

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. 1

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

December 8, 2017

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Introduction

The first session of the Tribunal was held on November 29, 2017, at 9:15 PST / 12:15 EST / 17:15 GMT / 19:15 SAST and CAT by telephone conference. The session was adjourned at 14:08 EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Mr. John M. Townsend, President of the Tribunal

Mr. J. Brian Casey, Arbitrator

Mr. Peter Rees QC, Arbitrator

ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal

Participating on behalf of the Claimant:

Mr. Alan Del Rio, LDR Consultants

Mr. Donal Larkin, LDR Consultants

Mr. Luis González García

Participating on behalf of the Respondent:

Juan C. Basombrio, Esq., Dorsey & Whitney LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on October 19, 2017;
- The Draft Procedural Order circulated by the Tribunal Secretary on October 19, 2017; and
- The parties' comments on the Draft Procedural Order received on November 20, 2017, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 6

2.1. The Tribunal was constituted on October 4, 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on October 4, 2017.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and

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- 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)

3 Person Quorum

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication, except that at hearings all Members of the Tribunal must be present in person unless the parties agree otherwise.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter or six months after the final submission on the merits, the Tribunal will provide the parties with status updates every three months.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal, after consultation with the Members of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

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6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Ms. Ella Rosenberg, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Ella Rosenberg
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-7756
Fax: + 1 (202) 522-2615
Email: erosenberg@worldbank.org
Paralegal email: jberry@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:

Ms. Ella Rosenberg
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 458-1534

8. Representation of the Parties

Arbitration Rule 18

- 8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Mr. Paolo Porcelli
5 Osborne Lane
EOH Business Park
2nd Floor
Block A
Johannesburg, South Africa
Tel: +27 011 616 0910
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and

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and

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+ 258 82 845101105
Email: tmuenda@gmail.com

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of October 10, 2017, ICSID requested that each party pay US\$ 100,000 to cover the initial costs of the proceeding. ICSID received Parties' respective payments on November 13, 2017.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington D.C. shall be the place of the proceeding.
- 10.2. Hearings shall be held in Washington D.C. unless the Tribunal determines or the parties agree that there is a compelling reason to hold a hearing at another location.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s), Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.

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- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the parties shall:
- (i) submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and the updated index of all the supporting documentation attached to the pleading (including witness statements, expert reports, exhibits and legal authorities)¹; and
 - (ii) upload the pleading, with all the supporting documentation and the corresponding updated index to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. On the business day following the electronic filing, the parties shall courier to the Tribunal Secretary:
- 13.2.1. one unbound hard copy in A4/Letter format² of the entire submission³, including signed originals of the pleading, witness statements, and expert reports, together with any other supporting documentation (but not including legal authorities) and the updated index; and
 - 13.2.2. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.
- 13.3. Also on the business day following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above and to each Member of the Tribunal at the addresses indicated at §13.4 below:
- 13.3.1. One hard copy in A5 format of the pleadings, witness statements, expert reports and the updated index. Exhibits together with any other supporting documentation (but not including legal authorities) shall be provided in A4 format; and
 - 13.3.2. One USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, legal authorities and the updated hyperlinked index of all the supporting documentation.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4/Letter format is required for ICSID's archiving.

³ The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

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13.4. The addresses of the Tribunal Members are as follows:

Mr. John M. Townsend 1775 I Street, N.W. Suite 600 Washington, D.C. 20006-2401 U.S.A. Tel. + (202) 721-4640 john.townsend@hugheshubbard.com	Mr. J. Brian Casey 333 Bay Street Suite 900 Toronto ON M5H 2R2 Canada Tel.+1 (416) 861-8253 jbcasey@baystreetchambers.com	Mr. Peter Rees QC 39 Essex Chambers 81 Chancery Lane London WC2A 1DD United Kingdom Tel.+(44) 20 7832 1111 peter.rees@39essex.com
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13.5. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.

13.7. A filing shall be deemed timely if sent by a party by 11:59 pm, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. The schedule is set out in Annex A.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. 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.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. Exhibits and other documents shall be submitted in the following form:
 - 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 16.5.3. Each Exhibit shall have a divider with the Exhibit identification number on the tab.
 - 16.5.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.

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- 16.5.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements. Documents already submitted by one party shall be referred to by the other party by the number first assigned to the document.
- 16.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Demonstrative exhibits, if any, will be exchanged by the parties no later than 6pm the day before they are to be used, and will be submitted to the Secretary of the Tribunal for simultaneous exchange.
- 16.7.1. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived.
- 16.7.2. The party submitting such exhibits shall provide them in hard copy (and, upon request, in electronic form) to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties’ pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness. If a witness statement or expert report is submitted in a language other than English, it shall be accompanied by a translation into English.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

18.1. Witnesses and Experts shall be examined at hearings in accordance with Arbitration Rules 35 and 36. Witness statements and reports submitted by witnesses and experts shall constitute their direct testimony. Any party shall have the right to call any witness or expert submitting a witness statement or report to testify at the hearing.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing shall be held at a place to be determined in accordance with §10 above.

20.3. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.4. The allocation of time shall be determined at a later stage.

20.5. Hearings shall be closed to the public.

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be

provided to the parties and the Tribunal on a same-day basis.

- 21.3. The parties shall agree on any corrections to the transcripts within 7 business days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

- 22.1. To be determined at a later stage.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

- 23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding except that the parties shall be provided an opportunity to request redaction of confidential information. Any dispute between the parties as to whether information is confidential shall be decided by the Tribunal.

[Signed]

John M. Townsend
President of the Tribunal (on behalf of the Tribunal)
Date: December 8, 2017