

**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)**

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**PROCEDURAL ORDER NO. 6**

***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

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April 12, 2019

## **Background**

- 1) As provided in paragraphs 6, 9, and 12 of Procedural Order No. 5, on **April 11, 2019**, the Tribunal held a second pre-hearing organizational meeting with the parties by telephone conference call. Participating in the conference call were:

### Members of the Tribunal:

Mr. John M. Townsend, President of the Tribunal  
Mr. Brian Casey, Arbitrator  
Mr. Peter Rees QC, Arbitrator

### ICSID Secretariat:

Ms. Ella Rosenberg, Secretary of the Tribunal

### Tribunal Assistant

Mr. Stijn Winters

### On behalf of the Claimants:

Mr. Alan Del Rio, LDR Construction Consultants  
Mr. Luis González García

### On behalf of the Respondent:

Mr. Juan C. Basombrio, Dorsey & Whitney LLP  
Ms. Erica Haggerty, Dorsey & Whitney LLP

- 2) On April 1, 2019, the Tribunal had proposed a draft agenda for the second organizational meeting and invited the parties to submit comments. The parties submitted joint comments by email on April 3, 2019.
- 3) The parties confirmed that there were no changes to the list of counsel for either party.
- 4) The President asked if there had been any change concerning witnesses since the parties' joint email of April 3, 2019, in which they had indicated that the order of witnesses would be as follows: Claimants' fact witness Mr. Gridella, followed by Respondent's fact witness Mr. Grachane, followed by Claimants' expert witness Mr. Timbane, followed by Respondent's expert witness Ms. Muenda.

- 5) Mr. Del Rio informed the Tribunal that Mr. Gridella might be unable to appear at the hearing, because he had commenced employment with a new employer after giving his witness statements, and he had so far been unable to obtain the permission of his new employer to attend the hearing, either in person or by video conference. Mr. Basombrio stated that the Respondent may apply to strike Mr. Gridella's witness statement if he did not appear. After some discussion, and inquiry from the Tribunal as to whether the Respondent would be willing to help resolve the difficulty, the Tribunal announced that it would issue further instructions after conferring among themselves.
- 6) The Tribunal conferred following the conference, and now directs as follows:
  - a) The Claimants shall inform the Tribunal and the Respondent, no later than April 22, 2019, whether they have been able to arrange for Mr. Gridella to attend the hearing.
  - b) If Mr. Gridella does not attend the hearing, the Respondent may make an application to the Tribunal concerning what consequence, if any, should follow from Mr. Gridella's failure to attend. Such application is to be made orally, during the time period reserved for Mr. Gridella's testimony in paragraph 7 below, and the Claimants will be given an opportunity to respond to such application at that time. Both parties should expect questions from the Tribunal in this connection.
- 7) The schedule for the hearing shall be as follows, subject to such adjustments as the Tribunal may deem necessary.
  - a) Monday, April 29, 2019:
    - i) The Tribunal will convene at 9:30 am and will consider administrative matters, followed by a short break.
    - ii) 10:15 am – 12:15 pm: Claimants' opening statement.
    - iii) 12:15 – 1:30 pm: Lunch break.
    - iv) 1:30 – 3:30 pm: Respondent's opening statement.

- v) 3:30 – 3:45 pm: Break.
  - vi) 3:45 – 5:45 pm: Examination of Mr. Gridella for up to two hours or, if he is not present, discussion of what consequence should follow from his absence. If Mr. Gridella is not present, and the discussion of what follows from his absence is concluded before 4:30 pm, Mr. Grachane’s examination will commence.
- b) Tuesday, April 30, 2019:
- i) 9:30 am: Examination of Mr. Grachane to commence or to continue, if commenced on April 29, for up to two hours, followed by a 15 minute break.
  - ii) The examination of Mr. Timbane will follow after the break, and will continue for up to two hours, followed by a break (which may be the lunch break).
  - iii) The examination of Ms. Muenda will follow, for up to two hours.
- c) Wednesday, May 1, 2019:
- i) 9:30 am – 12:00 noon: Claimants’ closing argument, including half an hour for Tribunal questions.
  - ii) 12:00 – 1:00 pm: Lunch break.
  - iii) 1:00 – 3:30 pm: Respondent’s closing argument, including half an hour for Tribunal questions.
  - iv) 3:30 – 3:45 pm: Break.
  - v) 3:45 – 5:30 pm: Tribunal questions for both parties.
- d) Thursday, May 2, 2019: Reserved for Tribunal deliberations.
- 8) The Parties and the Tribunal agreed that Friday, May 3 and Monday, May 6, which had previously been reserved, are both released.

- 9) After discussion, the Tribunal granted the Claimants' request for leave to submit into the record a copy of the Award on the Merits in *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain* (ICSID Case No. ARB/13/30), and the Respondent's request to submit into the record a copy of the Amicus Brief dated 11 December 2018 filed by the European Commission of the European Union in *Micula v. The Government of Romania*, U.S. District Court, District of Columbia, Case No. 1:17-cv-02332-APM.
- 10) Both parties indicated to the Tribunal that they believed that post-hearing briefs would be useful. The Tribunal asked the parties to confer about the timing and length of such briefs, and to be prepared to discuss both with the Tribunal in the course of the hearing.
- 11) The parties asked the Tribunal to revise paragraph 22 of Procedural Order No. 5, which requires the parties to submit jointly a single hard copy of the complete consolidated record at the hearing, in order to allow each party to submit separately the portion of the record for which it is responsible. The Tribunal agreed.
- 12) The Secretary of the Tribunal briefed the parties on the logistical arrangements for the hearing, which are detailed in her email to the parties dated April 10, 2019. No difficulties or disagreements were identified.
- 13) On the same date as but after the conclusion of the conference, the Respondent made an objection by email to the submission by Claimants of amended translations of several documents that were originally in Portuguese. The Claimants are directed to provide the Respondent with red-lined or similar versions of these translations, showing how they differ from the translations previously submitted, by April 16, 2019. If the Respondent wishes to object to any particular amended translation, it should do so, explaining why, by April 18, 2019. Unless the Respondent objects by that date, the amended translations will be accepted.
- 14) Also after the conclusion of the conference, the Claimants applied to submit two additional declarations made by member states that did not join in the joint declaration of E.U. member states concerning the effect of the *Achmea* decision submitted by the Respondent. The

Respondent's request to be allowed to submit an objection by April 15, 2019 is granted. The Claimants may reply to that objection, if they wish to do so, by April 17, 2019.

For the Arbitral Tribunal:

*[Signed]*

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John M. Townsend  
President  
Date: April 12, 2019