subvention fee was raised as early as an email from Mr Freiha to Mr Boustani on 20 February 2012, in which Mr Freiha noted that:

> "*The Moz govt never pays market rates and typically deals get done on the basis of a subsidy to be paid by the contactor* [sic] *to the lender – Will that be the case here and what is the profitability of the project for you?*"

224.2. Based on that email, and in any event, it is averred that: (i) "*contractor*" or "*subvention*" fees were a common market practice, endorsed by Credit Suisse; and (ii) they had been used by the Republic in the past to reduce the interest payable on its loans.

224.3. In or around June 2012, negotiations for the Projects stalled on the basis that the Republic could not afford the interest costs of the Projects. As a result, Mr Singh suggested the introduction of a contractor or subvention fee into the structure, by which Privinvest would subsidise Proindicus and the Republic's interest costs. Paragraphs 162-163 are repeated.

224.4. As a result, PSAL agreed that it would pay a Contractor Fee to Credit Suisse, by which a portion of the interest on the Facility Agreement would be paid upfront by PSAL.

224.5. That agreement was embodied in a Contractor Fee Letter dated 21 March 2013, by which it was agreed that Credit Suisse would accept a sum of US$38m from PSAL, for which the consideration was Credit Suisse having arranged the Proindicus Facility Agreement.

224.6. The first sentence of Paragraph 69 is admitted, save that: (i) if it is alleged by referring to the Contractor Fee Letter as "*styled as*" such that it was not valid and binding, then that is denied; (ii) if it is alleged that the fact that the Contractor Fee Letter was signed only after the conclusion of the Proindicus Facility Agreement that it was improper and/or inappropriate, then that is denied – the sums under the Facility Agreement were only disbursed the following day, and the Contractor Fee Letter was a pre-condition of that disbursement, because it represented a key part of the consideration Credit Suisse received for the sums loaned.

224.7. The second sentence is admitted. The other signatory was Mr Chris Chapman, who was described as "*Director – Fixed Income*." No wrongdoing has been alleged against Mr Chapman in any forum in connection with the Projects.

224.8. The third sentence is admitted. The other signatory was Mr Hankach.

225. Paragraph 70 is admitted. Paragraph 200 above is repeated.

226. As to Paragraph 71, Paragraph 196 above is repeated and, save as is consistent with that paragraph, Paragraph 71 is otherwise denied. As to the last sentence of Paragraph 71.1:

226.1. The main reason for the changes in the scope of supply was said to be to make it more adequately meet the Republic's needs. In particular, in order to patrol the EEZ, it was more appropriate to have a larger number of vessels, which were smaller and faster so as to decrease response times, together with more surveillance aircraft. More specifically, upon beginning work in-country, it became apparent to Privinvest that the infrastructural deficiencies in Mozambique, and in particular with the Republic's Navy, were considerably greater than appreciated. As a result, it was necessary to provide equipment which could be used even with the more basic level of training and infrastructure available.

226.2. A Vigilante 400CL vessel is a 60 metre-long warship. It was agreed between Privinvest and Proindicus that such a vessel was not suitable to meet the Republic's needs.

226.3. It is admitted that the Remos GX is commonly, though not exclusively, used as a light sport aircraft. The particular Remos GX's which were to be provided by Privinvest were enhanced with Radar systems, an E/O Sensor, AIS and a Command-and-Control system which interacted with the other assets supplied. The reference to the ordinary use of a Remos GX aircraft does not reflect the proposed supply by Privinvest.

227. The text of the emails referred to at Paragraph 71A is admitted. Privinvest will refer to these emails for their full meaning and effect at trial.

228. Paragraph 72 is admitted, save that it is denied that Mr Chang was only acting purportedly on behalf of the Republic.

229. Paragraphs 73-76 are admitted, save that:

229.1. If by the reference at Paragraphs 74 and 76 to the Supplemental Contractor Fee Letters being "*styled*" as such it is intended to allege that they were non-binding or invalid, that is denied.

229.2. Paragraph 75 is admitted in so far as it is consistent with Paragraph 196 above, and is otherwise denied.

B7. EMATUM

230. The Republic had intended for some time to reduce the amount of legal and illegal fishing by non-Mozambican vessels of the tuna in its EEZ. In this regard:

230.1. On 28 March 2013, the Republic submitted a Tuna Fleet Development Plan to the Indian Ocean Tuna Commission, indicating its intention to phase out its grant of licences to non-Mozambicans to fish tuna in its waters. This plan also indicated the replacement of the current tuna fishing fleet with vessels fishing directly for Mozambique, either under charter or re-flagged, with a target of 40 such vessels during 2014-2016 and ultimately 130 such vessels by 2028.

230.2. The Mozambique Fishing Feasibility Study of July 2013, produced by the Republic to assess the viability of the EMATUM Project, noted the significant potential of the Republic's fishing industry if its EEZ were properly exploited.

231. To this end, Privinvest and the Republic (in particular, through former President Guebuza) began discussions about the EMATUM Project. The purpose of the EMATUM Project was:

231.1. To provide the Republic with a state-owned fleet of fishing vessels which could fish tuna within the EEZ, and thereby generate revenue.

231.2. To supply the maritime surveillance and rescue capacity needed for the operation of such a fleet.

231.3. To contribute to the maritime surveillance activities of Proindicus.

232. The EMATUM Supply Contract was signed for ADM by Mr Allam and for EMATUM by Mr do Rosário and Henrique Álvaro Cepeda Gamito. It provided that:

232.1. By Article II, ADM promised to deliver the assets and provide the services defined therein to EMATUM.

232.2. Further by Article II, it was agreed that: (i) ADM would grant to EMATUM a licence to use the relevant intellectual property related to the Vessels supplied thereunder; and (ii) that licence would incorporate a term requiring ADM's prior consent before supplying products using that intellectual property to a third party (including other African states).

232.3. By Article IV, ADM was entitled to subcontract any part of the works under the Supply Contract, subject to an obligation to use reasonable endeavours to ensure that the works were undertaken in accordance with the Supply Contract.

232.4. By Article V, the Project would last three years from the Supply Contract's effective date. That date was the date on which ADM received full payment under the Supply Contract, subject to a long-stop date of 30 September 2013.

232.5. By Article VIII(B), all assets would be delivered Ex Works on INCOTERMS 2010 at the site of origin of the assets' respective manufacture. All assets would be subject to an acceptance test, in which EMATUM was entitled to participate.

233. Further, it was agreed thereunder that ADM would supply the following:

233.1. 21 Longliners, which were subject to the technical specifications in Annex 1, which required them to comply with the relevant French Flag Authority Decree, the IMO Global Maritime Distress Safety System A1 and A2, COLREG regulations, and to comply with Bureau Veritas class rules.

233.2. 3 Ocean Eagle 43 Trimarans and their associated camcopter drones.

233.3. 3 bait fishing trawlers.

233.4. The equipment for a land operations centre.

233.5. 1 set of spare parts per vessel.

233.6. Basic operator training for the vessels and camcopter drones.

234. ADM complied with its obligations under the EMATUM Supply Contract, save in so far as EMATUM's own breaches of contract made it impossible for ADM to do so:

234.1. All the Longliners, Trimarans and trawlers were supplied, together with the spare parts for them.

234.2. The land operations centre could not be commissioned because EMATUM failed to supply a site for it as required by the Supply Contract. However, the relevant equipment was all delivered.

234.3. ADM delivered the training to the extent it was able to do so. However, on certain occasions EMATUM failed to supply sufficient trainees for the training, or those trainees were not suitable for it, and also at times hindered ADM from supplying substantial parts of the relevant training.

235. The text of the communications pleaded at Paragraphs 76A-C is admitted. Privinvest will rely on those communications at trial for their full meaning and effect.

236. The first sentence of Paragraph 77 is admitted, save that it is denied that EMATUM only "*purported*" to enter into the EMATUM Supply Contract.

237. The second sentence of Paragraph 77 and Paragraph 78 are admitted, save that the allegation that it was so provided only "*on the face*" of the EMATUM Supply Contract is not understood. Paragraph 232 above is repeated.

238. The third sentence of Paragraph 77 is admitted in so far as Mr Langford was involved in the drafting of the EMATUM Supply Contract, but its relevance is denied.

239. As to the general allegation in the first sentence of Paragraph 79, Paragraph 205 above is repeated *mutatis mutandis*.

240. The second sentence of Paragraph 79 is denied. ADM contracted to supply, and did supply, valuable goods and services under the EMATUM Supply Contract.

241. As to the third sentence of Paragraph 79 in general, Paragraph 207 is repeated *mutatis mutandis.*

242. Paragraph 79(i) is denied. There was no bribery, and thus the Privinvest Defendants had not purchased the counterparty's loyalty.

243. As to Paragraph 79(ii), it is admitted that contractor fees were paid but denied that this was illegitimate. The reasons that they were introduced were substantially the same as those in connection with the Contractor Fee Letter between Proindicus and PSAL, and Paragraph 224 is repeated *mutatis mutandis.*

244. As to Paragraph 79(iii), Paragraph 210 above is repeated *mutatis mutandis.*

245. As to Paragraph 79(iv), Paragraph 192 above is repeated.

246. As to Paragraph 79(v), it is denied that these payments evidence that the Supply Contract was not genuine. These payments were not improper, for the reasons pleaded at Paragraph 253 below.

247. As to Paragraph 79(vi) and Paragraph 84:

247.1. In the course of the negotiations of the EMATUM Financing Transaction, Credit Suisse had indicated that it wished to hold back US$51m of the sums payable under the Facility Agreement as a reserve to meet interest payments.

247.2. However, ADM refused to agree to this, because it was unwilling to pay EMATUM's interest obligations, and had already paid a subvention fee.

247.3. Shortly before the 2020 Notes were to be marketed, Credit Suisse decided that it could only fund US$500m, not US$850m, of the sums to be advanced under the EMATUM Facility Agreement. In consequence, Privinvest decided to agree to a lower contract price of US$785.4m, rather than attempt to renegotiate the EMATUM Supply Contract. That price took into account the interest reserve (being US$850m, the net amount under the Facility Agreement, less US$13.6m in Credit Suisse's Arrangement Fee and US$51m of interest reserve).

247.4. Subsequently, Credit Suisse decided it was content to dispose of the interest reserve, and so it was agreed between EMATUM and Privinvest to restore the initial price under the EMATUM Supply Contract to reflect the parties' original agreement, rather than ADM in effect funding the interest reserve itself.

247.5. It is denied that this feature, properly explained, was improper or disadvantageous to EMATUM.

248. As to Paragraph 79(vii), Paragraph 214 is repeated *mutatis mutandis*.

249. Save that it is denied that Mr Chang was acting only purportedly on behalf of the Republic, Paragraph 80.1 is admitted.

250. Paragraph 80.2 is admitted. Mr Gamito was the other signatory for EMATUM.

251. As to Paragraph 81:

251.1. As with the Proindicus Facility Agreement, the EMATUM Facility Agreement involved EMATUM (and, thereby, the Republic) paying significantly lower interest rates than the market price or than Credit Suisse was willing to agree to.

251.2. In consequence, it was necessary for Privinvest to agree to pay a contractor fee to enable the transaction to proceed.

251.3. However, unlike the Proindicus Facility Agreement, Credit Suisse was immediately packaging the debt owed by EMATUM and selling it in the form of the 2020 Notes, such that it might make an immediate profit on the debt.

251.4. Accordingly, it was necessary to agree a mechanism by which Privinvest would be reimbursed if it effectively overpaid on the contractor fee. This mechanism was the formula created by the Contractor Rebate Letter between ADM and Credit Suisse dated 3 October 2013.

251.5. Paragraph 81 is admitted, save that if it is alleged by referring to the Contractor Fee Letter as "*styled as*" such that it was not valid and binding, then

that is denied. Mr Allam was the only signatory for ADM on the Contractor Fee Letter, and there was only one signature block for a signatory for ADM.

251.6. Pursuant to the Contractor Rebate Letter, the total rebate which ADM was entitled to, and was paid on 4 October 2013, was US$3,289,118.

252. Paragraph 82 is admitted and averred.

253. Paragraph 83 is admitted, save that the payment was made on 16 September 2013. This payment was made as a loan to cover working capital and operational expenses for EMATUM. It was followed on 22 September 2013 by a further sum of US$1.3m. It was made following a request from Mr do Rosário. Mr do Rosário's initial request was for a figure in excess of US$25m, but Privinvest declined that request, on the basis that the start-up operational costs for EMATUM ought to be considerably lower. Privinvest eventually agreed to loan US$4.3m as a reasonable estimate of those start-up costs to support the Projects.

254. Privinvest also made a further payment of €1m for the same purpose on 27 November 2014.

255. On 25 March 2015, ADM and EMATUM embodied by way of a counter-signed letter (the "**ADM-EMATUM Loan Agreement**") the terms which had already been agreed in relation to these loans. The ADM-EMATUM Loan Agreement made clear that the loans were repayable: (i) if EMATUM defaulted on the EMATUM Facility Agreement or become insolvent, immediately; (ii) otherwise, on demand at any date after 16 September 2017.

B8. MAM

256. Around the time that the Proindicus Project was being delivered, the Republic also expressed interest in establishing a shipbuilding and ship maintenance industry in Mozambique. In particular, former President Guebuza raised this possibility with Mr Boustani on multiple occasions in late 2013 and early 2014, and President Nyusi raised it with Mr Boustani on 7 March 2014, at the presentation of the first vessels delivered under the Proindicus Supply Contract.

257. The purpose of the MAM Project was to provide the Republic with indigenous shipbuilding, ship repair and maintenance facilities, which would: (i) enable the Republic to repair and maintain the vessels supplied under the Proindicus and EMATUM Contracts, and thus ensure their longevity; (ii) enable the Republic to sell new vessels to third parties for profit; (iii) critically, provide logistics support and other services to offshore oil and gas supply installations, including using the African Storm vessel.

258. The MAM Supply Contract was initially signed on 1 May 2014, by Mr Boustani for PISB and Mr do Rosário and Mr Irá for MAM. It was subsequently amended and restated by way of a Letter Agreement dated 22 December 2014. The Letter did not come into effect until 15 June 2015, on which date PISB signed the Letter Agreement and Mr Allam emailed Mr do Rosário to confirm that it had done so. References hereafter are to the obligations under the Contract as amended and restated.

259. The MAM Supply Contract had initially included the construction and commissioning of a shipyard in the Republic, by which the Republic could construct its own vessels, similar to those in use by Proindicus and EMATUM. However, as recorded in the Letter Agreement, it had become apparent that MAM was unable to provide the land and infrastructure for the construction of such a shipyard. Instead, it was agreed between MAM and PISB that Privinvest would contribute to the operational, training and maintenance needs of the Republic's growing fleet of vessels by: (i) upgrading two bases, at least one of which would be capable of assembling vessels and some steel works; and (ii) establishing a Mozambique Maritime Institute. Privinvest will rely on these changes in support of its contention that it was sincerely interested in ensuring the success of the Projects and their generation of benefits for the Republic.

260. Pursuant to the MAM Supply Contract, as amended:

    260.1. PISB would supply (subject to MAM's performance of its own obligations) the assets as defined therein, being all equipment and materials to outfit and

render operational the Bases (as defined) and the buildings constituting the Mozambique Maritime Institute.

260.2. Bases meant parts of the two existing government owned naval facilities at Pemba and the Maputo Catempe Naval Base, each of which would be made available to PISB and upgraded by PISB to the extent necessary to enable maintenance activities to be undertaken at both Bases, and for assembly and steelworks to be additionally undertaken at one of them.

260.3. In addition to the provision of the assets, PISB would:

260.3.1. Ensure that the Bases were upgraded to at least the standard of good industry practice, and fit them with all necessary equipment and make them fit for purpose so that MAM could assemble Local Vessels (components for which would be supplied by PISB) at one base, and, in coordination with the Mobile Maintenance Vessel (see Paragraph 260.3.5 below), provide maintenance and servicing services at both of them for both the Republic's own vessels as supplied pursuant to the Proindicus and EMATUM Supply Contracts, and third party vessels associated with the offshore oil and gas industry.

260.3.2. Provide the above mentioned maintenance and servicing services for a period of up to 24 months commencing on 1 June 2015.

260.3.3. Improve the existing and identified buildings at the Pemba Naval School and Maputo Nautical School to create the Mozambique Maritime Institute, fit with them with all necessary equipment and fit them out so as to enable the provision of training services in respect of the vessels delivered under the Proindicus and EMATUM Supply Contracts.

260.3.4. Manage and operate the Mozambique Maritime Institute and provide above mentioned training services from there for a period of up to 24 months commencing on 1 June 2015.

260.3.5. Make available, at its own cost, a Mobile Maintenance Vessel (known as "*African Storm*") which was capable of providing maintenance and

support services for offshore oil and gas platforms and vessels, operating in the Republic's areas of rich oil and natural gas reserves, and provide the maintenance services to be undertaken aboard that vessel, for a period of 24 months, after which the Mobile Maintenance Vessel would be transferred to MAM for the sum of US$1.

