

Background Summary

Pathfinder Minerals Plc ("Pathfinder Minerals" or the "Company") is a company listed on the London Stock Exchange, seeking to develop heavy mineral sand deposits in Zambesia Province, Mozambique.

In late 2011 the company experienced interference within Mozambique in the form of the unlawful transfer of the licences held by its 99.99%-owned subsidiary Companhia Mineira de Naburi ("CMDN") to an unconnected company (with the similar sounding name of Pathfinder Moçambique), controlled by General Jacinto Veloso and Diogo Cavaco. General Veloso was, until that point, a director of Pathfinder Minerals and both he and Diogo Cavaco were directors of CMDN.

It is apparent that General Veloso, a retired senior Mozambique Government minister, has in effect procured through the Ministry of Mineral Resources the expropriation of Pathfinder Minerals' valuable assets.

In addition to the expropriation of the mining licences, General Veloso and Diogo Cavaco also sought the unlawful removal of Pathfinder Minerals' ownership (through its wholly owned UK subsidiary IM Minerals Limited ("IMM")) of CMDN as a means of restricting the action which Pathfinder Minerals can take in Mozambique to pursue restoration of the licences or compensation for its loss.

The English High Court ruled in October 2012 (see judgment [here](#)) that the agreements by which Pathfinder Minerals (through IMM) acquired CMDN were established under English law and that IMM is the legitimate owner of 99.99% of CMDN; and also ordered legal costs to be paid by General Veloso and his co-defendants. In April 2013 the Court of Appeal dismissed General Veloso and Diogo Cavaco's application to appeal the October judgment (see judgment [here](#)), which is therefore now absolute.

The Commercial Court of Maputo, in which a number of legal actions relating to the ownership of CMDN are ongoing, has also determined on two occasions that IMM is the legal owner of the shares in CMDN.

Detailed Background - Development of the licences

Pathfinder Minerals (through IMM) controlled CMDN, which was the ultimate holder of two mineral licences (760C and 4623C) over land which is known to contain deposits of the heavy minerals, ilmenite, rutile and zircon.

Prior to the local interference, Pathfinder Minerals had made significant advances in project development and had appointed a number of the world's leading engineering and mining contractors to conduct a Definitive Feasibility Study.

These included Wardell Armstrong (based in the UK) as the Feasibility Study Manager; and Jacobs Matisis, the Johannesburg-based subsidiary of Jacobs Engineering (USA). Jacobs Matisis had received a grant from the South African Department of Trade and Industry specifically to support its work to be carried out on Pathfinder Minerals' licensed areas.

Prior to the licences being transferred to General Veloso's company, Pathfinder Minerals had already invested significant funds in detailed analysis and the development of the project in line with the original strategic aim to be in production by 2015.

Mining Licences

The Ministry of Mineral Resources has confirmed to Pathfinder Minerals that mining concession licences 760C and 4623C are no longer registered to CMDN. The Ministry also confirmed that a single, combined licence over the same areas covered by 760C and 4623C has been issued to Pathfinder Moçambique, a company which had been newly formed in 2011, is wholly unconnected with Pathfinder Minerals and is controlled by General Veloso, his daughter and Diogo Cavaco.

Legal Actions

General Veloso resigned his directorship of Pathfinder Minerals in November 2011, asserting that CMDN no longer held the mining licences issued to it by Mozambique's Ministry of Mineral Resources. General Veloso and Diogo Cavaco later attempted to justify their actions by asserting that Pathfinder Minerals did not and had never owned shares in CMDN. In December 2011 General Veloso and Diogo Cavaco purported to have passed resolutions at an EGM of CMDN to dismiss Nick Trew (Pathfinder Minerals' CEO) and Gordon Dickie (a former non-executive director of Pathfinder Minerals) as directors of CMDN; and to cancel the shares in CMDN previously held by IMM and reissue them to General Veloso and Diogo Cavaco. The EGM was convened without the knowledge of IMM (the owner of 99.99% of CMDN's shares).

On 19 October 2012, following a hearing on 18 September before Mr Justice Field in the English High Court and full consideration of the extensive evidence before the court, the Judge ruled that Pathfinder Minerals *did* validly acquire its 99.99% interest in CMDN (see judgment [here](#)). In so ruling, the Judge expressly rejected the allegations of fraud which had been made by General Veloso and

the other defendants against Pathfinder Minerals, IMM and their directors. The Judge also granted a permanent injunction restraining General Veloso and his associates from taking any steps to interfere with Pathfinder Minerals' rights of ownership of shares in CMDN.

