

**PCA Case No. 2020-21**

In the matter of an arbitration under the Arbitration Rules of the United Nations  
Commission on International Trade Law 1976

and

The Agreement between the Government of the Republic of India and the Republic of  
Mozambique for the Reciprocal Promotion and Protection of Investment dated  
19 February 2009

-between-

**PATEL ENGINEERING LIMITED**  
**(INDIA)**

Claimant

-and-

**THE REPUBLIC OF MOZAMBIQUE**

Respondent

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**PROCEDURAL ORDER NO. 5**

**ORGANIZATION OF THE HEARING**

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THE ARBITRAL TRIBUNAL

Guido Santiago Tawil (Arbitrator)  
Hugo Perezcano Díaz (Arbitrator)  
Juan Fernández-Armesto (Presiding Arbitrator)

REGISTRY

Permanent Court of Arbitration

ADMINISTRATIVE SECRETARY

Sofia de Sampaio Jalles

4 November 2022

**WHEREAS**

1. Pursuant to para. 90 of Procedural Order No. 1, the Arbitral Tribunal shall issue a Procedural Order establishing the specific details of the evidentiary hearing [the “**Hearing**”].
2. On 10 October 2022 the Tribunal sent the Parties a draft Procedural Order on the organization of the Hearing. The Parties submitted their comments to this Procedural Order on 19 October 2022, together with a summary of their points of agreement and disagreement.
3. On 25 October 2022 the Tribunal held a pre-Hearing conference call with the Parties to resolve any outstanding procedural, administrative, or logistical matters in preparation for the Hearing.
4. The following Procedural Order reflects the Parties’ agreements and the Tribunal’s decisions when such agreements were not possible.

## **PROCEDURAL ORDER NO. 5**

### **1. DATE, VENUE AND SITTING HOURS**

5. The Hearing shall be held from Monday 28 November to Saturday 3 December 2022, and on Monday 5 and Tuesday 6 December 2022.
6. The Hearing shall take place at the *Palácio da Bolsa*, located in Rua Ferreira Borges, 4050-253 Porto, Portugal.
7. The sitting hours will be from 9:30h to 18:00h, with appropriate lunch and coffee breaks as directed by the Tribunal. The PCA has arranged for catering to be provided to the Tribunal and the Parties during the course of the hearing.

### **2. ATTENDANCE LIST**

8. The Parties have provided a complete list of participants that will be joining the Hearing in-person and remotely, specifying each participant's title, name, location (if joining remotely), and the capacity in which they are joining the hearing. The list of participants is attached hereto as Annex A.

### **3. FACTUAL AND EXPERT WITNESSES**

9. The Parties have agreed that the following factual and expert witnesses shall be examined at the Hearing<sup>1</sup>:

#### Claimant's factual witnesses

- Mr. Kishan Daga
- Mr. Ashish Patel

#### Claimant's expert witnesses

- Versant Partners (Mr. Kiran Sequeira and/or Mr. Paul Baez)
- Professor Rui Medeiros
- Mr. David Baxter
- Mr. David Dearman
- Mr. Andrew Comer
- Mr. Gerard LaPorte

#### Respondent's factual witnesses

- Mr. Luis Amandio Chauque
- Mr. Paulo Francisco Zucula

#### Respondent's expert witnesses

- Ms. Teresa F. Muenda

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<sup>1</sup> Based on C 41 and R 33.

- Mr. Mark Lanterman
- Mr. Mark L. Songer
- Mr. David Ehrhardt
- Mr. Jose Tiago de Pina Patricio De Mendonca
- Mr. Daniel Flores
- Mr. Larry Dysert

10. The Tribunal wishes to call Mr. LaPorte and Mr. Dysert for examination in accordance with para. 100 of Procedural Order No. 1. The Tribunal does not wish to call Mr. Raffinetti or Mr. Banerji.
11. Each Party shall be responsible for summoning those of its own witnesses who have been called to the Hearing.
12. Where a factual or expert witness cannot attend the Hearing for a valid reason as determined by the Tribunal, such witness may be heard by videoconference in accordance with the Remote Witness Participation Protocol (Annex B), or by any other means the Tribunal deems appropriate. Counsel of both Parties may be present at the place where the witness will make his or her video deposition.