260.3.6. Provide spare parts for the vessels provided under the Proindicus and EMATUM Supply Contracts to cover a normal and professional operation of such vessels for a two year period from 1 June 2015.

260.3.7. Provide MAM with a licence to use the intellectual property, and an associated technology transfer (supported by a technical assistance team for a period of 24 months from 1 June 2015), in respect of the vessels supplied to it by Privinvest under the Supply Contracts.

261. On 30 January 2017, PISB wrote to MAM, envisaging the conclusion of the MAM Supply Contract. That letter made clear that PISB's obligations to MAM would expire on 31 May 2017, and that in so far as it had been unable to discharge its obligations because MAM had failed to fulfil its own obligations under the Contract, it would not do so after that date. Annex 1 set out in detail a list of outstanding failures of provision by MAM, and their potential impact on PISB's ability to comply with its own obligations. Annex II set out the detailed correspondence concerning prior failures of performance by MAM. As recorded in that letter, PISB had performed its obligations under the Supply Contract to the extent possible, given that MAM's own breaches interfered with and obstructed PISB's performance.

262. As to Paragraph 85:

262.1. Paragraph 258 above is repeated.

262.2. It is denied that MAM only "*purported*" to enter into the MAM Supply Contract.

262.3. The third sentence is admitted in so far as Mr Langford was involved in the drafting of the MAM Supply Contract, but its relevance is denied.

263. Paragraph 86 is admitted, save that: (i) the allegation that it was so provided only "*on the face*" of the MAM Supply Contract is not understood; (ii) the MAM Supply Contract was subsequently varied, as pleaded at Paragraph 260 above.

264. As to the general allegation in the first sentence of Paragraph 87, Paragraph 205 above is repeated *mutatis mutandis.*

265. The second sentence of Paragraph 87 is denied. PISB contracted to supply, and did supply, valuable goods and services under the MAM Supply Contract.

266. As to the third sentence of Paragraph 87 in general, Paragraph 207 is repeated *mutatis mutandis.*

267. Paragraph 87(i) is denied. There was no bribery, and thus the Privinvest Defendants had not purchased the counterparty's loyalty.

268. As to Paragraph 87(ii), the particulars of this allegation are given at Paragraph 88. As to those particulars:

268.1. The first sentence of Paragraph 88 is denied.

268.2. As to Paragraph 88.1, it is admitted that the entire purchase price was to be paid to PISB up front. It is denied that this was unreasonable and/or dishonest. Paragraph 210.3 above is repeated *mutatis mutandis.*

268.3. As to Paragraph 88.2, it is admitted that PISB was entitled to subcontract the works. It is denied that this was not a term an honest or reasonable government official would countenance, because: (i) this is normal market practice; (ii) to the knowledge of the Republic and MAM, there were numerous other subsidiaries and associated companies of PISB with the relevant expertise to do this work, including Logistics Offshore, Logistics International, ADM and CMN; (iii) PISB gave the warranties in Article 8(D) in respect of any sub-contracted work as with work PISB performed itself, such that MAM was protected from defective sub-contracted work.

268.4. Paragraph 88.3 partially and misleadingly quotes from the MAM Supply Contract. The full provision is as follows:

> "*The given price…is a fixed price for the indicative times of delivery of the Assets and the supply of the Services; it does not cover any offset commitments, delays, V.AT, duties, levies and/or taxes (or any additional expenses, costs, losses or damages suffered by the Contractor as a result of the Customer's breach of the terms hereof or any other increased costs or expenses as a result of the operation of the provisions of this Contract). All such expenses, duties, taxes costs, commitments, losses or damages etc as aforesaid shall be at the Customer's sole cost and account and shall be paid forthwith upon demand being made therefore by the Contractor.*"

269. The relevant provision thus addresses circumstances in which PISB experiences increased costs as a result of the operation of local law (such as offset commitments or VAT), as a result of MAM's breaches of contract or because of the operation of some other provision of the Supply Contract, in particular Article 2.4 thereof. This provision was therefore commercially reasonable.

270. As to Paragraph 88.4, it is admitted that the delivery timetable was indicative only, but subject to the obligation on PISB to supply all goods and services within the duration of the Supply Contract. This flexibility was necessary because PISB's ability to supply was dependent in part on MAM's cooperation and performance of its own obligations, and the overall 2-year timetable for Privinvest to build, install and commission all of the relevant assets was already tight, particularly bearing in mind the dangers posed in working in many parts of the country where assets were to be delivered/installed.

271. As to Paragraph 87(iii), Paragraph 192 above is repeated.

272. As to Paragraph 87(iv), it is admitted that Logistics Offshore paid approximately US$1m into a bank account held by MAM. This was an advance for working capital purposes.

273. As to Paragraph 87(v), Paragraph 214 is repeated *mutatis mutandis.*

274. Paragraph 89 is admitted, save that it is denied that Mr Chang was acting only purportedly on behalf of the Republic.

275. As to Paragraph 90, Paragraph 272 above is repeated.

B9. Subsequent developments in relation to the Transactions

276. As to Paragraphs 91-101, these are not particulars of claim against Privinvest, and are not in any event within Privinvest's knowledge, such that no admissions are made as to them, save that Mr Boustani did not play any part in the meetings referred to in the period March-May 2015.

B10. The ultimate failure of the Projects

277. Privinvest does not know whether the goods and/or services supplied under the Supply Contracts have been put to use and/or generated revenue in any meaningful way since the Supply Contracts came to an end, whether by the Republic itself, the SPVs or otherwise.

278. In so far as the Projects have not generated significant revenue, alternatively the revenue anticipated at the time they were concluded, Privinvest will say that the reasons for this failure are as follows:

278.1. The material breaches of the Supply Contracts by the SPVs, as to which Paragraphs 204, 234 and 261 above are repeated;

278.2. The Republic appears to have elected not to use the assets and services supplied after the Supply Contracts themselves ended;

278.3. The Republic did not take steps to ensure that the SPVs would generate the profits they could have done. Pending disclosure, Privinvest will say that these failures included at least the following:

278.3.1. In respect of the Proindicus Project, failing to publish and/or enforce the SIMP Concession Agreement so as to generate revenue for Proindicus.

278.3.2. In respect of EMATUM: (i) failing to ensure the grant of fishing licences to EMATUM so as to enable the vessels supplied to fish legally; (ii) failing to take delivery of the drones supplied under the EMATUM Contract; (iii) failing to supply sufficient and trained staff for the command centre.

278.3.3. In respect of MAM: (i) failing to require oil and gas companies operating within the EEZ to contract with MAM for the supply of logistics support and services, as well as offshore maintenance for their installations; (ii) more particularly, failing to insist that an offshore platform installed by Daewoo, around the time of the completion date of the MAM Project, use MAM for its offshore logistics services; (iii) failing to establish an offset programme (which Privinvest had originally proposed) requiring the purchase of services from MAM by foreign companies in the area generally.

279. Pending disclosure and evidence, it is to be inferred that the reasons for the steps taken or not taken described in Paragraph 278 above are as follows:

279.1. When President Nyusi took power in January 2015, it was in his own political interests to abandon the Projects, because they were closely associated with former President Guebuza. Paragraph 96.6 above is repeated.

279.2. In addition, in view of the continuing fall in commodity prices in the course of 2015 and 2016, some of the natural resources the Republic sought to exploit by the Projects were less likely to attract investment.

279.3. President Nyusi's commercial interests were best suited by causing the Projects to fail. In this regard, the Privinvest Defendants will rely on the existence of a company owned by President Nyusi's son, Florindo, called Motil Moçambique S.A., which is understood to have sold its fishing quotas to a Chinese company. This company would otherwise have competed with EMATUM.

C. PAYMENTS

280. The Republic's claims rely principally on certain payments allegedly made by Privinvest, identified in Schedule 2A and supported in Schedule 2B. The Republic's account of these payments misunderstands and misdescribes the basis and purpose of those payments, and is also materially inaccurate as to when and how certain of them were made.

281. In summary, and without prejudice to the detailed pleas below:

281.1. Privinvest considered that Mozambique had extensive economic potential that was attractive to foreign investors, consistent with wider press reports about the significant economic potential in Mozambique at the time. Alongside the Projects, therefore, Privinvest intended to make more general strategic investments in other businesses in the Republic (in compliance with the relevant Mozambican law), consistent with the letters referred to at Paragraphs 132.1 and 179 above. These included investments with Mr Ndambi Guebuza and certain of the Mozambican Officials. It was (and/or was represented to Privinvest as being) lawful for the Mozambican Officials to engage in private business whilst holding public office.

281.2. Both within Mozambique, and in the UAE and Lebanon, business transactions were often based in substantial part on trust and confidence and through the development of a network of business and social contacts. Many of the transactions described below were conducted informally, on the basis of these principles. This reflected the fact that Privinvest trusted its Mozambican counterparties, and wished to secure their trust and help in identifying future legitimate and commercially attractive business opportunities in Mozambique and elsewhere.

281.3. Further, Privinvest made solicited donations to the political campaigns of certain of the Mozambican Officials, including President Nyusi and Mr Chang, as well as FRELIMO generally. Such donations were lawful.

281.4. Privinvest also made certain payments to the Consultants. These payments were made pursuant to binding Consultancy Agreements for the legitimate provision of services to Privinvest including the development of a network of business and social contacts.

281.5. The payments to the CS Deal Team Defendants were not made in connection with their work at Credit Suisse, but as a result of their services to Privinvest and/or their roles (or, in the case of Mr Singh, intended roles) with Palomar.

281.6. None of the payments made by Privinvest represented a *quid pro quo* for the Projects. On the contrary, the payments were all unconnected with the approval of the Projects or entry into any of the Three Transactions.

282. In relation to these payments, the Republic refers in Schedule 2B to the RACPOC to payments being made "*in respect of*" particular individuals. Privinvest understands this to mean that there is an alleged factual connection between the payment and the relevant individual, and uses it in that sense hereafter. Privinvest does not plead to each and every allegation contained in Schedule 2B of the RACPOC, in circumstances where it has pleaded in full to each payment alleged in Schedule 2A.

C1. Payments to Mozambican nationals who were not Officials

C1(i) The Consultants

283. It is common practice, when doing business with governments in general and in developing markets in particular, including the Republic, for a foreign investor or contractor to engage consultants to assist in navigating local bureaucracy, effect introductions and conduct marketing and public relations activities, as well as advising on political, cultural and business practices and norms. Privinvest had itself encountered difficulties with these issues in the course of past investments in other countries, such that it made sense for it to engage local consultants in Mozambique. Privinvest itself had not done business in Mozambique before and therefore had no pre-existing understanding of the complex political, cultural and business dynamics of Mozambique at the relevant time.

284. PSAL entered into a written Consultancy Agreement with Mr Nhangumele and Mr Langa dated 20 January 2012. The Consultancy Agreement was in fact signed shortly after the conclusion of the Proindicus Supply Contract, but was back-dated based on a request by the Consultants, who considered that they had in fact been providing their services since January 2012. The material terms of that agreement were as follows:

284.1. The Consultants would provide various commercial services, including marketing (Clause 1), public relations (Clause 2) and commercial assistance (Clause 3).

284.2. Pursuant to Clauses 4.2 and 4.3 thereof, Mr Nhangumele and Mr Langa together were entitled to remuneration equal to 5% of the contract price payable to PSAL, up to a limit of US$17m. 60% of that sum was payable on the date on which PSAL received its first payment in relation to the Projects, 20% three months thereafter and a further 20% three months after that.

284.3. Pursuant to Clause 6.5, the Consultants warranted that neither the relationship created by the Consultancy Agreement, nor the performance thereof, was contrary to Mozambican law, and undertook to comply with all laws, rules and regulations in force in Mozambique.

284.4. Pursuant to Clause 11, the Consultancy Agreement was to be governed by the laws of Lebanon, with exclusive jurisdiction in favour of the courts of Beirut.

285. The following payments were made to Mr Nhangumele:

285.1. On 25 March 2013, US$5.1m was paid by PSAL to an account in Mr Nhangumele's name at First Gulf Bank, UAE.

285.2. On 25 June 2013, US$1.7m was paid by PSAL to the same account.

285.3. On 25 September 2013, US$1.7m was paid by PSAL to the same account.

286. The following payments were made to Mr Langa:

286.1. On 25 March 2013, US$5.1m was paid by PSAL to an account in Mr Langa's name at First Gulf Bank, UAE.

286.2. On 25 June 2013, US$1.7m was paid by PSAL to the same account.

286.3. On 25 September 2013, US$1.7m was paid by PSAL to the same account.

287. The timing and amount of each of those payments was in precise compliance with the terms of the Consultancy Agreement with Mr Nhangumele and Mr Langa.

288. Schedule 2A is admitted in so far as it concerns Mr Langa and Mr Nhangumele, save that the relevant payments were not bribes.

C1(ii) Armando Ndambi Guebuza

289. Privinvest entered into a number of business ventures with Mr Ndambi Guebuza and companies owned or controlled by him. As pleaded above at Paragraphs 18, 132 and 179, part of Privinvest's commercial strategy in relation to Mozambique was that it would enter into other long-term business ventures in Mozambique and elsewhere. The Guebuza family, and in particular Mr Ndambi Guebuza and his sister Valentina, owned various substantial businesses operating in Mozambique and other parts of Africa. For the avoidance of doubt, Privinvest did not intend to invest, and did not invest, with former President Guebuza during or after his presidency.

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

290.1. Now PrePay Mozambique SA ("**Now PrePay**"), established on 21 July 2014. Now PrePay's business was and is the operation of telecoms and electronic financial services businesses in Mozambique. Its shares were at all material times owned approximately 87% as to Quilua Investments Holding (see Section C2(i) below), 10% as to Vivre Consultoria-Sociedade Unipessoal Limitada (a Guebuza family investment vehicle), and 1% each as to Pantera Investments SA, Anlaba Investments SA and Txopela Investments SA (see Section C2(i) below). Now PrePay continues to trade within Mozambique.

290.2. A joint venture in respect of real estate assets in South Africa (the "**Real Estate JV**"). The Real Estate JV was to be co-ordinated through Pam Golding Properties and Apple Creek Real Estate, two real estate agencies in South Africa connected as a result of Pam Golding Properties having acquired Apple Creek Real Estate in 2005. In the event, the Real Estate JV did not materialise, in part because of the public allegations made by the Republic concerning the Projects

which made it difficult for Privinvest to do business anywhere in the world, but it is still intended that the funds will be used for the Real Estate JV in future.

291. The Republic does not allege that Mr Ndambi Guebuza owed any duties to it, and Privinvest was in consequence free to make payments to him, without regard to any duty he owed. The explanations given below are without prejudice to that position.

292. The allegation in Schedule 2 that Mr Ndambi Guebuza received US$33m is denied. As to the individual payments alleged in Schedule 2A:

292.1. On 29 April 2013, US$1.75m was paid by PSAL to the trust account of Pam Golding Properties with Standard Bank of South Africa (the "**Pam Golding Trust Account**"). This payment was in relation to the Real Estate JV.

292.2. Privinvest has no record or evidence of a further payment of US$1.5m on the same date, and Schedule 2B identifies no basis for this allegation. It is therefore denied.

292.3. On 13 June 2013, US$780,870 was paid by PSAL to an account in the name of "*Imperial Collection*" with First Rand Bank Ltd, South Africa ("**First Rand**"). This payment was in relation to the Real Estate JV.

292.4. On 16 June 2013, US$2.5m was paid by PSAL to a trust account of Jouberts Attorneys, a South African law firm, at First Rand (the "**Jouberts Trust Account**"). This payment was in relation to the Real Estate JV.

292.5. On 9 December 2013, US$800,000 was paid by PSAL to the Pam Golding Trust Account. This payment was in relation to the Real Estate JV.

292.6. On 21 April 2014, US$1m was paid by PSAL to a trust account in the name of Apple Creek Real Estate at Nedbank. This payment was in relation to the Real Estate JV.

292.7. On 4 June 2014, an attempt was made to pay US$700,000 by PSAL to an account in the name of Apple Creek at Standard Bank SARL in Mozambique. This payment was in relation to the Real Estate JV. The payment was rejected,

and was instead made to the Jouberts Trust Account as pleaded below. This alleged payment is therefore denied.

292.8. On 17 June 2014, US$700,000 was paid by PSAL to the Jouberts Trust Account. This payment was in relation to the Real Estate JV.

293. So far as Privinvest is aware, none of the sums paid in relation to investments with Mr Ndambi Guebuza were received by or for the benefit of former President Guebuza. Privinvest did not at any stage intend that they should be received by former President Guebuza or be for his benefit.

C1(iii) The role of former President Guebuza

294. The Republic maintains its claim in relation to the payments described in Section C1(i) and C1(ii) above on the basis that those payments were made to influence the Republic's participation in the Three Transactions, owing to the connections between the Consultants and/or Mr Ndambi Guebuza and former President Guebuza.