On 22 April 2013 the Court of Appeal dismissed an application from General Veloso and Diogo Cavaco for permission to appeal against the judgment given on 19 October 2012 (see judgment [here](#)). In dismissing the Application the Court of Appeal made clear that it was doing so, not just because General Veloso and the co-appellants failed to provide the security for costs which they had been ordered to provide, but also because they were in deliberate breach of the English court's orders and their application amounted to a "cynical and tactical ploy" to buy more time in Mozambique and a clear abuse of the English court's process. The Court of Appeal also said that the defendants' grounds of appeal appeared to be "wholly devoid of merit".

On 25 October 2012, the Commercial Court of Maputo issued a provisional finding, pending a substantive hearing as yet unscheduled, that, as a matter of Mozambique law, IMM is the owner of 399,998 of the 400,000 issued shares in CMDN and that the nominative share certificate issued by CMDN to IMM representing those shares is valid and permissible under the constitution of CMDN.

On 15 December 2014, the Commercial Court of Maputo granted the annulment sought by Pathfinder Minerals of the resolutions purportedly passed in December 2011 to dismiss Nick Trew and Gordon Dickie as directors of CMDN; and to cancel the shares in CMDN previously held by IMM and reissue them to General Veloso and Diogo Cavaco. The court also held again that IMM validly acquired shareholder status in CMDN. General Veloso and Diogo Cavaco have applied to appeal this decision. The Company is awaiting a decision on whether their application to appeal will be successful.

With the English proceedings concluded in Pathfinder Minerals' favour, the Company has since focused on the enforcement of its rights and costs orders in Mozambique through the Mozambique Supreme Court (the "Supreme Court"); in addition to ongoing proceedings in the Commercial Court of Maputo.

On 31 December 2014, the Supreme Court rejected Pathfinder Minerals' first application for the recognition of costs orders by the English court for costs aggregating £106,000 to be paid by General Veloso and Diogo Cavaco.

The Supreme Court determined that the jurisdiction clauses contained in the agreements which were the subject of the dispute were not valid as a matter of Mozambique law because they conferred jurisdiction on the courts of England and Wales without specifying *which* court in England and Wales was to have jurisdiction (or providing the criteria for selecting the competent court). The Supreme Court rejected the Company's first application for the recognition of costs orders on this basis alone and upheld all of Pathfinder Minerals' other arguments.

The Company is advised that the formulation conferring jurisdiction on the courts of England and Wales contained in the jurisdiction clauses in question is entirely standard for English law governed contracts. Pathfinder Minerals applied to the Supreme Court for permission to appeal its decision on the first application for recognition, which would seem to have serious implications for other existing and future foreign investors in Mozambique.

In September 2015, the Supreme Court admitted Pathfinder Minerals' application for permission to appeal its earlier decision on a 'harmonisation of laws' appeal. This is an appeal based on the existence of a previous conflicting decision in which the Supreme Court had agreed to recognise a foreign judgment where the jurisdiction of the foreign court was derived from a clause similar to that in the Pathfinder Minerals agreements.

As a matter of Mozambique law, a successful appeal on this point would not affect the underlying decision not to recognise the relevant costs orders in that case. However, its effect will be to clarify the law going forward - which would be a significant outcome for Pathfinder Minerals given the pending application to recognise the substantive ruling by the English court relating to the ownership of CMDN.

Pathfinder Minerals continues to await rulings from the Supreme Court both on the 'harmonisation of laws' appeal, in respect of the first application for recognition, and on the second application for recognition of further costs orders and, more importantly, of the English court's judgment itself. It is not known how long it will take for the Supreme Court to deliver its judgments, but it could be a considerable length of time.

In addition, Pathfinder Minerals continues to prepare for the hearing of a substantive claim, brought by General Veloso and Diogo Cavaco against Pathfinder Minerals and IMM in the Mozambique courts, on the issue on which the English courts have already ruled beyond appeal (i.e. IMM's status as a shareholder in CMDN). Pathfinder Minerals has not yet been notified of a date for this hearing.