

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Spentech Engineering Limited

v.

United Arab Emirates

(ICSID Case No. ARB/24/16)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Ms. Loretta Malintoppi, President of the Tribunal
Sir Christopher Greenwood, GBE, CMG, KC, Arbitrator
Mr. Christopher Adebayo Ojo SAN, Arbitrator

Secretary of the Tribunal

Ms. Leah W. Njoroge

Assistant to the Tribunal

Ms. Fedelma C. Smith

October 25, 2024

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Introduction

The first session of the Tribunal was held on October 21, 2024 at 8:00 a.m., by video conference via Zoom. The session was adjourned at 8:47 a.m.

A 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:

Ms. Loretta Malintoppi, President of the Tribunal
Sir Christopher Greenwood, Arbitrator
Mr. Christopher Adebayo Ojo SAN, Arbitrator

ICSID Secretariat:

Ms. Leah W. Njoroge, Secretary of the Tribunal
Ms. Ivania Fernandez, ICSID Paralegal

Assistant to the Tribunal:

Ms. Fedelma C. Smith

On behalf of the Claimant:

Prof. Githu Muigai, Mohammed Muigai LLP
Dr. Jotham Arwa, Jural Consulting Ltd.
Ms. Wambui Githu, Mohammed Muigai LLP
Ms. Edith Koros, Jural Consulting Ltd.
Eng. Maurice Owiti, CEO, Spentech Engineering Ltd.

On behalf of the Respondent:

H.E. Ambassador Abdalla Hamdan Al Naqbi, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Mr. Kevin Lee, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Ms. Caroline Emilie Balme, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Ms. Tanishtha Vaid, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Dr. Paolo Busco, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Mr. Simon Olleson, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates
Dr. Scott Sheeran, Office of International Legal Affairs of the Presidential Court of the United Arab Emirates

The Tribunal and the Parties considered the following:

- The Respondent's indication of its intention to raise an objection pursuant to ICSID Arbitration Rule 41 that the Claimant's claims are manifestly without legal merit ("**Rule 41 Objection**"), and the procedural timetable agreed between the Parties relating to the Rule 41 Objection ("**Procedural Timetable**");
- The Draft Procedural Order No. 1 and No. 2 circulated by the Tribunal Secretary on October 1, 2024; and
- Each Party's comments, received separately on October 20, 2024, indicating the Parties' proposals on Draft Procedural Order No. 1.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration. The Procedural Timetable is attached as **Annex B**. Amendments to the Procedural Timetable will be made by reissuing Annex B.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of July 1, 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

- 2.1. The Tribunal was constituted on September 16, 2024 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 19(3)(b). Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on August 28, 2024, September 3, 2024, and September 16, 2024.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

3. Fees and Expenses of Tribunal Members

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

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 in force at the time the fees and expenses are incurred.

4. Presence and Quorum

Arbitration Rule 33

4.1. The participation of a majority of the members of the Tribunal by any appropriate means of communications is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35

5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2. Orders, decisions and the Award may be made by any appropriate means of communication. In particular, for the avoidance of doubt, orders, decisions and the Award may be made by electronic mail.

5.3. Orders, decisions and the Award may be signed electronically.

5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.

5.5. When 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.

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- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. No reasons need to be provided for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the Parties.
- 5.9. The Tribunal's rulings on procedural matters shall be communicated to the Parties and may be informed by the Tribunal Secretary in the form of a letter or e-mail.

6. Power to Fix Time Limits
Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. Short extensions of time may be agreed between the Parties as long as (i) they do not materially affect the overall schedule of the procedure as set out in Annex B and (ii) the Tribunal is informed. Neither Party will request an extension of time to the Tribunal without first having attempted to seek agreement from the other Party, if it is reasonably possible to do so.
- 6.4. The Parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the Tribunal Secretary on the relevant date, or on the subsequent business day at the seat of the Centre if the time limit falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, the day of such announcement being excluded from the calculation.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Ms. Leah W. Njoroge, 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. Leah W. Njoroge
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
U.S.A.
Tel.: + 1 (202) 473-7727
Fax: + 1 (202) 522-2615
Email: lnjoroge@worldbank.org
Paralegal name: Ivania Fernandez
Paralegal email: ifernandez1@worldbank.org
ICSID case address: arb/24/16@worldbank.org