**4. EXAMINATION OF FACTUAL AND EXPERT WITNESSES**

13. Examination of witnesses shall be conducted in accordance with Procedural Order No. 1.
14. When two or more experts testify jointly, the general rule shall be that only one of them answers each of the questions posed by counsel or the Tribunal.

**5. TIME ALLOCATION**

15. The total Hearing time will be equally split between the Parties.
16. Each Party shall have up to:
  - 2.5 hours to present Opening Statements; and
  - 1 hour to present Closing Statements, which shall consist in a summary of the key take-aways from the evidence produced at the Hearing.
17. In addition, each Party shall have 16.5 hours to examine factual and expert witnesses (including direct, cross and re-direct). Subject to the Tribunal's directions, each Party is free to use its allocated time as it sees fit.
18. The remaining time corresponds to the Tribunal, to procedural incidents and to miscellaneous purposes. Time taken by the Tribunal for its own questions during the Parties' opening statements and witnesses examinations and the answers to those questions shall be counted against the Tribunal's time.
19. The Administrative Secretary will act as timekeeper and inform the Parties at the end of each Hearing day of the time used.

20. Any disagreement between the Parties concerning Hearing time is to be dealt with outside sitting hours whenever possible, between the Parties, and referred to the Tribunal only as a last resort. The Tribunal's determination regarding any disputes as to the allocation of time not resolved *inter partes* shall be final and binding.

**6. HEARING AGENDA**

21. The Hearing will start with oral opening statements by each of the Parties, followed by the examination of factual and expert witnesses. The tentative Hearing schedule is attached as Annex C.
22. The Tribunal will allow room for flexibility in the use of the Hearing time. The Parties' witnesses and experts should be prepared to appear up to half-day before their scheduled time.

**7. SUPPORTING MATERIALS**

23. The Parties and their experts may use PowerPoint (or slide) presentations and other demonstrative exhibits. The necessary video display equipment will be available at the Hearing venue. Any exhibits may be displayed on screen, as necessary.
24. Demonstrative exhibits shall be provided to the PCA, each Member of the Tribunal, the Administrative Secretary, the opposing Party, the Court Reporters, and Interpreters in PDF editable format without restrictions one hour prior to the start time when such Demonstrative exhibits will be used. Hard copies of demonstrative exhibits shall be provided only to the Court Reporters, the Interpreters, the opposing Party and the President of the Tribunal.

**8. TRANSCRIPTION AND RECORDING**

25. The Hearing shall be audio and video recorded and transcribed in English. The PCA has made the necessary arrangements for the recording and transcription of the Hearing.

**9. INTERPRETATION**

26. The PCA has reserved simultaneous interpretation services. On 19 October 2022 the Parties notified the Tribunal that the following factual and expert witnesses require interpretation:
- Prof. Medeiros (Claimant's legal expert);
  - Mr. Luis Amandio Chauque (Respondent's witness), Mr. Paulo Francisco Zucula (Respondent's witness), Mr. Tiago Mendonça (Respondent's expert) and Ms. Teresa Muenda (Respondent's legal expert).

**10. POST-HEARING SUBMISSIONS**

27. The Tribunal, after consultation with the Parties, will define at the end of the Hearing the rules for filing post-hearing and cost submissions.

28. After deliberating, the Tribunal may ask the Parties to answer questions in writing in their post-Hearing submissions.

**11. COVID-19 PROTOCOL**

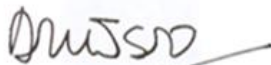
29. Given the exceptional circumstances created by the COVID-19 pandemic, all participants who will attend the Hearing in person are required to follow the safety measures established by the Portuguese Government, applicable at the time of the Hearing.
30. Any in-person participant who turns out to be positive during the Hearing or experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until he/she has obtained a negative rapid antigen test. A participant who has already attended the Hearing and experiences such symptoms during the Hearing must immediately inform the PCA and the Administrative Secretary of this development, pending the results of their test.
31. If any participant tests positive or experiences COVID-19 symptoms, the Tribunal and the Parties will discuss the possibility of the participant joining remotely.
32. Individuals unable to attend in person may be allowed by the Tribunal to attend virtually.

**12. TRANSPARENCY**

33. The Parties do not agree to live stream the Hearing and wish to review any recordings before deciding whether to make them publicly available.

