

## Dutch appeals hearing on TMF'S role in Mozambique's hidden debt: Hold TMF accountable

On 17 December 2020 in The Hague, Netherlands, a court will hear the appeal of TMF, a Dutch trust services provider, in relation to its due diligence failures connected to the Mozambique hidden debt scandal. This appeal is important, because "if the Netherlands wants to maintain its credibility and not become known as the Panama of Europe, it must take this matter very seriously."<sup>1</sup>

*Factual Background.* Amid 2013 and 2016, the Mozambican state-backed companies, MAM, ProIndicus and EMATUM, borrowed, illegally, US \$2 billion from European banks and institutional investors. Supposedly, the loans were meant to fund maritime revenue generating activities, security operations, and ship maintenance facilities along the Mozambican coast<sup>2</sup>.

However, a 2017 independent audit by Kroll could not account for US \$500 million of the funds. Documentation for the remaining US \$1.5 billion revealed little value for money. That same year, Mozambique defaulted on the debt, contributing to an economic crisis from

which the country has yet to recover.<sup>3</sup> The lives of many Mozambican people have been devastated.

EMATUM sought to issue bonds on the European bond market by engaging TMF, a Netherlands-based trust services provider that can act as a corporate agent in the Netherlands for its clients<sup>4</sup>.

Dutch trust service providers (*trustkantoren*) serve foreign corporate clients by providing them with a Dutch address or acting as a nominee director of a Dutch subsidiary. Trust service providers need a license to operate, which can be revoked if the supervising authority detects wrongdoing. But this sector is overseen by Dutch financial regulatory authority *De Nederlandsche Bank* (DNB)<sup>5</sup>.

In 2013, TMF registered a company in the Netherlands called Mozambique EMATUM Finance 2020 B.V. ("EMATUM B.V."). To this day, the Dutch corporate register shows that TMF acts as EMATUM B.V.'s sole managing director and provides EMATUM B.V. with a commercial residence<sup>6</sup>.

On 30 August 2013, EMATUM sought a cred-

<sup>1</sup> <https://www.nrc.nl/nieuws/2016/06/01/miljoenenroof-mozambique-liep-deels-via-amsterdam-1624990-a396913>, June 1, 2016.

<sup>2</sup> [file:///C:/Users/User/Downloads/Mz%20TMF%20Factsheet%20-%20041220-FS%20\(EXTERNAL\).pdf](file:///C:/Users/User/Downloads/Mz%20TMF%20Factsheet%20-%20041220-FS%20(EXTERNAL).pdf)

<sup>3</sup> Idem

<sup>4</sup> See <https://www.transparency.nl/wp-content/uploads/2017/04/TI-netherlands-UBO-web.pdf>.

<sup>5</sup> There are around 150 trust service providers in the Netherlands, which together service and administer around 24,000 companies.

<sup>6</sup> <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2016/06/24/kamerbrief-betreffende-antwoorde-op-kamervragen-over-het-bericht-miljoenenroof-mozambique-liep-deels-via-amsterdam/kamerbrief-betreffende-antwoorde-op-kamervragen-over-het-bericht-miljoenenroof-mozambique-liep-deels-via-amsterdam.pdf>

it facility from Credit Suisse UK, with a credit limit of US \$850 million that was guaranteed, with a maturity period of seven years, by the Mozambican Government through the Ministry of Finance led by former minister Manuel Chang<sup>7</sup>.

After the issuance of the bonds on 11 September 2013, EMATUM B.V. issued US \$500 million in loan participation notes due in 2020, whose first tranche was underwritten by the Credit Suisse UK. Additionally, on 11 October 2013, EMATUM B.V. issued US \$350 million in loan participation notes, also due in 2020, which was then underwritten by VTB Capital<sup>8</sup>.

Allegedly, the transaction's objective was to finance state-backed investments in Mozambique's ocean fishing sector. Yet, EMATUM invested only a small amount of the funds in 24 fishing vessels which, together, cost much less than the US \$850 million in loan proceeds. At least US \$750M of the proceeds remain insufficiently accounted for<sup>9</sup>.

