



CENTRO DE INTEGRIDADE PÚBLICA

Anticorrupção - Transparência - Integridade

# HIDDEN DEBTS



Edition nº 4 | March | Free Distribution

## Hearing on the Hidden Debts in London:

# Prinvest tries at all costs to avoid English courts and to drag the case to arbitration

Por: [Borges Nhamirre](#)

Prinvest, the Lebanese company at the centre of the Mozambique's USD 2 billion hidden debt scandal, is playing all its cards to avoid being tried by the English legal system. Prinvest, the company owned by the Franco-Lebanese billionaire Iskandar Safa, is the defendant in the civil case begun by the Mozambican Attorney-General's Office (PGR) in the London High Court of Justice. It is defending itself with the claim that the English courts are not competent to deal with the case. It alleges that the parties agreed that disputes arising from the supply contracts signed with the three Mozambican companies - EMATUM, ProIndicus and MAM – will be settled by the International Arbitration Tribunal (ICC) in Switzerland. In the first instance, the London court rejected the arguments of Prinvest through a decision of Justice Waksman<sup>1</sup>. Prinvest disagreed and appealed to the London Appeals Court, and the case was heard on 17 and 18 February this year.

CIP has had access to the full transcripts of the hearing, which run to 296 pages, and is publishing them in full here ([in English](#))

The Prinvest appeal was heard by three senior judges: Launcelot Henderson (Lord Justice Henderson), Rabinder Singh (Lord Justice Singh) and Sue Carr (Lady Justice Carr). Prinvest was represented by the lawyers Duncan Matthews, Ben Woolgar and Frederick Wilmot-Smith, while Mozambique was represented by the lawyers Nathan Pillow, Richard Blakeley and Ryan Ferro.

At the hearing, the Prinvest lawyers sought to prove that in the contracts to supply coastal protection equipment and services, signed with the companies EMATUM, ProIndicus and MAM, the parties agreed that the International Arbitration Tribunal of Switzerland and Swiss Law were competent to settle eventual disputes. With these arguments, the Lebanese company asked for the annulment of the decision of the judge in the first instance, Justice Waksman, who had recognised the competence of the English courts to judge the case.

“Proindicus contract, clause L, Swiss law and ICC arbitration”, Duncan Matthews told the collective of judges. “The EMATUM clauses in exactly the same terms, so just for your note, at clause J, page 247”, he continued, adding that “The MAM clause is in slightly different terms. It's at page 264, clause K. It does again provide for Swiss law, it provides for Swiss Rules arbitration rather than ICC arbitration, Swiss Rules at the Swiss Chambers”.

In civil law, there is a principle according to which the court competent to judge disputes emerging from a contract, is that agreed upon between the parties. Only in the absence of agreement between the parties does one resort to the Law of the place where the contract was signed to define the competent jurisdiction.

The Prinvest lawyers clung to this principle to allege that, since the parties had agreed on Swiss Law and the International Arbitration Tribunal to settle disputes arising from the supply contracts, “All disputes arising in connection with this project

\* Em caso de dúvidas, sugestões e questões relacionadas a esta nota, contacte: [borges.nhamirre@cipmoz.org](mailto:borges.nhamirre@cipmoz.org)

to go to ICC arbitration Geneva (ICC Rules)”.

## **But the claim by Mozambique does not concern the bribes to do with the supply contracts – it is about the bribes offered for issuing the State guarantees**

It was the task of lawyer Nathan Pillow, representing the Mozambican State, to take apart the Prinvest allegations. The central argument of the lawyers representing Mozambique is that the object of the claim submitted in London High Court of Justice is not the supply contracts signed between Prinvest and the three companies, EMATUM, ProIndcus and MAM. The object is the guarantees issued by then Minister of Finances Manuel Chang to ensure that the loans to the same three companies would go ahead.

Although the subjects are the same, the contracts are different. And this matters. It matters because, under the supply contracts signed between Prinvest and the Mozambican companies, Swiss Law and the International Arbitration Tribunal were chosen to settle conflicts, while in the contracts on the guarantees that made the loans viable, English law is used for solving conflicts.

In these terms, the lawyer Nathan Pillow explained that Mozambique claims that Prinvest bribed the then Minister of Finance, Manuel Chang, to sign the loan guarantees, and for that reason the guarantees are null and void.

This is indeed the request that Mozambique presented in its claim submitted to the London High Court of Justice: that the guarantees issued to make viable the three loans totaling more than two billion US dollars should be declared null and void. If Mozambique wins the case, then the country ceases to be obliged to pay the hidden debts, and it will then be up to Credit Suisse and all those who benefitted from the loans to pay the creditors their money.

Several companies of the Prinvest group, and the owner of the group, Iskandar Safa, are listed as defendants in the case, not because they paid bribes to various officials of the Mozambican state, including the son of the then President of the Republic, Armando Ndambi Guebuza. They are listed because they paid bribes to the then Minister of Finance, Manuel Chang, as a condition for signing the illegal guarantees that made the loan viable.

“We say Prinvest and Mr Safa paid Mr Chang a secret commission of \$5 million. In fact it’s now admitted that he was paid \$7 million by Prinvest entities. We say that’s a bribe...”, argued the lawyer Nathan Pillow. “Mr Chang signed the guarantees. He signed each of them personally. If those guarantees are valid then the loss or the loss to which the Republic has thereby been exposed is its liability, if any, under the guarantees, he said.

