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20 May 2020

By Email

Sarah Z. Vasani
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*Re: Republic of Mozambique; Mozambique Ministry of Transport and
Communications v. Patel Engineering Ltd.
Arbitration Rules of the International Chamber of Commerce*

*Patel Engineering Ltd. v. Republic of Mozambique
UNCITRAL Arbitration Rules (1976)*

Dear Ms. Vasani:

On or about 6 May 2011, the Mozambique Ministry of Transport and Communications (“MTC”) and Patel Engineering Ltd. (“PEL”) purported to execute a document, entitled “Memorandum of Interest Between Ministry of Transport and Communications and Patel Engineering Ltd.” (“MOI”).

ICC ARBITRATION:

Clause 10 of the MOI contains the following Arbitration Agreement:

“The present document constitutes a memorandum of interest between the parties. Any dispute arising out of this memorandum between the parties shall be referred to arbitration. The arbitration will be governed by Mozambique law and the rules of the International Chamber of Commerce shall be followed. Each party will appoint one arbitrator and both of these appointed arbitrators will in turn appoint the presiding arbitrator. The venue of the arbitration shall be at the Republic of Mozambique.”

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Pursuant to Clause 10 of the MOI, enclosed please find the Request for Arbitration of the Republic of Mozambique (“Mozambique”) and the MTC against PEL, pursuant to the Arbitration Rules of the International Chamber of Commerce, which we filed today, 20 May 2020, with the International Chamber of Commerce. My colleague Lindsey Schmidt will be forwarding the exhibits separately to you.

In the MOI, the parties agreed that the ICC Arbitration will be conducted under the Arbitration Rules of the International Chamber of Commerce: “the rules of the International Chamber of Commerce shall be followed.” *See* MOI at Clause 10. The parties agreed that the ICC “arbitration will be governed by Mozambique law” *Id.* Further, the parties agreed that the place of the ICC Arbitration shall be in Mozambique: “The venue of the arbitration shall be at the Republic of Mozambique.” *Id.* Mozambique and the MTC propose that the arbitration be conducted in the City of Maputo, the capital of Mozambique.

In the MOI, the parties did not identify the language of the ICC Arbitration. Mozambique and the MTC propose that the language be both Portuguese and English, without the need for translations. However, the parties may provide translations and use interpreters at their choice.

Please take note that Mozambique and the MTC have nominated their arbitrator, for the ICC arbitration proceeding:

Maria Fernanda Rocha Lopes
FL&A Advogados
Rua Frente de Libertação de Moçambique (ex-R.Pereira do Lago), nº 224
Maputo, Moçambique
Telephone: (+258) 21 496974
Email: fernanda.lopes@fla.co.mz

See Request for Arbitration at ¶ 275.

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UNCITRAL ARBITRATION:

We acknowledge receipt of the Notice for Arbitration, dated 20 March 2020, pursuant to the Mozambique-India BIT and the UNCITRAL Arbitration Rules of 1976, that you forwarded on behalf of PEL against Mozambique.

In Footnote 111 of the Notice of Arbitration, PEL states: “For the avoidance of doubt, the Claimant does not agree to submit this present dispute under Article (9)(2) of the Treaty either: (a) to the judicial, arbitral or administrative bodies of Mozambique” However, it is the contention of Mozambique that PEL agreed to submit the present dispute to ICC Arbitration in Mozambique, under Clause 10 of the MOI. Clause 10 is broad enough to include any BIT claims. At a minimum, the ICC Arbitration must be concluded before the UNCITRAL Arbitration.

Mozambique and the MTC request that PEL dismiss the UNCITRAL Arbitration without prejudice or agree to suspend the UNCITRAL Arbitration until after conclusion of the ICC Arbitration, *supra*. Assuming that PEL is not agreeable, and without any waiver by or prejudice to Mozambique or the MTC, and solely in order not to default, Mozambique and the MTC respond to the proposals in Part V of the PEL Notice for Arbitration, as follows.

Pursuant to Article 9(c) of the Mozambique-India BIT, Mozambique agrees with PEL that the arbitration tribunal shall consist of three arbitrators, with each party appointing one arbitrator and the two party-appointed arbitrators appointing the president of the tribunal.

Pursuant to Article 9(3)(c)(ii), the parties “*shall appoint their respective arbitrators within two months*” of the Claimant’s reference to arbitration. Mozambique agrees with Patel that the deadline for each party to nominate their respective arbitrator is today, 20 May 2020.

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Mozambique and the MTC designate the following arbitrator for purposes of the UNCITRAL Arbitration:

Hugo Perezcano Díaz
180 Northfield Drive West, Unit 4
Waterloo ON N2L 0C7 Canada
Telephone: +1 (226) 355-9865
Email: hugo.perezcano@iiuris.com
Attached is a copy of Mr. Perezcano's CV.

Mozambique agrees that the UNCITRAL Arbitration shall be administered by the Permanent Court of Arbitration at The Hague, Netherlands ("PCA"). Counsel for both parties shall contact the PCA jointly to make the arrangements.

With respect to Article 16 of the UNCITRAL Rules, Mozambique proposes that the place of the UNCITRAL Arbitration (meaning, both the legal seat and physical location of hearings) be Maputo, Mozambique. Mozambique does not agree to London, England, because it would favor the offices of PEL's counsel, just as we assume PEL would not agree to Orange County, California, where my offices are located. As a compromise, however, Mozambique proposes that the place of the UNCITRAL Arbitration be The Hague, Netherlands, and that hearings be conducted at the arbitration facilities of the PCA.

With respect to Article 17 of the UNCITRAL Rules, we assume that Patel will not agree that the language be Portuguese. Thus, also as a compromise, Mozambique proposes that the language be both English and Portuguese. However, the parties may provide translations and use interpreters at their choice.

Finally, we received Patel's request for production of documents. The request is premature. Mozambique also will have document requests for Patel, in due course. The Tribunal will enter a procedural order setting forth a schedule for the proceedings, which will include dates for the *mutual* production of documents.

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I look forward you hearing from you on these various points.

On a personal note, I hope that you and your family are doing well in these challenging times.

With best regards,



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Enclosures