

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Spentech Engineering Limited**

**v.**

**United Arab Emirates**

**(ICSID Case No. ARB/24/16)**

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**PROCEDURAL ORDER NO. 2  
On Transparency and Confidentiality**

***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

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November 8, 2024

## **I. PROCEDURAL BACKGROUND**

1. On October 1, 2024, the Tribunal circulated a draft of this order (“Draft PO2”) for discussion by the Parties.
2. On October 21, 2024, the first session was held. During the first session, the Parties and the Tribunal discussed the Respondent’s comments on Draft PO2 and the Parties’ comments on draft Procedural Order No. 1.
3. On October 24 and 29, 2024, respectively, the Parties exchanged their comments on Draft PO2.
4. On November 5, 2024, the Parties submitted to the Tribunal their joint proposal on Draft PO2.
5. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

## **II. LEGAL FRAMEWORK**

6. The legal framework applicable to these proceedings is determined by the Agreement between the Government of the Republic of Kenya and the Government of the United Arab Emirates on the Promotion and Protection of Investments (the “BIT”), the ICSID Convention, and the 2022 ICSID Arbitration Rules. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information.
7. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
8. In this case, the BIT is silent with respect to transparency /confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 as amended/supplemented by Section III of this Order.
9. In accordance with ICSID Arbitration Rule 66 confidential or protected information is information which is protected from public disclosure:
  - (a) by the instrument of consent to arbitration;
  - (b) by the applicable law or applicable rules;
  - (c) in the case of information of a State party to the dispute, by the law of that State;
  - (d) in accordance with the orders and decisions of the Tribunal;
  - (e) by agreement of the parties;
  - (f) because it constitutes confidential business information or protected personal information;
  - (g) because public disclosure would impede law enforcement;
  - (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;

- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

### **III. TRANSPARENCY RULES**

- 10. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

#### **A. AWARD (ICSID ARBITRATION RULE 62)**

- 11. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties consent to publication of the Award by ICSID on its website, with any redactions agreed by the Parties.<sup>1</sup> The Parties shall provide ICSID with their jointly redacted text within 60 days after the dispatch of the Award.
- 12. If the Parties do not agree on a jointly redacted text, they shall, within 60 days after the dispatch of the Award, inform ICSID and provide their respective proposals for redaction.
- 13. In accordance with ICSID Arbitration Rule 62(4), if the Parties disagree on redactions, ICSID shall prepare excerpts of the Award within 60 days after receipt of the Parties' notice under paragraph 12, taking into account each Party's proposed redactions as far as possible. The Parties may comment on the proposed excerpts within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected. ICSID shall consider any comments received on the proposed excerpts and publish the excerpts within 30 days after the expiry of the time limit for the Parties' comments on the proposed excerpts.

#### **B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)**

- 14. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below.

#### **C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)**

- 15. ICSID shall not publish the Parties' written submissions. Upon request of a Party the Tribunal may authorize ICSID to publish any written submission filed by that Party, excluding supporting documents, with redactions pursuant to Section G below. The Tribunal shall decide any disputed redactions pursuant to Section G below, and ICSID shall publish the written submission in accordance with the decision of the Tribunal. The Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in ICSID Arbitration Rule 66.

#### **D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)**

- 16. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

#### **E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))**

- 17. Hearings shall not be open to the public.

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<sup>1</sup> Pursuant to ICSID Arbitration Rule 72(2) this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

**F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))**

18. Upon request of a Party, ICSID shall publish any recordings or transcripts of hearings, unless the other Party objects.

**G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66)**

19. With respect to publication pursuant to Sections B, C, D and F above, any confidential or protected information as defined in ICSID Arbitration Rule 66 that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
20. Within 60 days from the date of (i) a decision or order, or (ii) a request for the publication of a written submission, final transcript or recording, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the 60-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.
21. Within 60 days of receipt of the notice referred to in paragraph 20, the other Party may raise objections to the proposed redactions.
22. If no objections are raised within the deadline established in paragraph 21, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
23. If objections are raised within the deadline established in paragraph 21 above, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
24. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order.
25. If information is to be redacted from a document or recording in accordance with paragraphs 22, 23 or 24 above, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.

On behalf of the Tribunal,

[signed]

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Ms. Loretta Malintoppi  
President of the Tribunal  
Date: November 8, 2024

**ANNEX TO PROCEDURAL ORDER NO. 2  
TRANSPARENCY SCHEDULE**

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	