295. As to that contention, and specifically as to the third sentence of Paragraph 129, Privinvest will say as follows:

295.1. The Republic has clarified in Paragraphs 15-16 of its Response to a Request for Further Information dated 3 November 2020 (the "**Republic's Second RFI Response**") that it does not aver that any of the sums paid to the Consultants or Mr Ndambi Guebuza were received by and/or led to a direct or indirect economic benefit to former President Guebuza.

295.2. It is admitted that Privinvest made payments to the Consultants in so far as they were made under the Consultancy Agreement, for the legitimate purpose of assisting in obtaining the Republic's government's approval for the Projects. That purpose is reflected in the Consultants' obligations under the Consultancy Agreement. For the avoidance of doubt:

295.2.1. That was one of Privinvest's several purposes in making payments to the Consultants, as reflected in the Consultancy Agreement.

295.2.2. Save as is consistent with the aforesaid, the third sentence of Paragraph 129 is denied.

295.3. It is also admitted that Privinvest made payments as a result of investments with Mr Ndambi Guebuza. These were in connection with independent business ventures, and not to exert any actual or perceived influence on the Republic's government.

295.4. It is denied that, as a matter of English law, a claim for bribery will lie in respect of a payment to a third party made solely for the purpose of causing that third party to exercise influence over a fiduciary or agent. The relevant test is whether the payment would give rise to a real risk of a conflict of interest on the part of the fiduciary or agent. The subjective intention of the payor is not relevant.

295.5. The Republic has failed to particularise how payments to either the Consultants or Mr Ndambi Guebuza gave rise to such a real risk of conflict.

295.6. If it is alleged that any such payment was unlawful as a matter of Mozambican law and/or led to any breach of duty by President Guebuza owed to the Republic, that contention is deficient for its failure to particularise the provisions of Mozambican law allegedly breached. Without prejudice to Privinvest's right to plead further to it if properly particularised, that allegation is denied.

295.7. It was and is lawful as a matter of Mozambican law to make payments to consultants for the purpose of lobbying the government and/or assisting in interactions with the Republic's government. The same conduct does not give rise to any cause of action as a matter of English law.

C2. Mozambican Officials

296. The payments alleged to have been made to the Mozambican Officials were neither contrary to Mozambican law, nor did they constitute bribery or corruption. On the contrary, the payments were either (or, on occasions, both):

296.1. Payments in connection with private business ventures involving those Officials; or,

296.2. Campaign donations.

C2(i) Quilua and Txopela

297. As pleaded above, Privinvest entered into a number of Mozambican business ventures unrelated to the Projects at or about the material times.

298. For this purpose, Privinvest incorporated a holding entity in Mozambique called Quilua Holdings Investments SA ("**Quilua**"). Quilua was incorporated on 30 May 2014, although it had been in contemplation for some time before that.

299. Quilua's shareholders were at all material times as follows:

299.1. 80% of Quilua's shares were held by Logistics International.

299.2. 7.5% of Quilua's shares were owned by each of Anlaba Investments SA (a Mozambican company owned or controlled by Mr Leão) and Pantera Investments SA (a Mozambican company owned or controlled by Mr Chang).

299.3. 5% of its shares were owned by Txopela Investments SA ("**Txopela**"), a company owned or controlled by Mr do Rosário prior to 23 February 2015.

300. On or about 23 February 2015, Infrastructure Resources & Services SAL Offshore ("**IRS**") executed an agreement to receive 25% of Txopela's issued share capital, in exchange for contributing €2.5m (equivalent to 25% of Txopela's newly issued share capital). IRS is partially owned by Logistics International. IRS was not, however, initially registered as a shareholder in Txopela.

301. Quilua thus represented a joint venture between Privinvest (or entities controlled by it) on the one hand, and Messrs Chang, do Rosário and Leão (or entities controlled by them on the other hand).

302. As well as owning shares in Quilua, it was intended that Txopela would itself acquire real estate assets in its own name, as part of a joint venture with IRS and/or Logistics International.

303. In May 2019, IRS filed a criminal case before the Investigative Judge of Beirut against Txopela resulting from Txopela's failure to procure that the real estate investments acquired in relation to the intended joint venture between Txopela and IRS were held on Txopela's balance sheet, and that the ownership of the shares in Txopela reflect the true intended ownership structure.

304. By way of settlement of that claim, Txopela (acting through its Mozambican lawyer) wrote to IRS on 22 September 2020, agreeing to procure that 100% of the shares in Txopela were transferred to IRS (such that IRS received all its rights in connection with the underlying assets), and supplying information about the assets acquired by Txopela on behalf of the intended joint venture.

C2(ii) Mr do Rosário and Mr Leão

305. As well as the specific investments described below, it was intended more generally that Mr do Rosário would: (i) co-ordinate the selection and making of many of Privinvest's investments in Mozambique (even where he did not have a direct economic interest therein); and (ii) manage those investments so far as necessary. This was principally because Mr do Rosário had the relevant local knowledge and connections to do so, which Privinvest did not.

306. For this purpose, Mr do Rosário and Mr Boustani discussed and agreed the amounts which Privinvest was willing to invest in these ventures. Mr do Rosário, however, had primary responsibility for how funds sent by Privinvest were used, and Privinvest would typically send funds for this purpose as requested from time to time by Mr do Rosário. Privinvest reposed considerable trust and confidence in Mr do Rosário to this end. In consequence:

306.1. Mr Boustani was not always aware as to the particular investment for which funds were being sent.

306.2. In addition, the payments made were not always immediately applied to a particular investment. In so far as they were held on account, they were subsequently used for various purposes (including the construction work on EMATUM's offices pleaded below at Paragraph 311.5, and the campaign donation made to President Nyusi pleaded below at Section C3(i)).

306.3. It is not possible for Privinvest to now specify with certainty how each relevant sum was used.

306.4. Mr do Rosário also handled payments made by Privinvest for investments being made jointly with Mr Leão (in view of their close relationship), Txopela and Quilua.

307. In the premises, the allegations made in connection with Schedule 2 proceed on a false basis. Although some of the payments identified were transferred by Privinvest to entities under Mr do Rosário's control, those funds were variously applied for the making of investments with Mr do Rosário personally, Txopela or Quilua, and other legitimate purposes within Mozambique. It is therefore not possible for Privinvest to identify a total figure for sums paid in respect of investments with Mr do Rosário personally.

308. Moreover, payments alleged as being made for the benefit of Mr Leão were mixed with those various other investment payments, and so cannot be disaggregated from them.

309. As to the particular payments identified in Schedule 2, it is admitted that they were each made to the alleged recipients, save that

309.1. It is denied that on 17 October 2013, Logistics Offshore paid US$2.8m to an account in the name of East Africaine Real Estate Limited.

309.2. It is denied that on 17 October 2013, Logistics Offshore paid US$200,000 to an account in the name of Real Empreendimentos Limitada.

309.3. It is denied that on 17 October 2013, Logistics Offshore paid US$300,000 to an account in the name of Squares 4 Invest Limited.

310. Without prejudice to its general position as to the manner in and purposes for which these payments were made, the best particulars Privinvest can give as to the purpose of the payments identified in Schedule 2 is as follows:

310.1. On 30 May 2013, PSAL paid US$1.25m into an account in the name of Adriano Manuel Weng at Banco Comercial Português, Portugal ("**BCP**"). Further payments were made to the same account by PSAL on 25 June 2013 (in the amount of US$1m) and 8 July 2013 (in the amount of US$1m).

310.2. These payments were understood by Mr Boustani to be for the purchase of a house in Rua Caracol and a house in Rua da Gorongosa, neighbouring streets in Maputo. Both of those properties were registered to Mr do Rosário personally, but with a common intention between Privinvest/IRS on the one hand and Mr do Rosário on the other that they would be re-registered to Txopela.

310.3. On 22 October 2013, Logistics Offshore paid US$310,000 to an account in the name of Dubai Audio Center LLC at Habib Bank AG Zurich, Dubai Branch. This payment was understood by Mr Boustani to be for audiovisual equipment for the house in Rua Caracol purchased from Mr Weng.

310.4. On 18 September 2013, Logistics Offshore paid US$250,000 into an account in the name of Vera Botelho da Costa at BCP. A further payment was made to the same account in the amount of US$30,000 on the same date. These payments were understood by Mr Boustani to be for the acquisition by Txopela of an apartment in the Polana Shopping Centre in Maputo. The property was registered to Mr do Rosário personally, but with a common intention between Privinvest/IRS on the one hand and Mr do Rosário on the other that it would be re-registered to Txopela.

310.5. On 18 September 2013, Logistics Offshore paid US$280,000 to an account in the name of Arlete Varela Jardim at FNB, Mozambique SA. This payment was understood by Mr Boustani to be for the acquisition by Txopela of an apartment in the Jacaranda Building in the Polana area of Maputo.

310.6. On 18 September 2013, Logistics Offshore paid US$280,000 to an account in the name of Ibrahim Ismahil Hatia at Standard Bank SARL, Mozambique. This was understood by Mr Boustani to be for the acquisition by Txopela of an apartment in the Polana Shopping Centre in Maputo.

310.7. On 29 October 2013, Logistics Offshore paid: (i) US$684,000 to an account in the name of Adil Salimo Jussub at Banco Espírito Santo, Portugal ("**BES**"); (ii) US$342,000 to an account in the name of Youssuf Salimo Jussub at BES; (iii) US$900,000 to an account in the name of Issuf Ahmad at Millennium BCP, Portugal. These were understood by Mr Boustani to be payments for the acquisition of three plots of land on which it was intended that Txopela would build a significant tower block. This asset is currently registered to Tat Property S.A., with the intention that it be re-registered to Txopela.

310.8. On 26 November 2013, Logistics Offshore paid US$400,000 to LIFO International General Trading LLC ("**LIFO**"). This was a payment in respect of a plot of land owned by Adil and Youssuf Salimo Jussub, which was understood by Mr Boustani to be in connection with the tower project described at Paragraph 310.7 above. Mr Jussub asked Logistics Offshore to pay him that price by a transfer to LIFO. Privinvest/IRS and Mr do Rosário intended the plot of land to be registered in the name of Txopela.

311. The other payments made were generally on account of the various joint activities which Mr do Rosário was co-ordinating on behalf of Privinvest. The uses of those sums included (at least):

311.1. The construction of a hotel in the Tete province (on behalf of Txopela), along with the purchase of the plot of land on which the hotel is situated.

311.2. The purchase of two plots of land in the Belorizonte area in Maputo (on behalf of Txopela), on which a hotel is built.

311.3. The following properties invested in with Anlaba Investments SA and/or Mr Leão:

311.3.1. Two semi-detached houses in Costa do Sol, Maputo Province.

311.3.2. A House on Rua de Incomati, Barrio Costa do Sol, Maputo Province.

311.3.3. Two semi-detached houses near ANE Condominium, also in Costa do Sol.

311.3.4. The construction of two semi-detached houses located at Ponta D'Ouro, Maputo Province.

311.4. The purchase of a house in Rua Patrice Lumumba, Quelimane Province.

311.5. The funding of necessary construction work to be done to EMATUM's offices, to which Privinvest had voluntarily agreed to contribute in light of their poor state of repair.

311.6. From time to time, the withdrawal of certain funds in cash, which were then paid to SISE. These payments were necessary because the implementation of the Projects involved Privinvest personnel and/or subcontractors travelling to or working in dangerous areas within Mozambique, and Privinvest required further security be provided for them. Mr do Rosário agreed on behalf of SISE, on the condition that Privinvest fund this security itself.

311.7. The campaign contributions made to President Nyusi, as pleaded below at Section C3(i).

C2(iii) Mr Chang

312. Privinvest made the following payments in respect of dealings with Mr Chang:

312.1. On or about 4 August 2013, US$1m was paid by PSAL to an account in the name of Genoa Asset S.A. ("**Genoa**") at Barclays Bank PLC (New York).

312.2. On or about 4 September 2013, US$1m was paid by PSAL to the same account in the name of Genoa.

312.3. On or about 21 October 2013, US$1.5m was paid by Logistics Offshore to an account in the name of Thyse International Incorporation ("**Thyse**") at Banco Espirito Santo S.A. Madrid.

312.4. On or about 12 November 2013, US$1.5m was paid by Logistics Offshore to the same account in the name of Thyse.

312.5. On or about 4 December 2013, US$2m was paid by Logistics Offshore to the same account in the name of Thyse.

313. The allegation in Schedule 2B, paragraph 7 that Privinvest paid US$7m in respect of Mr Chang is therefore admitted, as are the individual payments identified in Schedule 2A.

314. The purpose and/reason for of each of these payments was as follows:

314.1. After the completion of the Proindicus Transaction (in or around the third quarter of 2013), Mr Boustani met Mr Chang for the first time. Mr Chang made various investment proposals to him.

314.2. The payments of US$2m to Genoa were for joint investments in real estate.

314.3. After his time as Finance Minister came to an end (as it was envisaged to after the elections in 2014), Mr Chang intended to set up and/or participate in certain private businesses, including:

314.3.1. A bank. In particular, it was anticipated that this bank might take advantage of opportunities for sharia-compliant finance.

314.3.2. A sovereign wealth fund, which was intended to be operated as a public-private partnership (*inter alia* involving Palomar).

314.4. It was envisaged that Privinvest would invest in these businesses, and/or that Privinvest and Mr Chang would start these businesses together. Consistent with this purpose, and as described at Section C2(i) above, Privinvest incorporated Quilua, in which Pantera Investments S.A. held (and still holds) 7.5% of the shares. Pantera is owned and/or controlled by Mr Chang.

314.5. The payments described above were payments on account of those investments. It was envisaged that, at a later date, Privinvest and Mr Chang would negotiate Privinvest's precise resulting stake in the various businesses.

As these business ventures have not yet materialised, it remains open to Privinvest to require Mr Chang to apply the funds against other joint investments, or if so advised, to seek restitution of the sums paid.

314.6. Subsequently, Mr Chang indicated to Mr Boustani that he intended to run for membership of the National Assembly, and requested that Privinvest donate to his campaign. As the joint investments described above had not come to fruition by that stage, Mr Boustani agreed with Mr Chang that he could instead apply those assets towards his campaign.

315. It is further admitted that, as alleged in Schedule 2B, Paragraph 6, Mr Boustani sent a consignment of wine, honey and olive oil to Mozambique. It was sent for Mr and Mrs Chang, and Mr and Mrs Leão. This was sent partly as a gift, and partly because Mrs Leão had business interests in a magazine connected with luxury goods and celebrities, as well as a restaurant in Maputo. It was hoped that these might lead to publicity and/or marketing for these products. It is denied that this delivery was, or is capable of constituting, a bribe, *inter alia* because it was *de minimis* in the context of the transactions as a whole.

C2(iv) Ms Dove

316. Two payments were made in respect of dealings with Ms Dove:

316.1. On 2 December 2014, Logistics Offshore paid €438,750 to an account in the name of SEN Consultoria & Investimentos B.L. at BCI.

316.2. On 18 December 2014, PISB made a further payment of €438,750 to the same account in the name of SEN Consultoria & Investimentos B.L.

317. These payments were made for the acquisition of a plot of land in Maputo from Ms Dove for the sum of €750,000. The balance of the payments were consultancy fees for that acquisition.

C2(v) Mr Matusse

318. Privinvest made the following payments in respect of dealings with Mr Matusse:

318.1. On 15 July 2013, PSAL paid US$500,000 to an account in the name of Isidora Faztudo at BIM.

318.2. On 4 August 2013, PSAL paid US$450,000 to the same account.

318.3. On 31 July 2013, PSAL made US$150,000 to an account in the name of Neusa Cristina Menezes de Matos at Caixa Geral De Depósitos, Portugal.

318.4. On 4 September 2013, PSAL paid US$150,000 to the same account.

318.5. On the same date, PSAL paid a further US$300,000 to an account in the name of Neuza Cristina Menezes de Matos at BIM.

319. It is denied that a payment of US$350,000 was made on 10 August 2013 or that a payment of US$250,000 was made on 10 September 2013 for the benefit of Mr Matusse, as alleged in Schedule 2.

320. The reason for these payments was as follows:

320.1. The payments of 15 July 2013 and 4 August 2013 were initially intended as payments on account to Mr Matusse to act as a deal arranger for Privinvest's intended acquisition of Televisão Independente de Moçambique ("**TIM**"). The transaction never came to fruition.

320.2. As a result, the initial payments in respect of TIM were re-applied, together with the further payments to Ms de Matos, for part-acquisition of an interest in a diamond mine owned by Mr Matusse in Mozambique. A draft agreement dated 20 August 2013 recorded a joint intention that a Privinvest entity (referred to as "*Shipbuilding*") would pay US$2.5m to Mr Matusse, in exchange for a 25% share in an entity: (i) to which Mr Matusse would transfer the rights to a diamond prospect of 21,660 hectares in Machaze, Manica Province and Massangena, Gaza Province under legal license number 4969L; (ii) in which the remaining 65% of the equity would be held by Regius Exploration Pty Ltd.