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

Ms. Leah W. Njoroge
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
U.S.A.
Tel.: +1 (202) 458-1534

8. Assistant to the Tribunal

- 8.1. By letter of September 26, 2024, the ICSID Secretariat, acting on instructions of the President of the Tribunal, explained to the Parties that she considered that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant, who would undertake the tasks described in that letter. In the same letter, the Tribunal proposed that Ms. Fedelma C. Smith be appointed as Assistant to the Tribunal. Her curriculum vitae was distributed to the Parties.

- 8.2. The Secretariat's letter also set out the tasks which may be assigned to the Assistant and noted that the Assistant was subject to the same confidentiality obligations as the Members of the Tribunal. The Assistant has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on October 9, 2024.
- 8.3. The Parties consented to the appointment of Ms Fedelma C. Smith as Assistant to the Tribunal on the terms set out in the letter referred to in the preceding paragraph. The Parties also agreed that the Assistant would receive US\$ 250 for each hour of work performed and reimbursement of reasonable actual expenses on the same terms as the arbitrators.
- 8.4. The contact details of the Assistant are:

Fedelma C. Smith
Europaplatz 2/1/2
1150 Vienna
Austria
Tel.: +43 670 653 6701
E-mail: fedelmasmith@fedelma.com

9. Representation of the Parties
Arbitration Rule 2

- 9.1. 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 the Claimant

Dr. Jotham Arwa
Ms. Edith Chepng'eno Koros
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and

For the Respondent

H.E. Ambassador Abdalla Hamdan Al
Naqbi
Mr. Kevin Lee
Ms. Caroline Emilie Balme
Ms. Tanishtha Vaid
Dr. Paolo Busco
Mr. Simon Olleson
Dr. Scott Sheeran

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ssheeran@diwan.gov.ae

9.2. The Tribunal may refuse designation of additional agents, counsel, or advocates if the designation would create a non-waivable conflict of interest with one or more Members of the Tribunal.

10. Apportionment of Costs and Advance Payments to ICSID – Division of Advances and Third-Party Funding
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50; Arbitration Rule 14

- 10.1. 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.
- 10.2. Following registration of the Request for arbitration, by letter May 29, 2024, ICSID informed the Parties that US\$ 400,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimant pay US\$ 200,000. ICSID received the Claimant's payment on July 16, 2024. Upon the constitution of the Tribunal, by letter of September 17, 2024, ICSID requested that the Respondent pay US\$ 200,000. ICSID received the Respondent's payment on October 9, 2024.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 10.4. In application of Arbitration Rule 14, each Party shall, immediately upon concluding a third-party funding arrangement, disclose to the Centre, the Tribunal and the other Party, that it has third-party funding, provide the name and address of the third-party funder and, if the third-party funder is a juridical person, provide the names of the persons and entities that own and control it. For the purpose of this

provision, the term “third-party funder” does not include shareholders, parent or affiliated entities of a Party.

11. Place of Proceeding and Hearings

Convention Articles 62 and 63; Arbitration Rule 32

- 11.1. Washington, D.C., United States, shall be the place of the proceeding.
- 11.2. The Tribunal may hold in-person hearings at any other place that it considers appropriate after consultation with the Parties. The method of holding a hearing will be determined in accordance with §22.2.
- 11.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 32; Arbitration Rule 7

- 12.1. English is the procedural language of the arbitration.
- 12.2. The Tribunal and the Secretariat shall communicate with the Parties in the English language.
- 12.3. Documents filed in any other language must be accompanied by a translation into English.
- 12.4. It is sufficient to translate only the relevant part of a supporting document, unless the Tribunal orders a Party to provide a fuller or a complete translation.
- 12.5. Translations need not be certified, unless the translation is disputed, and the Tribunal orders a Party to provide a certified translation.
- 12.6. Subject to any later decision by the Tribunal, documents exchanged between the Parties in a language other than English under §16 below (Production of Documents) need not be translated.
- 12.7. The Parties will notify the Tribunal which witnesses or experts require interpretation, no later than when notifying which witnesses and experts are called for examination at the hearing and as soon as possible.
- 12.8. The testimony of a witness called for examination during the hearing who is required to give evidence in a language other than English shall be interpreted, simultaneously if possible.