Place of arbitration: The Hague, Netherlands

Date: 4 November 2022



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Juan Fernández-Armesto  
President of the Arbitral Tribunal

**ANNEX A – LIST OF PARTICIPANTS**

<b>CLAIMANT – PATEL ENGINEERING LIMITED (INDIA)</b>	
Mr. Kishan Daga	PEL’s Director – Projects (Claimant’s Representative)
Ms. Sarah Vasani	CMS
Ms. Lindsay Reimschuessel	CMS
Ms. Daria Kuznetsova	CMS
Ms. Nicola Devine	CMS
Ms. Sofia Martins	Miranda & Associados
Mr. Renato Guerra de Almeida	Miranda & Associados
Mr. Ricardo Saraiva	Miranda & Associados
Mr. Edward Ho	Brick Court Chambers
Mr. Baiju Vasani	Twenty Essex
<b>RESPONDENT – THE REPUBLIC OF MOZAMBIQUE</b>	
Mr. Angelo Matusse	Respondent’s Representative
Mr. Juan Basombrio	Dorsey & Whitney LLP
Ms. Theresa Bevilacqua	Dorsey & Whitney LLP
Mr. Daniel Brown	Dorsey & Whitney LLP
Ms. Wendy Feng	Dorsey & Whitney LLP
<b>ARBITRAL TRIBUNAL</b>	
Prof. Guido Santiago Tawil	Arbitrator
Mr. Hugo Perezcano Díaz	Arbitrator
Prof. Juan Fernández-Armesto	Presiding Arbitrator
<b>PERMANENT COURT OF ARBITRATION</b>	
Mr. Túlio Di Giacomo Toledo	Legal Counsel
<b>ADMINISTRATIVE SECRETARY</b>	
Ms. Sofia de Sampaio Jalles	
<b>COURT REPORTER</b>	
Ms. Diana Burden	
<b>INTERPRETERS</b>	
Mr. Cristóvão Tomás Bach Andresen Leitão	
Mr. Manuel Sant’Iago Ribeiro	
Ms. Lara Cristina Jerónimo Duarte	

## **ANNEX B – REMOTE WITNESS PARTICIPATION PROTOCOL**

### **1. Witnesses testifying remotely**

1.1. The following witnesses will testify remotely:

- i) Mr. Ashish Patel, Claimant’s fact witness;
- ii) Mr. Andrew Comer, Claimant’s industry expert;
- iii) Mr. David Baxter, Claimant’s industry expert;
- iv) Mr. Gerard Laporte, Claimant’s document expert;
- v) Mr. Paulo Francisco Zucula, Respondent’s fact witness;
- vi) Mr. David Ehrhardt, Respondent’s industry expert;
- vii) Mr. Mark Lanterman, Respondent’s document expert;
- viii) Mr. Mark Songer, Respondent’s document expert.

1.2. Mozambique is to confirm by 9 November 2022 whether Mr. Dysert will appear in person or remotely.

### **2. Video-conferencing platform**

2.1 Witnesses testifying remotely shall be connected to the hearing room using the Zoom video-conference platform, which shall be administered by the PCA and its technical assistants.

2.2 Log-in details shall be provided by the PCA to the witnesses at least one day prior to the commencement of the hearing, with a copy to counsel. The log-in details shall not be shared with anyone other than hearing participants.

2.3 Witnesses shall join the video-conference through a “waiting room” to be managed by the PCA. They will be admitted one-by-one to the video-conference, and should have their video and audio turned on for identification purposes.

2.4 Expert witnesses may be present in the hearing room at any time. Expert witnesses connecting outside the time allocated to their testimony shall connect at least 15 minutes prior to the start of the hearing day and shall remain connected throughout the day<sup>2</sup>.

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<sup>2</sup> Procedural Order No. 1, para. 106.