According to reports, US \$500 million in loan proceeds were eventually repurposed for purchase of military equipment by Mozambique. However, up to now, the actual use of those funds remains uncertain<sup>10</sup>.

By 2014, it was clear that the stated fishing element of the EMATUM project was marginal, and that a majority of the loan proceeds had been funneled elsewhere. In the same year, EMATUM's financial statement showed a substantial loss. Likewise, 2014 was the last year in which EMATUM published its financial statements<sup>11</sup>.

Then, in the beginning of 2016, irregularities started increasing, such as public reporting in Mozambique on the legality of the government guarantees extended for the loan; mis-

management and failure of the fishing project; apparent conflicts of interest of politically exposed persons in the project's management structure; reallocation of the US \$500 million in loan funds for the state military budget; and dubious involvement of project contractors and financing parties.

In April 2016, Mozambique acknowledged that it had hidden over US \$1.4 billion in debt from the IMF and other investors. And on 18 January 2017, Mozambique defaulted on its EMATUM loan interest payments<sup>12</sup>.

On 31 May 2016, DNB initiated an investigation into TMF's role in the bond issuance. According to Dutch media reports, DNB investigated whether TMF had ascertained sufficiently the ultimate destination of the funds raised through the bond offering.<sup>13</sup> DNB later issued a € 500,000 fine on TMF, which TMF now appeals.

*Appeal Hearing Information.* The TMF appeals hearing will be held at the Trade and Industry Appeals Tribunal (*College van Beroep voor het Bedrijfsleven*), in The Hague on 17 December 2020. A written decision on appeal is expected in January 2021.

*FMO Position: Criminal Accountability for Trust Service Providers.* FMO believes that TMF's behavior as a facilitator of a significant international fraud is not merely a misstep that should be dealt with by the regulator, but a criminal act that should have been prosecuted in the criminal justice system<sup>14</sup>. Given the harmful impact that trust service providers' actions can have on countries like Mozambique, the FMO calls on the Dutch government to ensure that, going forward, the Public Prosecutions Service, not DNB, will investigate and prosecute trust service providers<sup>15</sup>.

<sup>7</sup> See <https://zoek.officielebekendmakingen.nl/ah-tk-20152016-2945.html>.

<sup>8</sup> See <https://zoek.officielebekendmakingen.nl/ah-tk-20152016-2945.html>.

<sup>9</sup> <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/wob-verzoeken/2018/03/06/deelbesluit-iwob-verzoek-over-nederlands-beleid-jegens-mozambique/4.+Deelbesluit!+-+bijlage+1.pdf>

<sup>10</sup> Kroll Report, at 17, 35, 115, full report available at <http://bit.ly/Kroll-Moz-full>.

<sup>11</sup> Kroll Report at 134.

<sup>12</sup> Kroll Report at 115.

<sup>13</sup> <https://www.nrc.nl/nieuws/2016/07/01/dnb-onderzoekt-rol-trustkantoor-tmf-bij-fraude-in-3003413-a1503680>.

<sup>14</sup> [file:///C:/Users/User/Downloads/Mz%20TMF%20Advocacy%20Messages%20-%20041220-FS%20\(EXTERNAL\).pdf](file:///C:/Users/User/Downloads/Mz%20TMF%20Advocacy%20Messages%20-%20041220-FS%20(EXTERNAL).pdf)

<sup>15</sup> Recent reports indicate the PPS may be investigating the role of Dutch companies in transactions uncovered by the 2020 Luanda Leaks

Without facilitators and enablers, fraud schemes like the Mozambique Hidden Debt would not happen. Indeed, if it turns out that Dutch trust service providers and/or individuals

providing trust services played a role in facilitating criminal acts as reported in the Luanda Leaks this year, these providers should be criminally investigated and prosecuted as appropriate<sup>16</sup>.

<sup>16</sup> [file:///C:/Users/User/Downloads/Mz%20TME%20Advocacy%20Messages%20-%200041220-FS%20\(EXTERNAL\).pdf](file:///C:/Users/User/Downloads/Mz%20TME%20Advocacy%20Messages%20-%200041220-FS%20(EXTERNAL).pdf)

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