320.3. The shares were never transferred to Privinvest as agreed. On 23 May 2016, Mr Matusse wrote to Mr Boustani and Mr Safa, indicating that Regius had withdrawn from the joint venture, as the mine was producing low grade

discoveries and Mozambique had not joined the Kimberley Process (which allows the export of diamonds as on the basis they are "conflict free"). Mr Matusse offered either to finalise the transfer of 25% of the shares in the mine as previously promised, or to find alternative ways to repay Privinvest. As a result of the Kroll Report and subsequent events, Privinvest has not yet been able to negotiate with Mr Matusse the new application of those funds.

C2(vi) Ms Lucas

321. Each of the payments identified in Schedule 2A in respect of Ms Lucas were paid by Logistics Offshore to MS International Trading FZCO ("**MS Trading**"). The fact of these payments is admitted.

322. The purpose of the payments was understood by Mr Boustani originally to relate to real estate investments with Ms Lucas.

323. Subsequently, an investment opportunity arose in respect of a future maritime agency, which was intended to be a joint venture between Privinvest and/or Palomar and Mr Osório Lucas, who is Ms Lucas' brother and understood to have been at all relevant times the Chief Executive Officer of the Maputo Port Development Company. Mr Boustani asked Mr do Rosário to use some of the monies paid to MS Trading to supply funds for capital and operational expenditure by the future maritime agency. Mr Boustani understood that Ms Lucas was also involved in the investment in the future maritime agency.

324. Privinvest does not know who owns or controls MS Trading. Mr Boustani was informed by Mr do Rosário that this was the entity to which payment should be made in respect of the investments described above, consistent with their arrangement described at Paragraph 306 above.

325. Further or alternatively, in so far as the Republic relies on Ms Lucas's alleged receipt of funds from Privinvest in support of its case, the same is evidence of the Republic's abuse of process as pleaded in Section E3 below:

325.1. Subsequent to the execution of the Projects, Ms Lucas was promoted in March 2016 to the office of Deputy Minister of Finance, in which office she served until February 2019.

325.2. The facts and matters on which the Republic relies to allege corruption in these proceedings were (at least in part) public and/or known to the persons responsible for her appointment, including President Nyusi.

325.3. In April 2020, Ms Lucas was appointed as an adviser to the current Prime Minister of the Republic, Mr Carlos Agostinho do Rosário. It is to be inferred that this appointment was made with the approval of President Nyusi.

C3. President Nyusi and FRELIMO

C3(i) President Nyusi

326. Privinvest also paid substantial sums both directly and indirectly for the benefit of President Nyusi.

327. At some point in 2014 (following President Nyusi's election by the Central Committee of FRELIMO as its candidate for the 2014 presidential election), Mr do Rosário indicated to Mr Boustani that President Nyusi wished to receive funds from Privinvest for his campaign, separate from funds being contributed directly to FRELIMO. Mr Boustani indicated to Mr do Rosário that he should supply such funds from the pool of funds which Mr do Rosário co-ordinated on Privinvest's behalf as set out at Paragraph 306 above. Privinvest made further payments around this time, including a payment on 10 April 2014 by Logistics Offshore of US$1m to an account in the name of Sunflower International Corp FZE at Emirates NBD. Privinvest understands that this payment was, in whole or in part, for the benefit of President Nyusi.

328. Mr Boustani understood from Mr do Rosário that he had provided such funds to President Nyusi. Pending disclosure and evidence, the best particulars that Privinvest is able to give of this payment are that Mr do Rosário transferred or gave

funds to Ms Sabrina Madebe, an employee of Proindicus and a relative of President Nyusi, who then paid them to President Nyusi.

329. Further:

329.1. Privinvest is aware that:

329.1.1. In or around July 2014, President Nyusi requested Mr do Rosário to procure the acquisition of a campaign vehicle, bearing his image, campaign graphics and the FRELIMO logo on it. President Nyusi specifically requested the particular artwork to be supplied by emails of 21 and 24 August 2014.

329.1.2. The vehicle (a Toyota Land Cruiser with appropriate modifications and artwork) was purchased by a payment dated 11 July 2014 from Proindicus to Spring Trade 206 CC, a South African company, in the amount of 728,6614.42 ZAR.

329.1.3. Privinvest believes that this payment was made using funds ultimately contributed by it, either because they were funds contributed as described at Paragraph 213 above, or because Mr do Rosário had transferred funds described at Paragraph 306-311 above to Proindicus, which had then effected payment.

329.2. At a meeting with Mr Boustani at Paris-Le-Bourget Airport on 1 August 2014, President Nyusi requested further campaign contributions and/or assistance from Privinvest. This meeting took place in the context of President Nyusi's tour of European capital cities (London, Paris, Berlin and Lisbon) in the first week of August 2014, a tour in respect of which Privinvest had offered to contribute logistical support (although that support was ultimately unnecessary).

330. In addition, President Nyusi was an indirect beneficiary of the funds paid to FRELIMO described below at Section C3(ii), which were paid for the purpose of funding his campaign for the presidency.

C3(ii) Payments to FRELIMO

331. Privinvest made four payments to FRELIMO, as follows:

331.1. On 31 March 2014, Logistics Offshore paid US$2m into an account in the name of FRELIMO's Central Committee ("*Partido FRELIMO Comite Central*") at BIM.

331.2. On 29 May 2014, Logistics Offshore paid US$3m into the same account.

331.3. On 19 June 2014, Logistics Offshore paid US$2.5m into the same account.

331.4. On 3 July 2014, Logistics Offshore paid US$2.5m into the same account.

332. These payments totalled US$10m. They were made in response to a request made by President Guebuza to Mr Boustani that Privinvest make donations to cover the costs of President Nyusi's election campaign and FRELIMO's associated campaign for elections to the National Assembly. It was represented to Privinvest by former President Guebuza in the same conversations that it was both lawful and encouraged to make such campaign contributions.

333. It is to be inferred that there was widespread awareness of Privinvest's funding of FRELIMO within the government of the Republic, in light of:

333.1. The extremely close relationship between FRELIMO and the Republic's government.

333.2. Former President Guebuza's role as leader of FRELIMO at the same time as being President.

333.3. The overlapping membership between FRELIMO's Central Committee and the Cabinet of the Republic.

333.4. The quantum of the sums paid by Privinvest to FRELIMO.

333.5. The 1 August 2014 meeting at Paris-Le-Bourget Airport between Mr Boustani and President Nyusi.

C4. Payments to the CS Deal Team Defendants

334. The payments made to the CS Deal Team Defendants were made either: (i) in Mr Pearse's case, in connection with a consultancy role for Privinvest unconnected with the Projects; or (ii) in connection with roles or intended roles at Palomar. In so far as the latter were connected with the Projects, they represented income received by Palomar for its legitimate role in the Projects.

C4(i) Mr Pearse

335. Payments made to Mr Pearse by Privinvest and/or Palomar fall into two categories:

335.1. First, payments in relation to consultancy work in Russia and Azerbaijan for Privinvest, and as compensation for Mr Pearse's loss of income and stock options on his departure from Credit Suisse.

335.2. Second, dividends from PHL proportionate to Mr Pearse's 1/3rd stake in PHL, arising from Palomar's legitimately generated revenue arising from the Projects.

336. As to the former:

336.1. Shortly before the Proindicus Financing Transaction was concluded, Mr Boustani and Mr Pearse had a discussion about Privinvest's attempt to do business with the state of Azerbaijan. CMN, an affiliate of PSAL which operates substantial shipyards in Cherbourg, France, had been approached by the Navy and/or Ministry of Defence of Azerbaijan at some point in 2011.

336.2. The approach had concerned the provision of sophisticated corvette vessels to the Azerbaijani Navy by CMN. At the time, CMN and/or ADM had capacity to build two such vessels, called the WP18 and the DV15.

336.3. A number of meetings between CMN and Azerbaijani defence personnel had occurred, in both Baku and France, but the deal had not progressed.

336.4. Mr Pearse proposed that he effect an introduction between a Mr Gabriel Comanescu, a businessman and associate of the President of Azerbaijan, and Mr Boustani. Mr Pearse effected that introduction.

336.5. Following that introduction, a company was incorporated in Abu Dhabi for the purpose of pursuing this joint venture, and Pierre Baz (a senior officer within Privinvest) was assigned to market its services.

336.6. In addition, Mr Pearse also arranged a meeting between Mr Safa and a major Russian businessman, at which Mr Safa (accompanied by Mr Langford) discussed the possibility of selling vessels in Russia.

336.7. Although neither project proceeded, Privinvest nevertheless considered this compensation to be fair, in part because Mr Pearse represented to Mr Boustani that he had lost considerable income and the value of stock in Credit Suisse upon his departure to establish Palomar, which he was compensated for by these payments.

337. In consideration of these efforts and Mr Pearse's departure from Credit Suisse, Mr Pearse received the following payments, all of which were made by PSAL to an account in the name of Mr Pearse with Abu Dhabi Commercial Bank ("**ADCB**"):

337.1. On 23 April 2013, US$2.5m.

337.2. The sum of US$1m on each of 26 May 2013, 26 June 2013, 25 July 2013, 3 September 2013, 30 September 2013, 31 October 2013, 3 December 2013, 23 December 2013 and 27 January 2014.

337.3. The sum of US$250,000 on 27 February 2014.

338. Second, in connection with Palomar:

338.1. Pursuant to an agreement dated 9 August 2013 between PHL and ADM, PHL agreed to assist ADM with the arrangement of the financing for the EMATUM Transaction (the "**PHL-ADM Agreement**").

338.2. Pursuant to the PHL-ADM Agreement, PHL agreed to act as Arranger in obtaining the necessary financing for the EMATUM Supply Contract, in exchange for which ADM agreed to pay PHL 10% of the value of the EMATUM Supply Contract.

338.3. Upon the conclusion of the EMATUM Supply Contract, ADM duly paid PHL the sum of US$76,840,000 (in two tranches).

338.4. On 23 September 2013, the directors of PHL signed a written board resolution of PHL, declaring a dividend of $46,800,000. This dividend represented the first tranche of the funds received by PHL pursuant to the PHL-ADM Agreement, arising out of the conclusion of the EMATUM Transaction.

338.5. On 25 September 2013, US$15.6m (ie. 1/3rd of the total dividend declared) was paid to Mr Pearse's account at ADCB by PHL.

338.6. On 20 October 2013, Mr Allam and Mr Pearse signed a written board resolution of PHL, declaring a dividend of $23,400,000. This dividend represented the remainder of the funds received by PHL pursuant to the PHL-ADM Agreement, arising out of the conclusion of the EMATUM Transaction

338.7. On 23 October 2013, a further US$7.8m (ie. 1/3rd of the total dividend declared) was paid to Mr Pearse's account at ADCB by PHL.

338.8. Pursuant to an agreement dated 19 May 2014 between PHL and PISB, PHL agreed to assist PISB with the arrangement of the financing for the MAM Transaction (the "**PHL-PISB Agreement**").

338.9. On 31 May 2014, Mr Allam and Mr Pearse signed a written board resolution of PHL, declaring a divided of US$30,150,000. This dividend represented PHL's receipts pursuant to the PHL-PISB Agreement, arising out of the conclusion of the MAM Transaction.

338.10. On 3 June 2014, PHL paid US$10.5m (ie. 1/3rd of the total dividend declared) to Mr Pearse's account at ADCB.

C4(ii) Payments to Ms Subeva

339. Contrary to Schedule 2, Privinvest did not make any payment to Ms Subeva for its own account (and did not make any payments at all save for those reimbursed to it by PCL shortly thereafter, described below at Paragraph 341).

340. Privinvest has since learned that Mr Pearse made three payments to Ms Subeva, of AED 750,000 (on 12 June 2013), US$1m (on 18 September 2013) and US$1m (on 27 October 2013). As to these:

340.1. Privinvest was not aware of these payments at the time.

340.2. Privinvest does not know why the payments were made, but Mr Pearse's testimony in the EDNY Trial was that these payments were gifts.

340.3. Privinvest infers that Mr Pearse decided to make these payments because of his ongoing romantic relationship with Ms Subeva, and not to achieve any outcome in relation to any of the Projects.

340.4. The making of these payments is not attributable to Privinvest.

341. PCL made salary and bonus payments to Ms Subeva, as suggested by Mr Pearse, in connection with her employment by Logistics Offshore, Abu Dhabi and secondment to PCL, including:

341.1. On 23 September 2013, US$347,446 as a signing bonus;

341.2. Thereafter, a monthly salary of AED 198,954 (which was equivalent to US$53,717), pursuant to an agreement that Ms Subeva's annual salary would be US$650,000.

341.3. A performance bonus in December 2013 of a further US$650,000 (paid in AED, rolled up with Ms Subeva's salary for December 2013).

C4(iii) Payments to Mr Singh

342. As to the payments to Mr Singh alleged in Schedule 2:

342.1. It is admitted that Logistics Offshore made payments from its account with First Gulf Bank to Mr Singh's account at ADCB, totalling US$3.7m.

342.2. These payments were as follows: US$800,000 on each of 23 October 2013, 27 November 2013, 23 December 2013, 21 January 2014, and US$500,000 on 27 February 2014.

342.3. Privinvest has subsequently learned that Mr Pearse made two payments to Mr Singh on 16 September 2013 and 27 October 2013. Privinvest was not aware of these payments contemporaneously, did not authorise their making, and they are not attributable to Privinvest.

343. Privinvest was informed by Mr Pearse that it was essential Mr Singh be persuaded to join Palomar, because of his very significant personal book of clients. In particular, Privinvest was told that Mr Singh had a personal book of clients with US$700-800m under management, which would enable Palomar to establish its wealth management business. Privinvest agreed to Mr Pearse's plan to recruit Mr Singh.

344. The payments made by Logistics Offshore to Mr Singh were advances deductible from future sums payable to Mr Singh as a result of him joining Palomar.

345. Subsequently, Mr Singh decided not to join Palomar, and instead to remain at Credit Suisse. The making of these advance payments to Mr Singh was conditional on his joining Palomar, and when that condition did not materialise, they were repayable.

D. MOZAMBICAN LAW

D1. Governing law

346. The Republic pleads its claims on the apparent basis that English law applies to its claims against the Privinvest Defendants. Privinvest denies that any of the claims against it fall to be adjudicated under English law. The Republic's claims against Privinvest are all governed by the law of Mozambique.

347. The Republic's claims against Privinvest are, save for its proprietary claims pleaded at Paragraphs 141-142, claims in respect of a non-contractual obligation arising out of a tort/delict, within the meaning of Article 4 of Regulation (EC) No 864/2007 of the European Parliament and of the Council (the "**Rome II Regulation**"). The Rome II Regulation governs cases issued prior to January 2020 pursuant to Article 66 of the Withdrawal Agreement.

348. Pursuant to Article 4(1) of the Rome II Regulation, those claims are governed by the law of the country in which the damage caused by that tort/delict occurs. If (which is denied) the Republic has suffered any damage, that damage has been suffered in Mozambique:

348.1. The Republic's losses claimed against Privinvest, pleaded at Paragraph 154, are all either: (i) liabilities which the Republic is or may become subject to under the Proindicus or MAM Guarantees, or the 2023 Eurobonds; or (ii) macro-economic losses arising from the alleged financial crisis in 2015.

348.2. Any liability which the Republic is or may in future become subject to is damage suffered in Mozambique. To the best of Privinvest's knowledge: (i) the steps taken to commit the Republic to the Guarantees were taken in Mozambique; (ii) the assets and/or bank accounts from which the Republic would have to make payment of any such liability or which would be subject to enforcement are located in Mozambique; and (iii) the direct consequences of any such liability would be felt in Mozambique.

348.3. Any macro-economic losses are also damage suffered in Mozambique.

349. Further, pursuant to Article 4(3) of the Rome II Regulation, the law indicated by Article 4(1) may be displaced by the law of any country with which the tort or delict is manifestly more closely connected. As to that:

349.1. The tort is manifestly more closely connected with Mozambique;

349.2. Alternatively, in so far as the law identified by the application of Article 4(1) is Mozambican law, no other country is manifestly more closely connected with the tort.

350. In support of their position as to the tort's manifestly closer connection with Mozambique, the Privinvest Defendants will rely on the following:

350.1. The Projects were commissioned by the Republic and the SPVs in exercise of the Republic's powers to protect its EEZ and national security.

350.2. The negotiations took place substantially within Mozambique, and at times within the UAE. No negotiations involving the Privinvest Defendants took place in England and Wales.

350.3. The Republic elected to implement the Projects through the SPVs, which were Mozambican-incorporated companies created by public deed.

350.4. The SPVs were owned indirectly by the Republic's own Ministries, which in turn had responsibility for overseeing the Projects.

350.5. The Projects were intended to be delivered and performed within Mozambique.

350.6. The assets under the Supply Contracts were, as a matter of fact, delivered to Mozambique.

350.7. The services under the Supply Contracts, and in particular the relevant training, were intended to be delivered either within Mozambique or to Mozambicans who were going to use it in their work in or for Mozambique.

