

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Spentech Engineering Limited

v.

United Arab Emirates

(ICSID CASE NO. ARB/24/16)

PROCEDURAL ORDER NO. 3
On the Organization of the Hearing on the Rule 41 Objection

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

Date: April 30, 2025

A. INTRODUCTION

1. On April 30, 2025, the President of the Tribunal and the Parties held a pre-hearing case management conference by video conference starting at 8:00 a.m. Washington, D.C. time. (the “**Pre-Hearing Conference**”).

2. Participating in the Pre-Hearing Conference were:

Members of the Tribunal:

Ms. Loretta Malintoppi, President of the Tribunal

ICSID Secretariat:

Ms. Leah W. Njoroge, Secretary of the Tribunal

Ms. Ekaterina Minina, ICSID Paralegal

Assistant to the Tribunal:

Ms. Fedelma C. Smith

On behalf of the Claimant:

Dr. Jotham Arwa, Jural Consulting Ltd

Ms. Wambui Githu, Mohamed Muigai LLP

Ms. Edith Koros, Jural Consulting Ltd

Ms. Brenda Ogonyo, Mohamed Muigai LLP

Eng. Maurice Owiti, Spentech Engineering Ltd

On behalf of the Respondent:

Mr. Kevin Lee, Office of International Legal Affairs, Presidential Court of the United Arab Emirates

Ms. Caroline Emilie Balme, Office of International Legal Affairs, Presidential Court of the United Arab Emirates

Ms. Tanishtha Vaid, Office of International Legal Affairs, Presidential Court of the United Arab Emirates

Mr. Paolo Busco, Office of International Legal Affairs, Presidential Court of the United Arab Emirates

Mr. Simon Olleson, Office of International Legal Affairs, Presidential Court of the United Arab Emirates

3. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID. The recording was subsequently uploaded to the Box folder established for the case to be accessed by the Members of the Tribunal and the Parties.
4. During the Pre-Hearing Conference, the Tribunal and the Parties considered the following documents:

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- The draft Procedural Order No. 3 circulated by the Secretary of the Tribunal on behalf of the Tribunal on March 26, 2025; and
 - The Respondent’s comments on draft Procedural Order No. 3 received on April 15, 2025, advising the Tribunal of the Respondent’s proposal on the various items. No proposals were received from the Claimant.
5. The Tribunal has considered the Parties’ positions and, in the present Order, sets out the procedural rules upon which the Parties have agreed and/or, having heard the Parties, the Tribunal has determined shall govern the conduct of the hearing on the Respondent’s Rule 41 Objection (“**Hearing**”).

B. DATE AND FORMAT OF THE HEARING, SCHEDULE AND ALLOCATION OF TIME

i. Date and format of the Hearing

6. As directed by the Tribunal on December 20, 2024, the Hearing will be held remotely by video conference on May 28, 2025. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.
7. In accordance with paragraph 17 of Procedural Order No. 2, the Hearing shall be closed to the public.

ii. Schedule of the Hearing

8. The order of proceedings, and a detailed Hearing schedule are indicated in the agenda incorporated as **Annex A**.
9. The Hearing will start at 11am London/Abuja time / 12pm Vienna time / 1pm Kenya time / 2pm Abu Dhabi time / 6pm Singapore time / 6am Washington, D.C. time on May 28, 2025.
10. The Hearing is expected to conclude by 5:15pm London/Abuja time / 6:15pm Vienna time / 7:15pm Kenya time / 8:15pm Abu Dhabi time / 12:15am Singapore time / 12:15pm Washington, D.C. time, subject to any adjustment required in the course of the proceedings. There will be two breaks: one of 15 minutes and another of 30 minutes.
11. For information, participants are advised that the President of the Tribunal will be located in the Central European Summer Time zone (UTC + 02:00) on the day of the Hearing.
12. The Tribunal reserves its discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

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13. The Tribunal emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

iii. Allocation of Time

14. The time at the Hearing shall be allocated to each Party in equal proportions, subject to the Tribunal's discretion taking into account all the relevant circumstances including the number of witnesses for each Party called to testify (if any) and the amount of evidence to be presented.
15. The Hearing time available for the Parties and the Tribunal amounts to a total of 5 hours and 30 minutes excluding breaks. The Tribunal will provisionally have 1 hour in reserve.
16. The Hearing will be conducted in accordance with the Hearing schedule set in **Annex A**.
17. The Parties may request short extensions of time if necessary and the Tribunal will exercise a limited degree of flexibility in this regard. Any time allocated to each Party for its use during the Hearing shall depend in the end on how much time remains available (or not) at the time of adjournment.
18. Time taken by the Tribunal for its own questions during the Parties' presentations and the answers to those questions shall not be taken into consideration in the time allocated to each Party.
19. Time spent dealing with objections from a Party shall not be taken into consideration in the time allocated to each Party unless the Tribunal determines otherwise if the circumstances warrant a deviation from that rule.
20. Time spent for housekeeping or to resolve technical difficulties shall be counted against the Tribunal's time, if needed.
21. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the total time used at the end of the Hearing day.

