

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**CMC Muratori Cementisti CMC Di Ravenna SOC. Coop.; CMC Muratori Cementisti
CMC Di Ravenna SOC. Coop. A.R.L. Maputo Branch and CMC Africa Austral, LDA**

v.

Republic of Mozambique

(ICSID Case No. ARB/17/23)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Mr. John M. Townsend, President of the Tribunal

Mr. J. Brian Casey, Arbitrator

Mr. Peter Rees QC, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

May 22, 2018

Background

1. On May 2, 2018, counsel for the Respondent submitted to the Tribunal for its rulings a Redfern Schedule setting forth the parties' positions, agreements, and disagreements concerning 121 requests for documents made to the Claimants by the Respondent (the "Requests").
2. The Redfern Schedule was submitted pursuant to provisions of Annex A to Procedural Order No. 1, which called for requests for production of documents related to jurisdiction to be made by March 26, 2018, for documents responsive to such requests and objections to such requests to be exchanged by April 10, 2018, and for requests for rulings on such objections to be sent to the Tribunal by April 20, 2018.
3. The Tribunal rules on the Requests pursuant to:
 - a. Article 43(a) of the ICSID Convention, which provides that, "[e]xcept as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, [...] call upon the parties to produce documents or other evidence."
 - b. ICSID Arbitration Rule 34(2), which provides in relevant part that:

"The Tribunal may, if it deems it necessary at any stage of the proceeding: (a) call upon the parties to produce documents [...]."
4. The Tribunal recalls that Paragraph 15.1 of Procedural Order No. 1 provides that:

"The parties may exchange demands for the production of documents at the times set by the Tribunal. If any dispute concerning exchanges of documents or other evidence between the parties should arise, the Tribunal will expect each party to draw its attention to any relevant provision of the IBA Rules on the Taking of Evidence in International Commercial Arbitration."

Procedural Order No. 2

5. The Tribunal's rulings on the Requests are without prejudice to any determination as to the admissibility, relevance, or probative value of documents produced or any other determination as to the merits of the case.

Rulings

6. Attached to this Procedural Order No. 2 as Annex A is a copy of the Redfern Schedule submitted to the Tribunal, with the Tribunal's rulings as to each Request for which a ruling was sought set forth in the right-hand column. This Order sets forth some observations of the Tribunal relevant to the Requests as a whole or to multiple Requests.
7. First, the document exchange contemplated by Procedural Order No. 1 for this time period was expressly limited to "*Requests for Production of Documents related to jurisdiction.*" A ruling of "*Denied – see paragraph 7 of Procedural Order No. 2*" means that the Request in question is denied on the basis that it seems to have little, if any, relevance to the jurisdiction of this Tribunal and not to be material to this Tribunal's rulings on jurisdiction. Such a denial is without prejudice to the right of the Respondent to renew the Requests so ruled on at the merits stage of this arbitration, if this arbitration should reach the merits stage, provided that they are relevant to some issue to be determined at that stage and material to its outcome.
8. Second, to the extent that any document to be produced may already be part of the record of this arbitration, it will be sufficient for the producing party to identify it by exhibit number or other specific reference to the record.
9. Third, if any document to be produced contains confidential information that requires protection, it may be delivered subject to later entry of a confidentiality order.
 - a. Any such document shall be marked "*subject to confidentiality order.*"
 - b. The party claiming confidentiality shall submit a proposed confidentiality order to the Tribunal within ten days of producing such a document, and the other party

Procedural Order No. 2

shall submit any comments it may have on the proposed order to the Tribunal within seven days thereafter.

- c. Pending the entry of such an order by the Tribunal, any document marked “*subject to confidentiality order*” shall be treated by the party receiving it, the ICSID Secretariat, and the Tribunal as confidential and shall not be shown to any person other than (i) outside counsel identified as such on Procedural Order No. 1, (ii) the ICSID Secretariat, and (iii) the Tribunal.

[*Signed*]

John M. Townsend
President of the Tribunal (on behalf of the Tribunal)
Date: May 22, 2018