350.8. The payments on which the Republic bases its claims in bribery were all made in respect of individuals understood to be Mozambican nationals, who in the case of the Mozambican Officials held public office in Mozambique.

350.9. The alleged breaches of duty for which Privinvest is said to be liable in dishonest assistance and knowing receipt are breaches of duties owed to the Republic under the Constitution and/or Mozambican public and criminal law.

350.10. The jurisdiction of the English court, and the prior contractual relationship between the Republic and Credit Suisse, are founded on the provisions of the Financing Transactions, to which Privinvest was not a party.

350.11. The only contractual arrangements to which Privinvest was a party were the Supply Contracts, which were governed by Swiss law, not English law, and subject to arbitration in Switzerland (not the jurisdiction of this Court).

351. The Republic's proprietary claims are claims in respect of a non-contractual obligation arising out of unjust enrichment within the meaning of Article 10 of the Rome II Regulation. Further, in so far as their governing law does not fall to be determined under Article 4 of the Rome II Regulation, the Republic's claims in knowing receipt are also claims in respect of a non-contractual obligation arising out of unjust enrichment within the meaning of Article 10.

352. Pursuant to Article 10 of the Rome II Regulation:

352.1. Article 10(3) provides that, if the applicable law cannot be determined on the basis of Articles 10(1) or (2) (which Privinvest avers that it cannot), it shall be the law of the country in which the unjust enrichment took place.

352.2. The only sums received by Privinvest as a result of the matters pleaded in the RACPOC were the sums received under the Supply Contracts. Absent any particularisation of the other sums Privinvest is alleged to have received which give rise to such a claim, no governing law can be identified by reference to Article 10(3).

352.3. Article 10(4) provides that, where the non-contractual obligation arising out of the unjust enrichment is manifestly more closely connected with a country other than that whose law is selected by Articles 10(1)-(3), that law shall apply. Article 10(4) indicates that the law of Mozambique is the governing law of the proprietary claims (and/or claims in knowing receipt) against it. Paragraph 350 above is repeated.

D2. Relevant principles of Mozambican tort law

353. Each of the Republic's claims against Privinvest would, as a matter of Mozambican law, be properly characterised as claims under Article 483 of the Mozambican Civil Code ("**MCC**"). Article 483 MCC provides as follows:

"*Whoever, whether by wilful misconduct [dolus] or by negligence, unlawfully infringes the rights of another person or any legal provision intended to safeguard the interests of others, must compensate the injured party for damages arising from such violation.* "

354. The elements of a claim under Article 483 MCC are therefore that:

354.1. The claimant has suffered damage;

354.2. That damage has been suffered as a causal consequence of the defendant's act or omission;

354.3. The defendant's act:

354.3.1. Infringed the rights of the claimant, or;

354.3.2. Breached a legal rule intended to protect the claimant's rights or interests (and not only the "*general*" or "*public*" interest).

354.4. The defendant had the necessary culpability (either *culpa* or *dolo*).

355. As to the causation requirement referred to at Paragraph 354.2 above:

355.1. Pursuant to Article 563 MCC, there is only an obligation to compensate for damage which would probably not have occurred but for the defendant's wrongful act;

355.2. The statutory position incorporates an adequacy theory of causation. Compensation is therefore only payable for damage if that damage would normally have occurred to a person in the position of the claimant (and only in so far as the defendant has specific knowledge of that position).

356. As to the culpability standard referred to at Paragraph 354.4 above:

356.1. Culpability may be established either by proof of *culpa* (which translates as "*negligence*") or *dolo* (which translates as "*intention*").

356.2. The general standard of care by which conduct is to be assessed is specified by the standard contained in Article 487(2) MCC, which provides that fault shall

be assessed according to the standard of the diligence which would be applied by a *bonus paterfamilias* (i.e. that of a reasonable man).

357. A civil claim under Article 483 MCC may be barred by Article 340 MCC, which concerns consent. That article provides as follows:

> "*1. The act prejudicial to the rights of others is lawful, provided that he has consented to the injury.*
>
> *2. However, the consent of the injured party does not exclude the unlawfulness of the act when it is contrary to a legal prohibition or to good manners.* "

358. Where a party has knowingly agreed to the conduct of which it subsequently seeks to complain in proceedings, the claim will be barred under Article 340 MCC and no civil claim may be brought under Article 483 MCC.

359. A civil claim under Article 483 MCC may also be barred by Article 498 of the Civil Code, which concerns limitation. That article provides, so far as is relevant, as follows:

> "*1. The right to compensation shall expire within three years from the date on which the injured party became aware of his or her right, although not knowing the person responsible and the full extent of the damage, without prejudice to the ordinary limitation if he has the time limit after the harmful event has elapsed.* "

360. The reference to a party becoming "*aware of his or her right*" is interpreted in doctrine as being either actual knowledge, or the knowledge that a reasonable person in the position of a claimant should have had.

361. In consequence, unless the limitation period is extended in accordance with Article 498(3), a civil claim shall be barred if brought more than three years after a party became aware, or could have become aware, of his or her rights.

362. The Claim Form in this action was issued on 27 February 2019. The Republic's claims are therefore time-barred in so far as it was, or should acting reasonably have become, aware of its rights prior to 27 February 2016.

363. A civil claim under Article 483 MCC may also be limited or barred by Article 570 of the Civil Code, which is concerned with the blame or responsibility of the injured party for the injury. That article provides, so far as relevant, as follows:

> "*1. Where a wrongful act of the injured party has contributed to the damage being caused or aggravated, it shall be for the court to determine, on the basis of the gravity of the fault of both parties and the consequences thereof, whether the compensation is to be granted in full, reduced or otherwise.*"

364. In consequence, the damages due in respect of a civil claim under Article 483 may be reduced or extinguished so as to attribute the ultimate responsibility for outcomes to the party properly responsible.

D3. Relevant principles of the Mozambican law of bribery

365. At Paragraphs 31-32 of Schedule 1 to the RACPOC, the Republic cites eight separate criminal offences which it alleges may give rise to criminal offences. However, the Republic does not:

365.1. Identify which cause of action, if any, to which these provisions are alleged to be relevant.

365.2. Identify the elements of any such offence.

365.3. Make or particularise any allegation that any of the conduct alleged constituted a crime under Mozambican law.

366. Absent such particularisation, Privinvest will say that as a matter of Mozambican law:

366.1. All economic activities are permitted unless expressly prohibited.

366.2. It is therefore lawful for a private company (such as the Corporate Defendants) to make a payment to any private, corporate or public entity provided that there is, in the payment, no infringement of any promulgated law.

366.3. In so far as the Republic wishes to make any allegation of any such offence, it is incumbent on it to plead and prove it.

366.4. Without prejudice to that position, no Mozambican criminal offence arises in connection with any payment for the benefit of a public official unless: (i) the relevant government official is not entitled to the money or advantage; and (ii) a reasonable third party would regard the payer's purpose as being to influence the public official to act or omit to act.

366.5. In the premises, there is no breach of Mozambican criminal law where the payment to a public official is either a commercial payment in connection with a private, joint business venture or a contribution to an election campaign.

367. As to Privinvest's own case, the conduct alleged by the Republic does not constitute a civil wrong in Mozambican law in so far as it alleges any breaches of the following provisions, because they are not intended to protect private rights (as opposed to only the "*general*" or "*public*" interest):

367.1. Article 507 of the 2014 Penal Code and/or Article 16 of Law 9/1987 of 19 September (abuse of office).

367.2. Article 4 of the Anti-Money Laundering Act (money laundering).

367.3. Article 458 of the 2014 Penal Code and/or Article 263 of the 1886 Penal Code (association to commit crime).

367.4. Article 509 of the 2014 Penal Code and/or Article 322 of the 1886 Penal Code (bribery).

367.5. Article 10 of Law No. 6/2004 of 17 June (economic participation in a transaction).

368. As such, the commission of any such offences could not give rise to civil liability under Article 483 MCC.

D4. Relevant domestic duties of Mozambican law

369. In respect of Law No.7/1998 of 15 June (the "**Law Concerning Government Officials**"):

369.1. The duties imposed by the law are owed by, and only by, those individuals listed at Article 1(2) of the Law Concerning Government Officials.

369.2. Since the duties are not owed by anyone but those listed at Article 1(2) of the Law Concerning Government Officials, only those there listed can breach those duties.

369.3. Since only those listed at Article 1(2) of the Law Concerning Government Officials can breach the duties imposed by the law, only those there listed can incur civil liability for any breaches of duties imposed by the law.

369.4. It is not admitted that the duties fall to be characterised as "fiduciary" as a matter of English law.

370. In respect of Law 16/2012 (the "**Law of Public Probity**"):

370.1. The duties imposed by the law apply only to "*public servants*": Article 2(1);

370.2. A "*public servant*" is defined as "*a person who exercises a mandate, position, job or function in a public entity, by virtue of election, appointment, hiring or any other form of investiture or bond, even if in a transitory or unpaid manner*": Article 3(1).

370.3. Since only public servants, as defined by the Law of Public Probity, can breach the Law of Public Probity, only public servants can incur civil liability in respect of breaches of the Law of Public Probity.

370.4. It is denied that Article 30(1) of the Law of Public Probity imposes a duty upon an official which is capable of breach.

370.5. It is not admitted that the duties fall to be characterised as "*fiduciary*" as a matter of English law.

371. Paragraphs 44 and 45 are therefore not admitted.

E. THE ROLE AND SIGNIFICANCE OF THE REPUBLIC

E1. Relevant facts known at the time

372. The fact of the Projects and the Supply Contracts, including detail as to the services provided thereunder, were contemporaneously public and/or discoverable by any person exercising reasonable diligence. In particular, the Mozambican National Assembly (and its members), as well as any other officers of the Republic, were or could have been aware of the Projects.

373. In support of this allegation, the Privinvest Defendants will rely on the following:

373.1. In or around 24 May 2012, Mr Ndambi Guebuza spoke to Mr Boustani and told him that the "*MoD*" had announced the Proindicus Project on national television. It is to be inferred that President Nyusi (who was then Minister of Defence) had in fact done so.

373.2. In March 2013, and in the context of a state visit, former President Guebuza visited ADM's shipyards in Abu Dhabi. In September 2013, he visited CMN (where the EMATUM vessels were being constructed). The latter visit was attended by François Hollande, then-President of France (and former President Guebuza visited the Elysée Palace shortly thereafter). Both visits generated considerable press attention, both in Mozambique and internationally.

373.3. Also in September 2013, a Mozambican delegation including *inter alia* Mr Chang and Ms Lucas had visited Cherbourg, France, in order to attend a public ceremony following the signing of the EMATUM Supply Contract.

373.4. There was considerable further publicity in relation to the Projects.

373.5. The SPVs were each created by Public Deed. Paragraph 92 above is repeated.

373.6. The Projects were conspicuous by the very nature of their scale. It would have been apparent to members of the public, members of the Mozambican

Parliament and officials that substantial vessels were arriving in Mozambique, and large areas of land were being used.

374. Further or alternatively, the Projects and the Transactions were well-known to and/or discoverable by those working in the government of the Republic:

374.1. The Projects were examined and/or approved by a number of government departments and agencies, including the Ministries of Finance, Defence and Fisheries, the CCFDS, INAMAR, SISE, and the Central Bank.

374.2. The Projects also required the use of resources from a number of government departments, including those referred to in Paragraph 374.1, and the Mozambican Navy.

374.3. The significant donations made to FRELIMO by Privinvest. Paragraphs 331-333 above are repeated.

375. The Financing Transactions were also contemporaneously public and/or easily discoverable by any person exercising reasonable diligence in attempting to ascertain their existence. In particular, the Mozambican National Assembly (and its members), as well as any other officers of the Republic, were or could have been aware of the Financing Transactions.

376. In support of this allegation, the Privinvest Defendants will rely on the following:

376.1. The inherent probabilities. The Projects were self-evidently costly. Since there was no separate appropriation for the Republic to fund the Projects using presently available cash resources, it would necessarily have been funded by debt.

376.2. The Proindicus Facility was syndicated and/or insured with credit insurers by Credit Suisse. It is to be inferred that its existence would have been widely known within financial markets and/or publicly.

376.3. As set out at Paragraph 82, the EMATUM Financing Transaction involved the issuance of the 2020 Notes by Mozambique EMATUM Finance 2020 BV.

376.4. The debt owed by all three SPVs was rated by leading ratings agencies, including both S&P & Moody's, and was subject to circulars within the financial markets as early as 2013.

376.5. The Mozambican Central Bank had approved the Financing Transactions.

376.6. Several Mozambican banks (or at least BIM) participated in the Financing Transactions by purchasing the debt from Credit Suisse.

E2. Attribution of knowledge to the Republic

377. The issue of whether particular knowledge falls to be attributed to the Republic is determined by Mozambican; alternatively, English law.

378. The relevant principles of Mozambican law are as follows:

378.1. There is no legislative provision concerning the attribution of a natural person's knowledge to a legal person. The issue is therefore governed by doctrine.

378.2. Knowledge will be attributed to a legal person where it is acquired by the natural person in performance of actions in, or related to, their capacity acting on behalf of that legal person.

378.3. In the context of the Republic, this entails that knowledge will be attributed to the Republic where a person acquires it in performance of acts in or related to their official capacity.

378.4. Attribution does not depend on the seniority of the relevant officer of the Republic. It depends on the powers or responsibilities ascribed to that officer by law.

378.5. Where the Republic acquires knowledge through a particular natural person who subsequently leaves their office on behalf of the Republic, the knowledge they acquired prior to that departure remains attributable to the Republic. This is reflected in Article 4 of Law No.7/2012, which enshrines the principle of continuity of public service.

379. Pursuant to these principles, the knowledge of (at least) the following individuals falls to be attributed to the Republic:

379.1. Former President Guebuza. President Guebuza had knowledge of the following facts and matters:

379.1.1. The existence, nature and terms of each of the Three Transactions. Paragraphs 207, 231 and 256 above are repeated.

379.1.2. Payments in respect of the Mozambican Officials, the Consultants, Mr Ndambi Guebuza, President Nyusi and FRELIMO described in Sections C1-C3 above; alternatively, the general fact that such payments were being made by Privinvest; in the further alternative, (at least) those payments made in respect of Mr Ndambi Guebuza described at Paragraphs 289-293 above.

379.2. Former President Guebuza's knowledge of these facts and matters falls to be attributed to the Republic, because they were acquired in the course of his roles as Head of Government under Article 146(3) of the Constitution and Commander-in-Chief of the Defence and Security Forces under Article 146(4) of the Constitution.

379.3. Former President Guebuza's knowledge of these matters is to be inferred from:

379.3.1. The inherent probabilities, and in particular former President Guebuza's widely-acknowledged influence over all aspects of the Republic's government.

379.3.2. The role of the CCFDS in instigating and approving the Projects. Paragraphs 126-129 above are repeated.

379.3.3. Mr Safa's correspondence with him. Paragraphs 150-151 and 179 above are repeated.

379.3.4. Regular meetings between former President Guebuza and Mr Boustani throughout 2013-2014 to be updated on the progress of the Projects.

379.3.5. The receipt of payments by FRELIMO (of which he was the leader at the time) and payments made in relation to investments in respect of other persons close to him including his son, Mr Matusse and Ms Dove.

379.4. President Nyusi. President Nyusi had knowledge of the following facts and matters:

379.4.1. The existence, nature and terms of each of the Three Transactions; alternatively, the Proindicus Transaction and at least one of the EMATUM and MAM transactions; alternatively, the Proindicus Transaction. Paragraphs 207, 256 and 372-373 above are repeated.

379.4.2. Payments in respect of the Mozambican Officials, the Consultants, himself and FRELIMO described in Sections C1-C3 above; alternatively, the general fact that such payments were being made by Privinvest; in the further alternative, (at least) those payments made in respect of Mr do Rosário for his benefit and those payments made to FRELIMO described at Section C3 above.

379.5. President Nyusi's knowledge of these facts and matters falls to be attributed to the Republic, because they were acquired in the course of his exercise of sovereign functions pursuant to Article 139(1) of the Constitution, which arose because he was acting (pursuant to Articles 138 and 140(1)) on behalf of the Central Office of Defence.

379.6. President Nyusi's knowledge of these facts and matters is to be inferred from:

379.6.1. President Nyusi's senior role in government and his political party generally, and his supervisory role over the Defence and Security Forces and SISE in particular. Paragraphs 96-97 above are repeated.

379.6.2. President Nyusi's letter to Mr Chang requesting that he sign the Proindicus Guarantee. Paragraph 188 above is repeated.

379.6.3. President Nyusi was also in close and repeated contact with both Proindicus and other government bodies as to the structure of the SIMP.

379.6.4. The payment referred to at Paragraphs 326-330 above which Privinvest understands was, in whole or in part, for the benefit of President Nyusi.