The part where the lawyer at the service of the Mozambican state explained that the claim submitted to the court has nothing to do with bribes paid to Mozambican officials under the contracts to supply coastal protection equipment and services caused a misunderstanding. It was as if Mozambique were saying that there were no bribes to high ranking State officials in the framework of the hidden debts. But that is not the case. What the lawyers working for the Mozambican State intended to say is that, in the specific case of the London hearing, the bribe that is relevant for annulling the contract is the bribe paid to Manuel Chang, because that was a fraudulent means of ensuring that illegal guarantees were issued, which made the loans viable.

“Our claim for bribery, has nothing to do with the supply contracts”, Pillow said, adding that. “The bribery occurred on our case in relation to the guarantees. Whether a tribunal finds or is ever asked and then ever finds that the supply contracts were good, bad or ugly is totally irrelevant to that question”.

The position of the lawyers working for the Mozambican state is explained by the fact that, if the matter concerns the bribes paid to Mozambican officials under the supply contracts, then the jurisdiction competent to judge the matter is the International Arbitration Tribunal in Switzerland, rather than the English court. But if the matter being judged is

exclusively the validity of the guarantees issued by Manuel Chang, the English court is competent to hear the case.

“What we say is the thing that Privinvest object to being aired in court is the allegation that the supply contracts were procured by bribery or tainted by it or unlawful because of it. We have made it clear we are not going to raise that allegation in court”, declared Pillow. “In our bribery case... we will simply say the court, as far as we are concerned, does not need to address whether the supply contracts were tainted by fraud. No part of our case. We won’t be alleging it against Privinvest”, he explained.

The insistence by Privinvest on going to arbitration is explained by the fact that it believes it has a greater likelihood of winning the case in this jurisdiction. The International Arbitration Tribunal, like other arbitration jurisdictions, is famous for taking decisions that are favourable to companies in cases concerning disputes over commercial contracts and ignoring related corruption cases.

The Mozambican State has already lost many cases in arbitration tribunals and Privinvest is hopeful of emerging victorious from this case despite confessing that it paid millions of dollars to officials of the Mozambican State involved in the contracting and management of the hidden debts<sup>[2]</sup>, including President Filipe Nyusi himself<sup>[3]</sup>.

The decision of the English Appeals Court which judged the case should be known within a month. Only after this can the trial of the main case advance – namely, the request for annulment of the guarantees issued by Mozambique to make the loan to the three companies viable. The case has 12 defendants. In addition to companies of the Privinvest group and Iskandar Safa, the co-defendants are companies of the Credit Suisse group, which granted loans to the Mozambican companies, and the three former Credit Suisse employees, Andrew Pearse, Surjan Singh and Detelina Subeva, who participated directly in negotiating the loans, and who received illegal commissions from Privinvest. The three confessed their crimes to the United States court which is also judging a case related to the hidden debts.

## Endnotes

<sup>[1]</sup> CIP (2020). Dívidas Ocultas: tribunal de Londres chumba recursos da Privinvest, inclui Iskandar Safa como réu e marca próxima audiência para Janeiro de 2021, available at <https://cipmoz.org/2020/08/23/dividas-ocultas-tribunal-de-londres-chumba-recursos-da-privinvest-inclui-iskandar-safa-como-reu-e-marca-proxima-audiencia-para-janeiro-de-2021/> [accessed on 4 March 2020]

<sup>[2]</sup> CIP (2021). Corrupção das altas hierarquias do Estado: Isaltina Lucas, Renato Matusse, Ndambi Guebuza entre os subornados pela Privinvest, available at <https://cipmoz.org/2021/02/03/corruptao-das-altas-hierarquias-do-estado-isaltina-lucas-renato-matusse-ndambi-guebuza-entre-os-subornados-pela-privinvest/> [accessed on 4 March 2021]

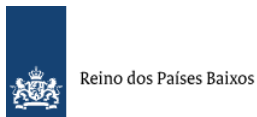
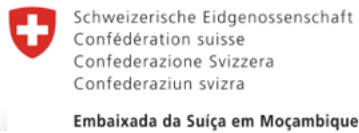
<sup>[3]</sup> CIP (2021). Privinvest informa ao tribunal inglês que pagou milhões de dólares a Filipe Nyusi, Manuel Chang e ao partido Frelimo, available at <https://cipmoz.org/2021/02/01/privinvest-informa-ao-tribunal-ingles-que-pagou-milhoes-de-dolares-a-filipe-nyusi-manuel-chang-e-ao-partido-frelimo/> [accessed on 4 March 2021]

Hwalay, S. (2020). Practice Alert: Alstom’s China agent wins arbitration award in UK despite ‘serious indicia of bribery’, available at <https://fcpablog.com/2020/06/24/practice-alert-alstoms-china-agent-wins-arbitration-award-in-uk-despite-serious-indicia-of-bribery/> [accessed on 4 March 2021]



CENTRO DE INTEGRIDADE PÚBLICA  
Anticorrupção - Transparência - Integridade

Partners:



#### Editorial information

**Director:** Edson Cortez

**Author:** Borges Nhamirre

**Peer review:** Baltazar Fael

**Language Review:** Samuel Monjane

**Property:** Center for Public Integrity

Rua Fernão Melo e Castro,  
Bairro da Sommerschild, nº 124  
Tel: (+258) 21 499916 | Fax: (+258) 21 499917  
Cel: (+258) 82 3016391  
[f](#)@CIP.Mozambique [t](#)@CIPMoz  
[www.cipmoz.org](http://www.cipmoz.org) | Maputo - Moçambique