- 12.9. The costs of interpretation 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.

13. Routing of Communications

Arbitration Rule 6

- 13.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 13.2. 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 and the Assistant.
- 13.3. 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 and the Assistant once she has received both Parties' communications.
- 13.4. 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.
- 13.5. The Parties and their representatives shall not engage in any oral or written communication with any Member of the Tribunal ex parte in connection with the arbitration.

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

Arbitration Rules 4, 5 and 9

- 14.1. The Parties shall:
- 14.1.1. by the relevant filing date, submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation;¹ and
- 14.1.2. within three business days following the relevant filing date, upload the pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.²

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

² Supporting documentation shall be uploaded as individual files, not in .zip format.

- 14.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable and unsecured/editable (i.e., OCR PDF or Word).
- 14.3. All pleadings shall contain consecutively numbered paragraphs and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number, the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**.
- 14.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.³
- 14.5. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 14.6. In accordance with §6.4, a filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date. If a filing falls on a Saturday or Sunday, the relevant date is the subsequent business day.

15. Number and Sequence of Pleadings – Procedural Calendar
Arbitration Rule 30

- 15.1. Depending on the outcome of the Tribunal’s decision on the Rule 41 Objection, the Tribunal will, following consultation with the Parties, issue a further procedural timetable after that decision is issued (“**Further Procedural Timetable**”).
- 15.2. The arbitration shall proceed in accordance with the Procedural Timetable at Annex B below and the Further Procedural Timetable, to be decided by the Tribunal in consultation with the Parties after the decision on the Rule 41 Application is issued and in the light of that decision, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend either timetable.
- 15.3. A pleading shall be filed and exchanged by the date indicated in the Procedural Timetable at Annex B below, or by the date indicated in the Further Procedural Timetable to be set by the Tribunal in accordance with §15.1 above.

³ To ensure the full operation of the hyperlinked index, the entire folder shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the parties shall upload the organized folder to a designated sub-folder on to the BOX filesharing platform, in a sub-folder and including a consolidated (non-hyperlinked) index.

- 15.4. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases.
- 15.5. In the second exchange of submissions (in principle Reply and Rejoinder), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts and documents resulting from the document production phase or new facts which have arisen after the filing Party's last submission.
- 15.6. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 15.7. The Parties shall include in their submissions a list of abbreviations. Each Party shall strive to use the same abbreviations as the other Party and the Parties shall update their list of abbreviations in subsequent submissions.

16. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

- 16.1. The Tribunal shall be guided but not bound by Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration 2020.
- 16.2. Within the time limit set in the Further Procedural Timetable, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control, in the form of a Redfern Schedule as attached in Annex C hereto, in both Word and .pdf format. Such a request shall not be copied to the Tribunal, the Secretary of the Tribunal or the Assistant.
- 16.3. Each request for production shall:
 - 16.3.1. identify with specificity: (i) the type of documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as "all documents" or "all records", or use such formulation and then define it to "include" specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be). A Party asserting that such identification is not possible must

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adequately substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;

- 16.3.2. describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;
 - 16.3.3. specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and
 - 16.3.4. explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.
- 16.4. The Tribunal recommends that the number of requests per Party do not exceed 35, including sub-requests. A Party wishing to exceed this number shall announce it two weeks before the date for submission of the Redfern Schedule, explaining the reasons and need for a number higher than recommended.
 - 16.5. Within the time limit set forth in the Further Procedural Timetable, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, submit its reasons for its failure or refusal to produce responsive documents (objections).
 - 16.6. Within the time limit set forth in the Further Procedural Timetable, the requesting Party may seek an order for the production of the documents sought and not produced, in which case it shall reply to the other Party's objections in that same Redfern Schedule. At the same time, it shall submit the Word and .pdf copies of the Redfern Schedule to the Tribunal.
 - 16.7. The Parties shall make no submissions in respect of the steps set out in §16.2 above other than those incorporated in the Redfern Schedules.
 - 16.8. On or around the date set forth in the Further Procedural Timetable, the Tribunal will, at its discretion, rule upon the production of the documents or categories of documents having regard to the requirements of §16.3, the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges and if appropriate the burden of proof. If a request does not meet the requirements of §16.3, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative.
 - 16.9. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal, the Secretary and the