379.6.5. The receipt of funds by FRELIMO to fund his campaign for the presidency. Paragraphs 330-333 above are repeated.

379.6.6. From January 2015 onwards, President Nyusi's role as Head of Government and Commander-in-Chief of the Defence and Security Forces.

379.7. Mr Chang. Mr Chang had knowledge of the following facts and matters:

379.7.1. The existence, nature and terms of each of the Three Transactions. This is a necessary inference from his signing of the Guarantees, which in turn necessitated knowledge of the Facilities and the Supply Contracts.

379.7.2. Payments in respect of the Mozambican Officials, the Consultants, himself and FRELIMO described in Sections C1-C3 above; alternatively, the general fact that such payments were being made by Privinvest; in the further alternative, (at least) those payments made in respect of him.

379.8. Mr Chang's knowledge of these facts and matters falls to be attributed to the Republic, because Article 23(1) of Law No.6 of 2012 gave him responsibility for entering into and approving financing agreements on behalf of the Republic.

379.9. Mr Leão. Mr Leão had knowledge of the following facts and matters:

379.9.1. The existence, nature and terms of each of the Three Transactions. This is a necessary inference from his role as Director-General of SISE. SISE owned substantial stakes in each of the SPVs and was given responsibility by the CCFDS for the Projects as a whole.

379.9.2. Payments in respect of the Mozambican Officials, the Consultants, himself and FRELIMO described in Sections C1-C3 above; alternatively, the

general fact that such payments were being made by Privinvest; in the further alternative, (at least) those payments made in respect of him.

379.10. Mr do Rosário. Mr do Rosário had knowledge of all the facts and matters attributed to each of the foregoing Mozambican Officials pleaded above. This is a necessary inference from his role in co-ordinating the Projects, liaising with Mr Boustani and Credit Suisse, and as CEO of each of the SPVs, as well as his receipt of payments and co-ordination of Privinvest's investments in Mozambique generally. Paragraphs 305-308 above are repeated.

379.11. Mr Leão and Mr do Rosário's knowledge falls to be attributed to the Republic because of: (i) the overall delegation of the task of administering the Projects to SISE; (ii) in Mr Leão's case, his role as Director-General of SISE; and (iii) in Mr do Rosário's case, his role within SISE and the specific delegation to him of responsibility for the Projects by Mr Leão.

380. Alternatively, as a matter of English law, the knowledge of each of former President Guebuza, President Nyusi, Mr Chang, Mr Leão and Mr do Rosário falls to be attributed to the Republic because:

380.1. The Republic's own primary rules of attribution so attribute that knowledge and conduct. Paragraphs 378-379 above are repeated.

380.2. Alternatively, each of them was acting with the Republic's actual or ostensible authority.

380.3. In the further alternative, they had (individually and/or collectively) control over the Republic's acts and omissions.

E3. Abuse of process

381. The Republic's claim against Privinvest is an abuse of the Court's process. It should therefore be struck out pursuant to CPR r.3.4(2)(b) and/or the Court's inherent jurisdiction, and/or dismissed following trial.

382. The claim amounts to an abuse of process. In support of that allegation, Privinvest will rely upon the following facts:

382.1. The Republic was, through former President Guebuza, President Nyusi, Mr Chang, Mr Leão, Mr do Rosário and Ms Lucas aware of all the facts and matters based on which it now brings its claims; alternatively, the most significant such facts and matters.

382.2. The Republic has elected to make its claim in respect of only certain payments to its officers, even though those payments are indistinguishable from the payments to President Nyusi described in Section C3(i) above. On the assumption that the Republic does not consider its own President to have been bribed (in which case the only valid reason for not so alleging would have been an internal political decision and/or to avoid embarrassing President Nyusi), it must in truth not believe that the payments it does complain of are unlawful.

382.3. FRELIMO received payment from Privinvest as set out in Section C3(ii) above, which payments were indirectly for the benefit of President Nyusi. The Republic does not seek to rely on this payment as unlawful or improper. Such payments were also indistinguishable from those of which the Republic does complain, from which it is further to be inferred either that: (i) the Republic has abstained from alleging bribery against President Nyusi owing to an internal political decision and/or to avoid embarrassing him; or (ii) the Republic does not consider the payments on which it does rely to be unlawful.

E4. Circuity of action

383. Each of former President Guebuza, Mr Chang, Mr Leão and Mr do Rosário made express representations to Privinvest (through the person of Mr Boustani) that:

383.1. There was no legal prohibition on: (i) officials of the Republic entering into private business ventures while in office; (ii) their doing so as partners or co-investors with foreign individuals or companies.

383.2. Such business ventures could lawfully involve: (i) activity in areas which those officers or agents were not involved in regulating; (ii) obtaining contracts with the Republic, its Ministries or state-owned companies.

383.3. It was lawful for an officer or agent of the Republic to enter into a transaction with a foreign company or individual to do business, even if that foreign company or individual was simultaneously involved in transactions which wholly or partly fell within the official's area of decision-making. The only restriction on such transactions was that officers of the Republic could not become a party, directly or indirectly, to a contract with its own ministry or department.

(together, the "**Investment Representations**").

384. In so far as they were made expressly, the Investment Representations were made as follows:

384.1. In light of the passage of time, Mr Boustani is no longer able to specify the precise words used. The best particulars which Privinvest is presently able to give are that the gist of the words used was to the effect of the Investment Representations.

384.2. In the case of Mr do Rosário, they were made on occasions too numerous to mention, commencing in or around early 2013, when Mr Boustani first began to meet with Mr do Rosário.

384.3. In the case of Mr Chang and Mr Leão, they were made on occasions too numerous to mention, commencing in or around the third quarter of 2013, when Mr Boustani first met with them to discuss the possibility of joint business ventures.

384.4. In the case of President Guebuza, at a meeting on or around 21 January 2013 with Mr Boustani at the Palácio da Ponta Vermelha (the official residence of the President of Mozambique) and on several occasions thereafter.

384.5. In each case, Mr Boustani was frequently during the period January 2013-late 2014 based in Maputo at the Radisson Hotel, and met with former President Guebuza, Mr Chang, Mr Leão and Mr do Rosário either at that hotel, in restaurants or at their homes or the homes of their family/friends. The Investment Representations were made expressly in one of these locations.

385. Further or alternatively, the Investment Representations were made impliedly, by the following conduct:

385.1. In the case of Mr Chang, Mr Leão and Mr do Rosário:

385.1.1. Their entry into such numerous transactions with Privinvest.

385.1.2. The establishment of Quilua, and (in the case of Mr do Rosário) the investment by IRS in Txopela, as a precursor to the making of such investments.

385.1.3. Their frequent discussions with Mr Boustani of relevant opportunities for Privinvest to make such investments.

385.1.4. Their execution of those investments, including by receiving funds and acquiring relevant property for the purpose of those transactions.

385.2. In the case of former President Guebuza and President Nyusi, their absence of protest or intervention to prevent such transactions, in the knowledge that the Mozambican Officials were entering into such transactions.

386. Privinvest's primary case is that Mozambican law governs the relationships between it, the Republic, former President Guebuza, Mr Chang, Mr Leão and Mr do Rosário. Section D1 above is repeated *mutatis mutandis*.

387. The making of the Investment Representations gives rise to a claim by Privinvest under Article 483 MCC as follows:

387.1. As to the elements of a claim under Article 483 MCC, Paragraph 354 above is repeated.

387.2. In the event that the Republic establishes its allegations that it was unlawful for either Privinvest to make or Mr do Rosário, Mr Leão and Mr Chang to receive such payments and/or for Privinvest to participate in such business ventures in Mozambique, or Credit Suisse establishes the same in relation to President Nyusi, and the Privinvest Defendants are held liable to the Republic or Credit Suisse as a consequence, then Privinvest will have suffered damage.

387.3. If Privinvest is found liable to the Republic on the basis that the payments described in Sections C1 and C2 above were unlawful, then Privinvest's damage will have been suffered as a causal consequence of the Investment Representations being made. Without their having been made, the Privinvest Defendants would not have made the payments in respect of Quilua, Txopela, Mr do Rosário, Mr Leão, Mr Chang, Ms Dove, Mr Matusse and Ms Lucas as pleaded in Sections C2(i)-(vi) above.

387.4. The act of making the Investment Representations infringed Privinvest's rights, because Privinvest would be deprived of its patrimony without grounds (as a result of Privinvest's being liable to the Republic as a result of the payments it made).

387.5. Each of former President Guebuza, Mr Chang, Mr Leão and Mr do Rosário knew or ought to have known that the Investment Representations were false (because they each knew the true position as a matter of Mozambican law in light of their seniority and responsibilities in the Republic and their long experience in politics), such that they had either *culpa* or *dolo*.

388. Further, the liability of former President Guebuza, Mr Chang, Mr Leão and Mr do Rosário arises under, in conjunction with Article 483 MCC:

388.1. Article 485(2) MCC, on the basis that each individual making the Investment Representations thereby assumed liability for the damage caused, and acted with the intention of causing prejudice to Privinvest.

388.2. Article 486 MCC, on the basis that in agreeing to participate in investments with Privinvest, they acquired a duty to inform Privinvest that such action was illegal.

389. Alternatively, in so far as English law governs the relationship between Privinvest, the Republic and President Guebuza, Mr Chang, Mr Leão and Mr do Rosário, then Privinvest will say that:

389.1. Induced by the Investment Representations (and each of them), and reasonably relying on them, the Privinvest Defendants made payments in respect of Quilua, Txopela, Mr do Rosário, Mr Leão, Mr Chang, Ms Dove, Mr Matusse and Ms Lucas as pleaded in Sections C2(i)-(vi) above.

389.2. In the event that the Republic establishes its allegations that it was unlawful for either Privinvest to make or Mr do Rosário, Mr Leão and Mr Chang to receive such payments and/or for Privinvest to participate in such business ventures in Mozambique, or Credit Suisse establishes the same in relation to President Nyusi, and the Privinvest Defendants are held liable to the Republic or Credit Suisse as a consequence, the Privinvest Defendants will say that:

389.2.1. It follows that the Investment Representations were false.

389.2.2. Each of the makers of the Investment Representations knew or ought to have known that they were false (because they each knew the true position as a matter of Mozambican law in light of their seniority and responsibilities in the Republic and their long experience in politics).

389.2.3. Each of them made the Investment Representations intending that the Privinvest Defendants would rely on them in entering into the aforesaid business ventures and/or making the aforesaid payments.

390. Further or alternatively, former President Guebuza, President Nyusi and Mr Chang each expressly and/or impliedly represented that:

390.1. It was lawful for officials of the Republic to receive, and for Privinvest to make, campaign contributions to aid in those officials' (re-) election campaigns.

390.2. That remained lawful even if those officials had decision-making responsibilities in connection with transactions in which Privinvest was directly or indirectly involved.

390.3. Such payments could lawfully be made either to FRELIMO or to such officials privately.

(the "**Campaign Contribution Representations**").

391. The Campaign Contribution Representations were made:

391.1. Expressly:

391.1.1. By President Nyusi on several occasions to Mr Boustani, including at their meeting on 1 August 2014 at Paris-Le-Bourget Airport.

391.1.2. By Mr Chang, at the meetings referred to above at Paragraph 384.3.

391.1.3. By President Guebuza: (i) at a meeting on or around 21 January 2013 with Mr Boustani at the Palácio da Ponta Vermelha (the official residence of the President of Mozambique) at which President Guebuza asked for Mr Boustani and Privinvest's "*support*" for FRELIMO; (ii) at subsequent meetings at which similar requests were made, including at a meeting a few weeks before Privinvest's first payment to FRELIMO on 30 March 2014.

391.2. Impliedly, in their conduct receiving the payments pleaded below at Paragraph 394.1.

392. The making of the Campaign Contribution Representations gives rise to a claim by Privinvest under Article 483 MCC as follows;

392.1. As to the elements of a claim under Article 483 MCC, Paragraph 354 above is repeated.

392.2. In the event that the Republic establishes its allegations that it was unlawful for either Privinvest to make payments in respect of Mr do Rosário (and indirectly President Nyusi) and/or Mr Chang to receive such campaign

contributions, or Credit Suisse establishes the same in relation to President Nyusi, and the Privinvest Defendants are held liable to the Republic or Credit Suisse respectively as a consequence, then Privinvest will have suffered damage.

392.3. If Privinvest is found liable to the Republic on the basis that the payments described in sections C1 and C2 above were unlawful, then Privinvest's damage will have have been suffered as a causal consequence of the Campaign Contribution Representations being made. More particularly:

392.3.1. Had former President Guebuza not made the Campaign Contribution Representations in January 2013 or thereafter, Privinvest would not have made any subsequent payments in respect of campaign contributions.

392.3.2. Had Mr Chang and/or President Nyusi not made the Campaign Contribution Representations, Privinvest would not have made and/or would have stopped making the payments in respect of Mr do Rosário (and indirectly President Nyusi) particularised in Sections C2(ii) and C3(i) above.

392.4. The act of making the Campaign Contribution Representations infringed Privinvest's rights, because Privinvest would be deprived of its patrimony without grounds.

392.5. Each of former President Guebuza, President Nyusi and Mr Chang knew or ought to have known that the Campaign Contribution Representations were false (because they each knew the true position as a matter of Mozambican law in light of their seniority and responsibilities in the Republic and their long experience in politics), such that they had either *culpa* or *dolo.*

393. Further, the liability of former President Guebuza, President Nyusi and Mr Chang arises under, in conjunction with Article 483 MCC:

393.1. Article 485(2) MCC, on the basis that each individual making the Campaign Contribution Representations thereby assumed liability for the damage caused, and acted with the intention of causing prejudice to Privinvest.

393.2. Article 486 MCC, on the basis that in agreeing to receive campaign contributions from Privinvest, they acquired a duty to inform Privinvest that such action was illegal.

394. Alternatively, in so far as a claim in respect of the Campaign Contribution Representations is governed by English law, then Privinvest will say that:

394.1. Induced by the Campaign Contribution Representations (and each of them), and reasonably relying on them, the Privinvest Defendants made the following payments:

394.1.1. In respect of Mr Chang, as described in Section C2(iii) above.

394.1.2. In respect of President Nyusi, as described in Section C3(i) above.

394.2. In the event that the Republic establishes its allegations that it was unlawful for Mr Chang and/or President Nyusi to receive such payments, or for Privinvest to make them, and the Privinvest Defendants are held liable to the Republic and/or Credit Suisse as a consequence, the Privinvest Defendants will say that:

394.2.1. It follows that the Campaign Contribution Representations were false.

394.2.2. President Nyusi, former President Guebuza and Mr Chang each knew or ought to have known that they were false (because each knew the true position as a matter of Mozambican law in light of their seniority and responsibilities in the Republic and their long experience in politics).

394.2.3. Each of President Nyusi, former President Guebuza and Mr Chang made the Campaign Contribution Representations intending that the Privinvest Defendants would rely on them in entering into the aforesaid business ventures and/or making the aforesaid payments.

395. The Investment Representations and the Campaign Contribution Representations fall to be attributed to the Republic (whether as a matter of Mozambican law, including without limitation Article 58(2) of the Constitution, Article 501 of the

Mozambican Civil Code and Article 13 of Law No.14/2011 of 10 August), or the English common law, incorporating the principles of public international law concerning attribution of conduct to states).

396. In the premises, if the Republic's case as to the unlawfulness of Privinvest's conduct in making payments to the Mozambican Officials is correct, then:

396.1. Privinvest has an equal and opposite claim under Article 483, 485(2) and/or 486 MCC.

396.2. Alternatively, if English law governs the relevant claims, then Privinvest has an equal and opposite claim in deceit; alternatively, for negligent misstatement.

397. In the premises, the Republic's claims would fail for circuity of action.

F. RESPONSE TO CAUSES OF ACTION

F1. Claims in connection with the Proindicus and EMATUM Guarantees

398. As to Paragraphs 101A-128 in general:

398.1. These paragraphs do not plead any direct claim against Privinvest. No admissions are made in respect of them, save as expressly set out below.

398.2. The only pleaded relevance of them to any claim against Privinvest is that Credit Suisse's entry into the Proindicus and EMATUM Guarantees is alleged to be one of the unlawful means used in the alleged conspiracy pleaded at Paragraph 133. If the Republic is successful in its case that the Guarantees are non-binding, it is denied that entry or purported entry into a non-binding contract is capable of constituting an unlawful means, as a matter of English law.

398.3. Further, even if this allegation is legally relevant at all to Privinvest, the provisions of Mozambican law said to deprive Mr Chang of authority, and Credit Suisse's knowledge thereof, are largely outside Privinvest's knowledge.

398.4. Each and every factual allegation made therein is therefore not admitted, save as expressly set out below.

399. Paragraph 101A and the first sentence of Paragraph 101B are denied. Mr Chang was not promised and did not receive any bribes or inducements from the Privinvest Defendants or that the Privinvest Defendants were aware of or participated in, and nor did any other Mozambican government official. Further or alternatively, Mr Chang was not acting without authority in entering into the Proindicus or EMATUM Guarantees.