**3. Remote examination of witnesses**

- 3.1 The examination of witnesses shall take place in accordance with paragraphs 103 and 104 of Procedural Order No. 1, unless otherwise provided by this Protocol.
- 3.2 The Tribunal encourages factual witnesses who will appear remotely to testify at the office of one of the counsel to the Parties. Counsel for both Parties may be present in the room. If counsel for both Parties are not present in the room during the examination, the Parties shall arrange to have available a 360 degree camera to enable the Tribunal to confirm that no unauthorized persons are present in the room. The Tribunal may at any time ask the witness to turn their camera to show a 360 degree view of the room they are in, whether to provide a better angle or lighting, or to verify the surroundings or any materials available to the witness.
- 3.3 It shall not be permitted for party representatives and counsel to communicate with witnesses during their examination by any means other than communication on the record.
- 3.4 Save in the case that the Parties reach prior agreement on some other arrangement, and the Tribunal consents thereto, the video-conferencing setup for each witness shall, to the extent possible, allow a reasonable part of the interior of the room in which the witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the witness. The virtual background feature provided by the Zoom platform shall not be used, nor any other virtual feature that alters the setup of the area from which the witness is testifying or the appearance of the witness.
- 3.5 Each witness shall testify without conferring with anyone else during testimony or referring to any documents to which the other participants do not have access. Each witness may testify through video-conference in the presence of a legal representative of each of the Parties, an assistant and/or a technician, provided that the individual is identified by name and by title at least a day in advance of the start of the witness's testimony and is seated in a location that is visible on the videoconference screen (beside or behind each witness) whilst the witness is giving evidence.
- 3.6 The Tribunal shall have the authority at any time during the examination of a witness to request the witness to reorient their camera, whether to provide a better angle, lighting, or to verify the surroundings or any materials available to the witness.
- 3.7 During the hearing, the examination of each witness shall proceed as follows:
  - i) in accordance with the provisions of this Protocol, the Presiding Arbitrator shall instruct the witness about: (a) what to do in the event of a disconnection

or other technical failure; and (b) the impermissibility of any recordings of the hearing;

- ii) the witness shall affirm that no unauthorized person is present in the room with the witness or can communicate with the witness;
- iii) each witness giving oral evidence will be examined (direct examination, cross-examination and re-direct) as provided in Procedural Order No. 5;
- iv) the Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

3.8 Each Party shall ensure that its witnesses are provided with an exact copy of their own witness statements or expert reports and, for expert witnesses, the reports of any expert relied on by the other Party addressing the same subject, in hard copy, devoid of any annotations or markings, during their testimony.

3.9 Cross-examining counsel may display relevant documents through the Zoom screen-sharing function. The Parties may also agree to prepare cross-examination bundles containing any documents beyond the reports referred to in the preceding paragraph. In such case, the cross-examining Party shall provide copies of its cross-examination bundles, devoid of any annotations or markings, to the witness in advance of the hearing. It shall also provide the cross-examination bundles in sufficient number at the hearing for distribution to opposing counsel, the members of the Tribunal, the PCA, the court reporter and the interpreters.

#### **4. Technical requirements**

4.1 Each Party is responsible for ensuring the attendance of its witnesses if they are to appear for examination at the hearing. The Parties are also responsible for ensuring that their witnesses are properly set up for the hearing, such that they can meet the requirements set out in paragraph 3.3 above and have available at each location where they will be testifying access to a stable internet connection offering sufficient bandwidth, as well as a camera, microphone and speaker of adequate quality.

4.2 Witnesses should consider using a wired Ethernet connection instead of WiFi, if possible.

4.3 Witnesses should also consider using a complete headset (headphones with integrated microphone) of good quality.

4.4 Participants are encouraged to ensure that their version of the Zoom desktop client is up-to-date prior to the start of the Hearing.

4.5 If a witness is disconnected or otherwise cannot participate, they shall immediately contact Ms. Nadhrah Naela Abdullah (tel.: +65 650 98424; e-mail: nabdullah@pca-

cpa.org) or Dr. Túlio Di Giacomo Toledo (tel.: +31 6 1511 5726; e-mail: [ttoledo@pca-cpa.org](mailto:ttoledo@pca-cpa.org)) of the PCA.

- 4.6 The Tribunal may temporarily or permanently suspend the hearing if it deems the functioning of the video-conference system to be inadequate or likely to prejudice the due process rights of any of the Parties or the integrity of the proceeding or if the Tribunal has cybersecurity concerns, or for any other valid reason.
- 4.7 Each Party shall reach out to the PCA at least one week in advance of the hearing in order to hold test calls for its witnesses.
- 4.8 During any test call, each witness should strive to replicate the conditions under which he or she will participate in the hearing, for example, by joining the test call using the same device(s) and internet connection from the same physical location that they intend to use during the hearing.