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Assistant. Documents so communicated shall not be considered to be on record unless and until a Party subsequently files them as exhibits in accordance with §17 below.

- 16.10. In addition, the Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on record.
- 16.11. If a Party fails to produce documents ordered by the Tribunal, the Tribunal may deem that the document is adverse to the position of that Party, in light of all circumstances and taking into account the reasons advanced by a Party to explain its inability to produce any given document.
- 16.12. Documents shall be produced in electronic file format (PDF) and in searchable form (OCR) whenever possible. Spreadsheets shall be produced in Excel format whenever possible.

17. Submission of Documents

Convention Article 44; Arbitration Rule 5

- 17.1. Documents, including exhibits and legal authorities, shall be submitted together with the Memorial or the written submission that refers to them according to the manner and form set forth in §14, above.
- 17.2. 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 special circumstances exist based on a timely and reasoned written application followed by observations from the other Party.
 - 17.2.1. 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.
 - 17.2.2. 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 document.
- 17.3. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 36(3).
- 17.4. Documents shall be submitted in the following form:
 - 17.4.1. 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

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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.

- 17.4.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name in accordance with §17.4.4.
- 17.4.3. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.4.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 17.5. 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.
- 17.6. The Parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 17.7. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form) at a hearing, provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record.
- 17.8. An electronic copy of each demonstrative exhibit, other than PowerPoint slides, shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunal, the Tribunal Secretary, the Assistant, to the court reporter and to the interpreters as necessary by at the hearing at a time to be decided at a later stage by the Tribunal following consultation with the Parties.
- 17.9. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

18. Witnesses

Convention Article 43(a); Arbitration Rule 38

- 18.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 18.2. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal.
- 18.3. Each witness statement shall state the witness's name, date of birth, and involvement in the case.
- 18.4. Witness statements shall be submitted in English or in another language of a witness' choice but accompanied by a translation into English.
- 18.5. In accordance with §§14.1.1 and 15.4 above, each Party will submit its witness statements together with its written submissions. Neither Party shall 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. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second".
- 18.6. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations, provided that the parties agree to refrain from any behavior that harasses, intimidates, threatens, or otherwise exerts undue influence on any witnesses or potential witnesses involved in this matter.
- 18.7. On the date provided in the Further Procedural Timetable, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine. A witness whose cross-examination is not sought shall not testify unless the Tribunal directs his or her appearance.
- 18.8. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.9. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the award.

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- 18.10. If it deems it necessary, the Tribunal may call upon the Parties to produce as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.11. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 18.12. Examination by video conference may be permitted for justified reasons at the discretion of the Tribunal.
- 18.13. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 18.14. At the hearing, the examination of each witness shall proceed as follows:
- 18.14.1. Witnesses shall make a declaration of truthfulness.
- 18.14.2. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements. In principle, it shall not exceed ten minutes;
- 18.14.3. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge but not necessarily limited to facts addressed in the witness statement, and the witness' credibility;
- 18.14.4. The Party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
- 18.14.5. The Tribunal may ask its questions at any time, mainly at the end of the witness' testimony.
- 18.15. Subject to other arrangements that may be agreed upon by the Parties during the Case Management Conference for hearing organization, (i) fact witnesses shall be examined prior to expert witnesses, the Claimant's fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimant's expert for each topic being examined first.
- 18.16. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of

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oral testimony or argument, prior to his or her examination. This limitation does not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions.

18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:

18.17.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant;

18.17.2. Direct that a witness be recalled for further examination at any time; or

18.17.3. Provide that the witnesses may be examined together (“witness conferencing”), in which case it will give appropriate directions.