400. As to the second sentence of Paragraph 101B, it is admitted and averred that Mr Chang knew of at least some of the payments being made in respect of other Mozambican Officials, and would in general terms have been aware that Privinvest was making such payments, but it is denied that these constituted bribes.

401. No admissions are made as to the first sentence of Paragraph 102, but it is in any event denied that Privinvest was aware of these matters.

402. As to the first sentence of Paragraph 102A:

402.1. It is admitted and averred that the Proindicus and EMATUM Guarantees were guarantees in respect of the Supply Contracts (and not only the Facilities which financed them).

402.2. It is denied that the terms of the Supply Contracts were such that no honest and reasonable government official could countenance them or guarantees in respect thereof. On the contrary, the Projects would have made substantial profits for the SPVs (and thereby the Republic as their sole indirect shareholder), had they been deployed properly. The decision to enter into them (and, in consequence, Guarantees in respect of them) was a commercially reasonable one. Paragraph 210 above is repeated.

403. Paragraphs 104 and 104A are admitted. It is denied that the Constitutional Council had authority to do so, and in particular that it is empowered to do so under the Republic's Constitution. The superior court for matters of public administration and fiscal matters is the Administrative Court.

404. As to Paragraph 106.2:

404.1. Paragraph 173 above is repeated.

404.2. Mr Boustani had been informed by Mr do Rosário that the Proindicus Project was being treated as a national security matter, given its nature and the close involvement of SISE, and as such the Republic required that certain details be kept confidential until the Project was executed.

405. The text of the emails referred to at Paragraph 106.3 is admitted. Privinvest will refer to them at trial for their full meaning and effect.

406. As to Paragraph 106.4:

406.1. The first sentence is admitted. The reference to the "*very confidential internal memo*" was to a letter from Mr Chang to President Nyusi, noting that: (i) it was unclear what the requirement for Central Bank approval required, because the Borrower was Proindicus and the Ministry of Finance was approving the Guarantee; (ii) approval from the Administrative Court was unusual in an external financing.

406.2. The second and third sentences are admitted as to the text of the emails. What Mr Boustani said, as pleaded in the third sentence, was consistent with Mr Chang's letter to President Nyusi, on which Privinvest was entitled to and did rely.

407. The text of the email pleaded at Paragraph 106.5 is admitted. It is denied that this email evidences knowledge of any of the alleged breaches pleaded by the Republic.

408. The text of the emails pleaded at Paragraphs 106.6 and 106.7 are admitted. Privinvest will refer to them at trial for their full meaning and effect.

409. The first sentence of Paragraph 106.8(a) is admitted. Mr Pearse gave evidence to that effect. It is further admitted that Mr Boustani had in fact said words to the effect set out in the first sentence to Mr Pearse.

410. The second sentence of Paragraph 106.8(a) is denied. Paragraph 284 above is repeated. Mr Boustani's complaint was that Privinvest had entered into a contractually binding commitment to pay Mr Nhangumele for work on the Proindicus Transaction, but that: (i) Mr Nhangumele had by that time stopped providing services to Privinvest; (ii) Mr Nhangumele was not in any event proving to be an effective lobbyist with the Republic's government. Further:

    410.1. On the Republic's own case, Mr Nhangumele was not an officer or agent of the Republic, and so could not himself have received any bribe or secret commission payment.

    410.2. Had Mr Boustani been talking about a bribe or secret commission, rather than genuine work for Privinvest, it would have made no sense to complain to Mr Pearse about it, since it was on the Republic's own case a matter which Privinvest would have known about for a considerable time previously.

411. As to Paragraphs 106.8(b) and (c), it is admitted that Mr Pearse gave such evidence, but no admissions are made as to its truth.

412. As to Paragraph 106.8(d), it is admitted that Mr Pearse gave such evidence and (to the best of Mr Safa's recollection) that Mr Safa met Mr Chang in France in or around September 2013 (although he cannot recall whether or not this took place in the south of France as alleged). It is denied that this meeting is any evidence of wrongdoing.

413. Paragraph 106.8(e) is admitted. It is denied that these are properly characterised as ciphers or code names, or that they were an attempt to keep certain matters secret.

414. As to Paragraph 109:

    414.1. It is denied that the matters set out therein, individually or collectively, put Credit Suisse on notice of any bribery or corruption in respect of the Projects.

    414.2. As to the allegation in the clause marked (a), Mr Safa did not know until the course of the EDNY Trial that Credit Suisse had ever described him as the "*master of kickbacks*" or an "*undesirable client"* (and makes no admissions as

to whether Credit Suisse had in fact so described him). It is denied that there was any evidential foundation for those descriptions.

414.3. As to the allegation in the clause marked (b), Paragraph 175 above is repeated.

414.4. As to the allegations in the clause marked (c):

414.4.1. No admissions are made as to Credit Suisse's awareness of the matters referred to herein.

414.4.2. In around August 2006, it was announced that Mr Safa was being charged with the offence of concealment of abuse of corporate assets ("*recel d'abus de biens sociaux*"), contrary to Article 321-1 of the French Criminal Code. The allegations concerned Mr Safa's receipt of commissions from a state-owned company called SOFREMI, which it was alleged were excessive and/or not due (the "**SOFREMI Case**").

414.4.3. Mr Safa was tried for that offence. In the course of the trial, Mr Safa presented evidence that all payments he had received were legitimate. The prosecution itself abandoned the case mid-trial. In consequence, the Criminal Court of Paris gave judgment on 11 December 2007, acquitting Mr Safa and bringing the proceedings to an end.

414.4.4. In or around 2001, French police had conducted investigations into allegations that Mr Safa had been involved in paying a ransom to secure the release of five French hostages being held by Hezbollah in Lebanon (which release had occurred in 1987-88) (the "**Hostages Case**").

414.4.5. No further action was taken until 2009, when an investigating magistrate was appointed. The allegation against Mr Safa was that he was guilty of abuse of corporate assets ("*abus de biens sociaux*") contrary to Article L.242-6 of the French Commercial Code. The magistrate investigated the allegations, and published a final ruling ("*ordonnance de non-lieu*") on 15 October 2009. The magistrate held that:

"*the allegations* [made against Mr Safa] *were never backed up by any element, were subject to no investigation at all in eight years and no conclusive evidence was even found that the French state has paid a ransom for the liberation of its hostage-citizens*"

414.4.6. Accordingly, the charges against Mr Safa were dismissed without trial.

414.5. In the premises:

414.5.1. It is admitted that Mr Safa had been subject to a prosecution in France in relation to the SOFREMI Case. It is denied that the events of the Hostages Case are aptly described as a "*prosecution*".

414.5.2. It is admitted that international arrest warrants were issued against Mr Safa. Both fell away upon his acquittal in the respective cases.

414.5.3. It is denied that this gave Credit Suisse any reason not to deal with Mr Safa, given that he had been acquitted in both the SOFREMI Case and the Hostages Case.

414.5.4. It is denied that either case involved allegations of corruption and embezzlement. Neither offence required proof of any such corruption or embezzlement, and none was alleged against Mr Safa.

414.5.5. Save as aforesaid, these allegations are denied.

415. The allegation in the first sentence of Paragraph 109A is not understood. For the purposes of the Projects, the SPVs and the Republic had a direct contractual relationship with Credit Suisse. Privinvest had no legal relationship with Credit Suisse. Paragraphs 36, 41.1 and 155 above are repeated as to Privinvest's role in introducing Credit Suisse to the Republic.

416. As to Paragraph 109B.1, no admissions are made as to the content of the EIBC Memorandum dated August 2013. The introduction to Credit Suisse for the purposes of the Projects was made as described above at Paragraphs 36, 41.1 and 155, and not through Al Ain.

417. Paragraph 109B.2 is admitted so far as is consistent with the foregoing.

418. Save that the word "*frequently*" is vague and unclear such that Privinvest is unable to meaningfully respond to it, Paragraph 109B.3 is admitted.

419. Paragraph 109B.4 is admitted, save that it is denied he did so "*ostensibly*" for that purpose. He in fact did so for that purpose.

420. Paragraph 109B.5 is admitted, save that Mr Boustani was not acting "*on behalf of*" Credit Suisse, if it is intended thereby to allege any legal relationship between Mr Boustani and Credit Suisse. He had no authority on behalf of Credit Suisse, but was conveying documents on a case-by-case basis. Paragraph 415 above is repeated.

421. Paragraph 109B.6 is admitted, save that Mr Boustani was not "*entrusted by CSI*" to pass on due diligence questions. Paragraphs 415 and 420 above are repeated.

422. Paragraph 109B.7 is admitted.

423. No admissions are made as to Paragraphs 109B.8-9, save that it is denied that Mr Boustani could "*purport to instruct*" Credit Suisse and VTB. Paragraphs 415 and 420 above are repeated.

424. Paragraph 109B.10 is admitted.

425. Paragraph 109C is admitted.

426. As to the first sentence of Paragraph 109D:

426.1. Privinvest does not understand the use of the word "*intermediaries*". If it is intended to denote a particular legal relationship, then it is denied that any such relationship existed.

426.2. In his letter of 31 August 2012, Minister Chang had requested that Privinvest continue to seek finance on the Republic's behalf. The Republic (through at least former President Guebuza, President Nyusi and Minister Chang) was aware prior to this time that Privinvest was seeking to identify funding on its behalf, and acquiesced in and/or encouraged that practice.

426.3. Mr Boustani was asked to identify funding on the Republic's behalf because the Republic itself: (i) did not routinely engage in commercial (as opposed to inter-governmental or concessional) borrowing; (ii) did not have the relevant expertise or contacts to do so; and (iii) elected not to engage external advisors such as investment bankers to assist it.

426.4. The Republic nevertheless made its own decisions as to financing (including pressing for cheaper terms than the market was willing to offer), and approved the financing through (so far as Privinvest was aware) its proper officers and agents.

426.5. Save as aforesaid, no admissions are made.

427. The second sentence of Paragraph 110A is expressly denied. Paragraph 182.4 above is repeated.

428. As to Paragraph 110C.2, the text of the email sent by Mr Boustani on 24 February 2013 is admitted, but the meaning it is alleged to have conveyed is denied. Mr Boustani sent a second email later that day, clarifying that only Mr do Rosário and Eugenio Matlaba were directors, and explaining that General Odallah was chairman of the company's General Assembly (ie. of shareholders), and General Nalyambipano was a member of the Audit Committee. The information that these individuals were all directors was thus qualified.

429. It is any event denied that the characterisations given demonstrate that, as alleged by the Republic, these individuals did not have expertise relevant to the Proindicus or EMATUM Transactions. The email was sent in the context of the impending Proindicus Transaction, which was a major project focussed on improving the Republic's security capacity in its EEZ. Military and/or intelligence expertise was highly relevant to that purpose.

430. Paragraph 110F.1 is denied. Paragraphs 90.2, 96.1, 128, 193.4, 404.2 and 429 above are repeated.

431. As to Paragraphs 111, 114.5.2, 114.6.3 and 114.6.6, the text of the emails therein is admitted. Those emails will be relied on for their full meaning and effect at trial.

432. As to Paragraph 111A, no admissions are made as to the contents of the EIBC Memorandum. The reference to Aventis appears to be a misspelling and/or misunderstanding, and should be a reference to Navantia (which is a competitor shipbuilding company).

433. Paragraph 112 is denied. Paragraphs 12, 16, 20, 116.3, 189, 374.1, 376.4. 376.6 and 426.4 above and 489 beloware repeated.

434. As to the first sentence of Paragraph 117, these were not Mr Boustani's explanations, but those of the Republic's officers themselves. Paragraph 406.1 is repeated. Mr Boustani conveyed the message to Credit Suisse, which was content with it.

435. The first sentence of Paragraph 121 is admitted. It is further admitted, as alleged in the second sentence, that no Swiss law-qualified lawyers acted for the Republic. That feature was not a "*red flag*" because:

435.1. There were (and to the best of Privinvest's knowledge, are) no unusual features of Swiss law relevant to the Supply Contracts.

435.2. Privinvest also did not engage its own Swiss law-qualified lawyers.

435.3. On the Republic's own case, it was not a party to the Supply Contracts.

436. As to Paragraph 123A:

436.1. The first sentence is denied. Both business plans indicated at a high level a reliable basis on which such revenue might be achieved.

436.2. Paragraph 123A.1 is denied. The Proindicus business plan was generated internally by Proindicus.

436.3. Paragraph 123A.2 is denied. Paragraphs 193.6, 194.3, 199.1, 278 and 436.1 above are repeated.

436.4. Paragraph 123A.3 is admitted, but its relevance is denied.

436.5. Paragraph 123A.4 is tendentious, and is an incomplete summary of the Proindicus Supply Contract. Paragraph 210.4 above is repeated.

436.6. No admissions are made as to Paragraphs 123A.5-6.

437. The general allegation in the first sentence of Paragraph 123B is denied. Privinvest's decision to reduce its profit margins by payment of the subvention fee was made for its own commercial reasons, and was neither incompatible with its stated profit margins nor otherwise irrational or improper.

438. As to the Paragraphs 123B.1 to 123B.5:

438.1. Paragraph 123B.1 is responded to at Paragraph 447 below.

438.2. The text of the relevant email on 5 August 2012 is admitted. The email pre-dates the conclusion of the Proindicus Supply Contract by some 5 months. No admissions are made as to whether it reflected Privinvest's eventual profit margins on the transaction.

438.3. No admissions are made as to Paragraph 123B.3. No admissions are made as to the accuracy of the figures given therein, or whether they were properly comparable to each other.

438.4. The first sentence of Paragraph 123B.4 is denied. Even if those figures were accurate and/or comparable, Privinvest would still have made a profit on the transaction. In addition, as pleaded above, Privinvest hoped to generate further business in the future in Mozambique and elsewhere in Africa, as part of its broader business strategy there.

438.5. The second sentence of Paragraph 123B.4 is therefore denied.

438.6. No admissions are made as to the first, second and third sentences of Paragraph 123B.5.

438.7. The fourth and fifth sentences of Paragraph 123B.5 are denied. Paragraph 437 above is repeated.

439. The first sentence of Paragraph 124 is admitted.

440. As to the second sentence of Paragraph 124, the extent and justification of the Contractor Fees payable in connection with each Project is set out at Paragraphs 163, 187, 224, 243 and 251 above and Paragraphs 445-446 below.

441. As to the third sentence of Paragraph 124, Paragraph 224 above is repeated.

442. The fourth sentence of Paragraph 124 is denied. Paragraph 224 above is repeated. Privinvest was told by Mr Singh and Mr Freiha that Credit Suisse had frequently used similar fees in past transactions.

443. As to the fifth sentence of Paragraph 124, the text of this email is admitted. Privinvest will rely on it at trial for its full meaning and effect.

444. No admissions are made as to the sixth sentence of Paragraph 124.

445. Paragraphs 124A-B are admitted.

446. Paragraph 124C is denied. Credit Suisse received US$41,710,882, because the contractor fee was subject to a rebate. Paragraph 251 above is repeated.

447. Paragraph 124D is denied. Paragraphs 437-438 above are repeated.

F2. Bribery

448. The first sentence of Paragraph 129 is denied:

448.1. The reference to "*corruption*" is not understood, since it is not a term which gives rise to any pleaded cause of action.

448.2. As to the allegation of bribery, it is denied that any bribery took place. In so far as this allegation is made in the tort of bribery against Privinvest, it is addressed below at Paragraph 449;

448.3. Neither the Proindicus Guarantee nor the EMATUM Guarantee was a product of or tainted by bribery or corruption. Paragraphs 207-214 and 239-248 above are repeated.

449. As to the allegation that Privinvest is liable in the tort of bribery:

449.1. The claim in bribery against Privinvest is governed by Mozambican law.

449.2. Accordingly, the claim is properly characterised as being one under Article 483 MCC. No such claim lies because:

449.2.1. The elements of such a claim are as set out at Paragraphs 353-354 above.

449.2.2. The Privinvest Defendants' acts did not breach any legal rule, because there was no breach of Mozambican law in the making of the payments to any person. Section D3 above is repeated.

449.2.3. Alternatively, for the same reason, the Privinvest Defendants had no *culpa* or *dolo* in making the aforesaid payments.

449.2.4. The Republic has suffered no recoverable damage, because:

449.2.4.1. The Projects were approved by the Republic on their own merits, in pursuit of long-standing public policy. The Republic would have agreed to enter into them absent the making of any payments in respect of the Mozambican Officials in any event.

449.2.4.2. The only Mozambican Official identified in the RACPOC who played any role in respect of the Guarantees was Mr Chang, who signed them. The remaining Mozambican Officials did not, to the best of Privinvest's knowledge, have any role in the approval of the Guarantees, nor were they authorised to conclude them. In so far as the alleged bribery relates to payments made to the Mozambican Officials other than Mr Chang, it cannot have been connected to this alleged purpose.

449.2.5. The claim is barred by the defences set out in Sections E3-E4 above.

449.2.6. The claim is also barred because:

449.2.6.1. It is time-barred under Article 483 MCC, because it was commenced more than three years after the Republic became aware of the facts or matters on which its claim is founded.