## **5. Etiquette**

- 5.1 Participants shall speak directly to the camera. In order to facilitate the accurate transcription of the Hearing, speakers shall endeavour to speak slowly and with pauses between phrases.
- 5.2 Participants should join the Hearing from a location without background noise and with adequate lighting.

**ANNEX C – TENTATIVE HEARING AGENDA<sup>3</sup>**

<b>Time</b>	<b>Monday 28 November 2022 (Day 1)</b>
09:30-09:40	Introduction by the Tribunal
9:40-11:00 (1hr 20 m)	Claimant's Opening Statement (1 <sup>st</sup> Part)
11:00-11:15	Morning Break
11:15-12:25 (1hr 10 m)	Claimant's Opening Statement (2 <sup>nd</sup> Part)
12:30-13:30	Lunch
13:30-14:50 (1hr 20 m)	Respondent's Opening Statement (1 <sup>st</sup> Part)
14:50-15:10	Afternoon Break
15:10-16:20 (1hr 10 m)	Respondent's Opening Statement (2 <sup>nd</sup> Part)
16:20-17:00	Time Reserved for Tribunal (to be used throughout the hearing)

<b>Time</b>	<b>Tuesday 29 November 2022 (Day 2)</b>
9:30-11:15	Examination of Claimant's Fact Witnesses
11:15-11:30	Morning Break
11:30-13:15	Examination of Claimant's Fact Witnesses
13:15-14:15	Lunch
14:15-16:00	Examination of Claimant's Fact Witnesses
16:00-16:15	Afternoon Break
16:15-18:00	Examination of Claimant's Fact Witnesses

<b>Time</b>	<b>Wednesday 30 November 2022 (Day 3)</b>
9:30-11:15	Examination of Respondent's Fact Witnesses
11:15-11:30	Morning Break
11:30-13:15	Examination of Respondent's Fact Witnesses
13:15-14:15	Lunch
14:15-16:00	Examination of Respondent's Fact Witnesses
16:00-16:15	Afternoon Break
16:15-18:00	Examination of Respondent's Fact Witnesses

<b>Time</b>	<b>Thursday 1 December 2022 (Day 4)</b>
9:30-11:15	Examination of Claimant's Industry Experts (Mr. Baxter, Mr. Comer)
11:15-11:30	Morning Break
11:30-13:15	Examination of Claimant's Industry Experts (Mr. Baxter, Mr. Comer)
13:15-14:15	Lunch

<sup>3</sup> Coffee and lunch breaks are indicative. The Tribunal will conduct the Hearing as appropriate.

14:15-16:00	Examination of Respondent's Industry Experts (Mr. Ehrhardt, MzBetar)
16:00-16:15	Afternoon Break
16:15-18:00	Examination of Respondent's Industry Experts (Mr. Ehrhardt, MzBetar)

<b>Time</b>	<b>Friday 2 December 2022 (Day 5)</b>
9:30-11:15	Examination of Claimant's Quantum Experts (Versant, Ankura)
11:15-11:30	Morning Break
11:30-13:15	Examination of Claimant's Quantum Experts (Versant, Ankura)
13:15-14:15	Lunch
14:15-16:00	Examination of Respondent's Quantum Experts (Quadrant, Mr. Dysert)
16:00-16:15	Afternoon Break
16:15-18:00	Examination of Respondent's Quantum Experts (Quadrant, Mr. Dysert)

<b>Time</b>	<b>Saturday 3 December 2022 (Day 6)</b>
	In reserve for any spill-over from Days 4 and 5

<b>Time</b>	<b>Monday 5 December 2022 (Day 7)</b>
9:30-11:15	Examination of Claimant's Document Expert (Mr. LaPorte)
11:15-11:30	Morning Break
11:30-13:15	Examination of Respondent's Document Experts (Mr. Lanterman, Mr. Songer)
13:15-14:15	Lunch
14:15-16:00	Examination of Claimant's Legal Expert (Prof. Medeiros)
16:00-16:15	Afternoon Break
16:15-18:00	Examination of Respondent's Legal Expert (Ms. Muenda)

<b>Time</b>	<b>Tuesday 6 December 2022 (Day 8)</b>
9:30-13:00	In reserve for any spill over from Monday
14:00-15:00	Claimant's Closing Statement
15:00-15:15	Afternoon Break
15:15-16:15	Respondent's Closing Statement
16:15-17:00	Questions from the Tribunal (if any) and post-Hearing issues