19. Experts

Arbitration Rule 38

19.1. The rules set forth in §18 above shall apply by analogy to experts, subject to different rules being set in this Section.

19.2. Each Party may retain and produce evidence of one or more experts.

19.3. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

19.4. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties’ submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.

19.5. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied to support their opinions.

19.6. In lieu of direct examination an expert may provide a brief presentation of his or her report for no longer than 30 minutes, subject to a different duration directed by the Tribunal after consultation of the Parties at the pre-hearing organizational meeting.

20. Pre-Hearing Organizational Meetings

Arbitration Rule 31

- 20.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the Parties. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the Parties and should address any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 20.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the Parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

21. Case Management Conferences

Arbitration Rule 31

- 21.1. A case management conference for purposes of discussing hearing organization and logistics will be held on a date to be determined by way of videoconference. The Tribunal may convene other case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 if necessary or appropriate.

22. Hearings

Arbitration Rule 32

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. The hearing may be held in-person or online through an appropriate videoconferencing platform as determined by the Tribunal after consultation with the Parties. In case of an online hearing, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions. An in-person hearing shall be held at a place to be determined in accordance with §11 above.
- 22.3. Having due regard to the views of the Parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid form.
- 22.4. The date of the hearing shall be determined by the Tribunal at a later stage following consultation with the Parties.

- 22.5. The Members of the Tribunal shall reserve at least one day immediately after the hearing to determine the next steps and to hold deliberations.
- 22.6. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be discussed at the case management conference for hearing organization and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.

23. Recordings of Hearings and Sessions
Arbitration Rule 29(4)(i)

- 23.1. Audio recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties and the Tribunal Members.
- 23.2. 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, if possible, be available in real-time and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 23.3. The Parties shall agree on any corrections to the transcripts within a time limit to be fixed at the end of the hearing. 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.

24. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rules 51

- 24.1. At or before the hearing, the Tribunal shall decide, following consultation with the Parties, whether and when the Parties shall submit post-hearing submissions and replies to post-hearing submissions. Should the Tribunal request post-hearing submissions, no additional evidence (including documents, witness statements or expert report) may be produced with them, except with leave from the Tribunal after having heard the other Party, or on the request of the Tribunal.
- 24.2. The Tribunal may, following consultation with the Parties, fix a page-limit for post-hearing submissions and replies to post-hearing submissions.

25. Transparency matters

Convention Article 48(5), Arbitration Rules 62-66

- 25.1. The Parties agree that the transparency regime governing these proceedings is dealt with in Procedural Order No. 2.

26. Data Privacy and Cybersecurity

- 26.1. The Members of the Tribunal, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 26.2. The Members of the Tribunal, the Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 26.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

27. Amicable Dispute Settlement

- 27.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding.
- 27.2. Any agreement pursuant to ICSID Arbitration Rule 54(1), made in order to pursue amicable settlement discussions, should be communicated to the Tribunal.
- 27.3. If the Parties settle the dispute in full, they may request that the Tribunal embody their settlement in its Award, pursuant to ICSID Arbitration Rule 55(2).

28. Disability Inclusion

- 28.1. At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including oral hearings. In considering such requests, the Tribunal will take account

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of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

On behalf of the Tribunal,

[signed]

Ms. Loretta Malintoppi
President of the Tribunal
Date: October 25, 2024

/r

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission–LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission–LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>

Spentech Engineering Limited v. United Arab Emirates
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Procedural Order No. 1 – Annex A

Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Procedural Timetable

Date	Time Lapse	Party / Tribunal	Description
October 31, 2024	-	Respondent	Rule 41 Objection
December 15, 2024	45 days	Claimant	Response on Rule 41 Objection
January 29, 2025	45 days	Respondent	Reply on Rule 41 Objection
March 15, 2025	45 days	Claimant	Rejoinder on Rule 41 Objection
May 28, 2025	74 days	All	Hearing on Rule 41 Objection

Annex C – Redfern Schedule

1	2	3		4	5	6
Requesting Party [insert]						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			