449.2.6.2. Of Articles 340 and 570 MCC, as the knowledge of former President Guebuza, President Nyusi, Mr Chang, Mr Leão and Mr do Rosário falls to be attributed to the Republic for the reasons set out at Section E2 above.

449.3. In so far as the claim does arise under English law, the claim will also fail because:

449.3.1. A claim for bribery inducing or threatening a breach of duty, where that duty is governed by foreign law, will fail if the foreign law does not prohibit the receipt of the payments in question by the relevant agent, such that there is no breach of duty or real risk thereof. There was no breach of duty or real risk of breach of duty by the Mozambican Officials. Sections D3-D4 above are repeated.

449.3.2. The payments were not secret from the Republic, for the reasons set out in Sections E1-E2 above, such that no claim in bribery arises.

449.3.3. Notwithstanding that it is not a requirement of the tort of bribery to show that any specific loss was caused by the payment, where a claimant claims only in damages against a defendant, it must nevertheless show that it has suffered recoverable loss on ordinary principles of causation. The Republic has suffered no such loss. Paragraph 449.2.4 is repeated.

449.3.4. The claim is barred by the defences set out in Sections E2-E4 above.

450. As to the second sentence of Paragraph 129, Section C above is repeated. It is denied that any bribe or secret commission was paid to any of the individuals referred to. Further, it is denied that payments made to the CS Deal Team Defendants are capable of giving rise to any cause of action by the Republic against Privinvest, in circumstances where the Republic does not allege that they were its agents. The

Republic has confirmed it advances no such contention by Response 61 to the First Privinvest RFI Response and Response 1 to the Second Privinvest RFI Response.

451. The third sentence of Paragraph 129 is pleaded to at Paragraph 295 above.

452. As Paragraph 129A is denied:

452.1. No admission is made as to the Republic's knowledge of the purpose and extent of any payments made by Privinvest. Paragraph 104 above is repeated.

452.2. As there was no bribery to which Privinvest was a party, the allegation that such bribery had any particular purpose is denied.

453. Paragraphs 130-130B are not particulars of claim against Privinvest, and it does not plead to them.

454. As to the general allegation in the first sentence of Paragraph 130C:

454.1. No bribes and/or secret commissions were paid by the Privinvest Defendants.

454.2. Whilst Mr Safa was aware of and approved in general terms Privinvest's strategy for investments in Mozambique, he did not direct or approve individual payments. Each of Mr Boustani and Mr Allam held a specific role within the Privinvest Defendants. Mr Safa did not (and could not, given the scale and range of his business interests) have supervised or directed them.

454.3. In consequence, it is denied that any bribes and/or secret commissions were paid with Mr Safa's knowledge or at his direction.

454.4. For the reasons aforesaid, Paragraph 130C.1 is denied.

455. As to Paragraph 130C.2, Paragraph 47 above is repeated.

456. It is denied that the exhibits referred to in Paragraph 130C.3 are evidence of the payment of bribes, or Mr Safa's approval of them. As to Paragraphs 130C.3.1 to 130C.3.4:

456.1. As to Paragraph 130C.3.1, Mr Safa has no recollection of having "*removed Esalt*", or any related discussions, as referred to in Mr Allam's email referred to in the allegation labelled as (ii). The text of the emails referred to therein is otherwise admitted. Privinvest will rely on them at trial for their full meaning and effect.

456.2. Paragraph 130C.3.2 is admitted. Any inference arising therefrom is denied.

456.3. No admissions are made as to Paragraph 130C.3.3, save that it is denied that any figures therein contained a record of bribes and/or secret commissions.

456.4. As to Paragraph 130C.3.4, Mr Safa never received this spreadsheet, and does not recall any such discussion with or instruction to Mr Allam.

457. As to Paragraph 130C.4:

457.1. It is admitted that Mr Pearse gave certain evidence in this respect at the EDNY Trial, but it is denied that it was true.

457.2. Paragraphs 130C.4.1-3 are denied.

457.3. Paragraph 130C.4.4 is denied. Mr Safa never discussed any increase in the Proindicus Facility Agreement with Mr Pearse.

457.4. As to Paragraph 130C.4.5, it is admitted that Mr Safa and Mr Chang met on one occasion around this time. Mr Safa does not now recall whether that meeting took place in Paris or in Southern France. It is denied that that meeting led to the payment of any bribes. Mr Boustani had authority to manage Privinvest's investments in Mozambique, and the payments to Thyse referred to were not specifically agreed by Mr Safa.

457.5. As to Paragraph 130C.4.6, the first sentence is denied. The second sentence is admitted, and Privinvest will refer to the email and attached agreement for its full meaning and effect at trial. It is denied that this was agreement was a sham – it was a reflection of the arrangements in respect of Mr Pearse described above at Paragraph 336.

457.6. As to Paragraph 130C.5, the true position as to Mr Safa's knowledge of such matters is set out above. In the premises, it is denied that there was any inherent implausibility as alleged, and it is denied that the Republic's inference therefrom is a correct one.

458. Paragraph 130D is denied. Paragraphs 59-60, 65-66 and 87.4 above are repeated as to the control and operation of Palomar, and Paragraph 54 above is repeated as to the attribution of Mr Safa's knowledge to Privinvest.

459. As regards the Privinvest Defendants, the first sentence of Paragraph 131 is denied. Paragraph 449 above is repeated.

460. As to the second sentence of Paragraph 131, the general allegation that the Republic is entitled to any relief is denied. As to the Paragraphs 131.1 to 131.5:

460.1. As to Paragraph 131.1, it is denied that the Republic has any entitlement to damages. If any such entitlement does arise, it is subject to the restrictions pleaded at Section F6 below.

460.2. As to Paragraph 131.2, it is admitted that, if English law governs the Republic's claim and Privinvest is found liable in bribery, the Republic is entitled to restitution of any bribe or secret commission paid by Privinvest, notwithstanding that Privinvest did not receive that money. Mozambican law recognises no such entitlement.

460.3. It is denied that the Republic is entitled to an account of profits as alleged in Paragraph 131.3. The only profits made by the Privinvest Defendants were made under the Supply Contracts (and the Republic has confirmed its case is so limited at Response 67.1 to the First Privinvest RFI Response). Further or alternatively, any profits made by Privinvest bore an insufficiently direct causal connection to any alleged wrongs and/or are too remote. In consequence, said profits may not be recovered against Privinvest if (which is denied) Privinvest is liable to account as a dishonest assistant.

460.4. Paragraphs 131.4 and 131.5 are deficient for failing to specify which defendant the relevant remedy is sought against. Neither a declaration as to the

holding of bribes on trust, nor an order permitting the Republic to trace into those bribes, is available as against any of the Privinvest Defendants, who did not receive and do not hold any such funds.

F3. Unlawful means conspiracy

461. No cause of action in conspiracy exists under Mozambican law. Under Article 490 MCC, it is possible for a person to become either an "*instigator*" or an "*auxiliary*" to a wrongful act. An instigator must do some conduct which causes the person committing the act (its "*author*") to decide to do so. An auxiliary must provide a decisive element in the author's commission of the act. Further, for liability to arise under Article 490, it must be possible for the defendant to be liable as a principal wrongdoer; a defendant cannot therefore be liable under Article 490 in respect of breaches of duties which do not apply to the defendant.

462. None of the matters pleaded at Paragraphs 132-134 would give rise to such liability.

463. In the alternative, if (which is denied) the Republic has a claim against the Privinvest Defendants (or any of them), the claim is barred for the reasons set out at Paragraphs 449.2.4-449.2.6 above.

464. Alternatively, in so far as English law governs, Privinvest pleads as follows.

465. The first sentence of Paragraph 132 is denied. There was no conspiracy, no use of unlawful means, and no intent to injure.

466. Further or alternatively, there is no liability in unlawful means conspiracy where the defendant does not know that the unlawful means used were unlawful. If any such means as were used were unlawful, Privinvest was not aware that they were so, and thus is not liable.

467. The second sentence of Paragraph 132 is denied. There was no such conspiracy.

468. The third sentence of Paragraph 132 is noted. There was no conspiracy, such that the Republic's allegations do not give rise to the inference alleged. As to the individual allegations therein:

468.1. As to the allegation labelled (i), there were no unlawful means used.

468.2. As to the allegation labelled (ii), it is denied because:

468.2.1. So far as it concerns Privinvest, there were no unlawful means used, and therefore nothing to have knowledge of, and further, if any such means were used, Privinvest did not believe them to be unlawful.

468.2.2. So far as it concerns the other Defendants, there were no unlawful means used, and therefore nothing to have knowledge of.

468.3. As to the allegation labelled (iii), Paragraph 47 above is repeated.

469. Save for Paragraphs 133.2 and 133.6, as to which no admissions are made because Privinvest played no role in them, each of the alleged unlawful means contained in Paragraph 133 is denied.

470. Specifically as to Paragraphs 133.2A and 133.3, it is denied that entering into as counterparty (in the case of the Supply Contracts) or procuring (in the case of the MAM Facility Agreement and Guarantee) an agreement is capable of constituting an unlawful means in English law.

471. As to Paragraph 133A:

471.1. It is denied that Privinvest (or any other party) is liable for the Republic's losses flowing from the MAM Transaction.

471.2. The Republic's case appears to be, as clarified in the opening sentence of Paragraph 133A, that the MAM Transaction was procured by unlawful means. If so, that is denied.

471.3. The allegation that the MAM Transaction formed part of the same combination and/or conspiracy as the Proindicus and EMATUM Transactions is denied. The allegation of a combination is deficient in failing to particularise who that combination was between, or when or how it was formed. In any event, there was no conspiracy in connection with the MAM Transaction or otherwise.

471.4. It is denied that any unlawful means were used in connection with the MAM Transaction or that the Republic is otherwise entitled to claim losses arising from it. It is noted that the Republic has elected: (i) not to sue VTB, which financed the MAM Transaction, in these proceedings; and (ii) to challenge the English court's jurisdiction to hear VTB's claims against it under Claim Numbers CL-2019-000817, CL-2020-000404 and CL-2020-000328, on the basis that the Republic has sovereign immunity from those proceedings, such that the Court will not (if the Republic's challenge succeeds) be able to determine as against VTB whether any unlawful means were used in the MAM Transaction.

471.5. It is denied that any of the matters relied on give rise to the inference that there was any combination and/or conspiracy in respect of the MAM Transaction.

471.6. Save as aforesaid, no admissions are made.

472. Paragraph 133B is denied.

473. Paragraph 134 is denied as a whole. As to Paragraphs 134.1 to 134.3:

473.1. Paragraph 134.1 is not understood. The Republic does not plead in Paragraphs 94-101 that Privinvest was involved with, still less procured, the EMATUM exchange.

473.2. Paragraph 134.2 is denied. Privinvest has had nothing to admit or confess to.

473.3. No admissions are made as to Paragraph 134.3.

474. The first and third sentences of Paragraph 135 are denied. The second sentence is noted.

F4. The Mozambican Officials' alleged breaches of duty and dishonest assistance

475. Paragraph 136 is denied. For the reasons aforesaid, the payments made to the Mozambican Officials were not bribes, and did not constitute a breach of any applicable Mozambican law rule.

476. As to the first sentence of Paragraph 137, Mozambican law contains no analogue with the law of dishonest assistance, save for the general principle of accessorial liability under Article 490 MCC. Paragraphs 461-463 above are repeated.

477. As to the Paragraphs 137.1 to 137.3:

477.1. Paragraph 137.1 is denied. There was no such bribery.

477.2. No admissions are made as to Paragraph 137.2, Credit Suisse's knowledge being outside Privinvest's knowledge.

477.3. As to Paragraph 137.3, it is admitted that the relevant Privinvest Defendants entered into the Supply Contracts, but denied that this constituted dishonest assistance.

478. Paragraph 138 is therefore denied.

F5. Knowing receipt and proprietary claims

479. Mozambican law has no doctrine analogous to knowing receipt.

480. As to proprietary claims, it is in principle under Mozambican law possible to recover one's property in a civil claim. However, that doctrine extends neither to an account of profits, nor to a proprietary claim based on the legal fiction in English law that bribes paid are recoverable in unjust enrichment from the payor (as opposed to the payee).

481. Accordingly, it is not possible for the Republic to recover in respect of either claim.

482. In the alternative, if (which is denied) the Republic has a claim against the Privinvest Defendants (or any of them), the claim is barred for the reasons set out at Paragraphs 449.2.4-449.2.6 above.

483. Paragraph 139 is denied. Privinvest did not receive any sums from the Republic otherwise than under the Supply Contracts. In any event, it had no knowledge which would have rendered it unconscionable to retain any such sums.

484. Paragraph 140 is denied. Any sums received were not derived from any breaches of duty.

485. As to Paragraph 141, it is admitted that if the Republic is entitled to recover from Privinvest in bribery or dishonest assistance under English law, it is entitled to claim an account of profits. It is denied that the Republic is in fact so entitled, because: (i) the Republic's claims are governed by Mozambican law (as to which see Section D1 above); and (ii) the Republic has not identified any sums which it is entitled to claim an account of other than in connection with the Supply Contracts.

486. Paragraph 142 is denied. Privinvest did not receive any sums from the Republic otherwise than under the Supply Contracts. In any event, the Republic has no claim to them.

487. Privinvest does not plead to Paragraphs 143-150, which are not particulars of any claim against it.

F6. Causation and loss

488. Paragraph 151 is denied. The Republic is not entitled to recover any sums, and is therefore not entitled to recover any interest from, the Privinvest Defendants.

489. As to Paragraph 152, it is admitted that the Three Transactions attracted public and international scrutiny in or around April 2016. This was because the Republic itself falsely alleged that: (i) the debts under the Guarantees were "*secret*" and/or unknown to the Republic and/or its donors and the IMF; (ii) subsequently, that the Guarantees were procured by bribery. No admissions are made as to whether this caused a severe financial crisis in the Republic.

490. No admissions are made as to Paragraph 153.

491. As to Paragraph 154:

491.1. Section D2 above is repeated as regards the test for recovery of damages under Mozambican law.

491.2. It is denied that the Republic has suffered any recoverable loss, whether under Mozambican or English law.

491.3. In so far as it has, the Republic must give credit for: (i) the profits it would have made using the assets and services provided under each of the Supply Contracts, had it used them properly; and/or (ii) the value of those assets. Pending disclosure, Privinvest will rely on the fact that Lancaster 6 expressed interest in buying EMATUM and MAM's assets as evidence that those assets had substantial market value.

491.4. Alternatively, the Republic must give credit for its failure to mitigate its losses, as to which Privinvest will rely on the same misuse of and/or failure to make reasonable profits from the use of the assets.

492. As to Paragraphs 154.1 to 154.4:

492.1. It is admitted that, in principle, the sums identified under Paragraph 154.1 would be recoverable from Privinvest.

492.2. As to Paragraph 154.2, it is denied that such sums are recoverable. The Republic elected, knowing substantially the same facts as it does now, to enter into the 2023 Eurobonds and, having made an independent choice to do so, cannot recover any additional debt it faces as a result (over and above its liability under the EMATUM Guarantee) from Privinvest.

492.3. As to Paragraph 154.3, it is denied that such sums are recoverable. Paragraph 492.2 above is repeated.

492.4. As to Paragraph 154.4, no admissions are made as to any macro-economic losses suffered by the Republic. It is denied that any such sums are recoverable.

In particular: (i) the concept of a 'macro-economic loss' is so vague as to be meaningless, in circumstances where the Republic itself does not suffer loss from (e.g.) a fall in GDP, but only from reduced revenues from taxation; (ii) in any event, such sums were not sufficiently foreseeable and/or causally connected to any wrong to be recoverable.

493. Paragraph 155 is denied, for the reasons aforesaid.

DUNCAN MATTHEWS QC

RICHARD LISSACK QC

BEN WOOLGAR

FREDERICK WILMOT-SMITH

TOM FOXTON

Statement of Truth of the Sixth to Tenth Defendants

The Sixth to Tenth Defendants believe that the facts stated in this Defence are true.

The Sixth to Tenth Defendants understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed .....

Name: Iskandar Safa

Position: Director of Privinvest Shipbuilding SAL (Holding) and Logistics International SAL (Offshore) (the Sixth and Ninth Defendants); Authorised Signatory of Privinvest Shipbuilding SAL (Holding) in its capacity as General Manager of Abu Dhabi Mar investments LLC and Privinvest Shipbuilding Investments LLC (the Seventh and Eighth Defendants); Authorised Signatory of Logistics International SAL (Offshore) in its capacity as General Manager of Logistics international Investments LLC (the Tenth Defendant).

Date: 15 January 2021

Statement of Truth of the Twelfth Defendant

I believe that the facts stated in this Defence are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed .....

Name: Iskandar Safa

Date: 15 January 2021

SERVED this 15th day of January 2021 by Signature Litigation LLP, of 138 Fetter Lane, London, EC4A 1BT