C. DOCUMENTS FOR USE AT THE HEARING

i. Hearing Bundle

22. By **May 14, 2025**, the Parties shall jointly prepare and upload to the Box folder established for the case a bundle of key documents for reference during the Hearing ("**Hearing**

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Bundle”). The Hearing Bundle shall include the Parties’ submissions and supporting documents filed under paragraph 14.2 of Procedural Order No. 1; and shall further include any other correspondence relied upon by either Party in its submissions on the Rule 41 Objection (“**Relevant Correspondence**”).

23. The Hearing Bundle shall be organized in folders, as follows:

Folder	Subfolders
A. All Pleadings	Claimant Respondent
B. All Fact Exhibits	Claimant Respondent
C. All Legal Authorities	Claimant Respondent
D. All Relevant Correspondence	Claimant Respondent
E. All Fact or Expert Witness Statements	Claimant Respondent

24. All exhibits and legal authorities in the Hearing Bundle shall be saved with only the exhibit number as the electronic file name.
25. The Parties shall ensure that in any external document management platform, exhibits and legal authorities contain the original electronic file name under which they were filed in the present proceedings.

ii. Demonstrative exhibits and PowerPoint presentations

26. Demonstrative exhibits shall be used in accordance with paragraph 17.7 of Procedural Order No. 1 dated October 25, 2024 (“**PO1**”).
27. Pursuant to paragraph 17.8 of PO1, an electronic copy of each demonstrative exhibit/presentation (such as PowerPoint slides) setting out the Parties’ argument 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 Secretary of the Tribunal, the Assistant to the Tribunal and to the court reporter as necessary by 24 hours prior to their use at the Hearing.
28. In accordance with paragraph 17.9 of PO1, after the conclusion of the Hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibit to the case folder in the BOX files sharing platform, designating each with the corresponding “CD-” for Claimant or “RD-” for Respondent.

iii. *Electronic presentation of evidence*

29. Each Party shall be responsible to present demonstrative exhibits and evidence to the participants in the Hearing using the Zoom screen-sharing function.
30. In accordance with paragraph 17.8 of PO1, demonstrative exhibits may compile information which is on record but not presented in such form, and must indicate from which documentary exhibit or legal authority they are derived. While presenting, the Parties may highlight particular passages of the document to draw attention to the relevant section. Documents that do not form part of the record may not be presented at the Hearing.
31. The Hearing participant displaying the document shall be the only participant with the ability to scroll through the document being displayed. The Parties are advised to limit their use of this function, to minimize pressure on the internet bandwidth and on the stability of the connection.

D. RECORDING OF THE HEARING

32. Pursuant to paragraph 23.1 of PO1, the Hearing will be recorded. A copy of the recording shall be provided to the Parties and the Tribunal.
33. Except for the court reporter, who will make their own audio recording of the Hearing, attendees will not otherwise make any audio or video of the Hearing or any part of it.

E. TRANSCRIPTION OF THE HEARING

34. Paragraph 23.2 of PO1 will apply to the arrangements for the correction of the transcripts.
35. Transcription services in English will be provided by Mr. Trevor McGowan (the “**Court Reporter**”). The Court Reporter may seek to clarify the record from time to time during the course of the Hearing.
36. Instructions to access the live transcript will be provided by the Secretary of the Tribunal to the participants in advance of the Hearing.

F. REMOTE HEARING ARRANGEMENTS

37. The following procedures shall be followed in order to ensure the good conduct of the remote Hearing:

i. Participants

38. Each Party shall provide its respective List of Hearing Participants (“**List of Participants**”) by **May 21, 2025**, using the template format that will be provided by ICSID. If a Party wishes to include an additional person not identified on the approved list, such person may participate only with the agreement of all Parties or at the direction of the Tribunal. In any event, no individual shall be in attendance who is not announced at least 24 hours in advance.
39. Participants shall join the Zoom videoconference 30 minutes in advance of the start of the Hearing to facilitate the identification of Participants and to address any technical contingencies.

ii. Connectivity

40. Each Party is responsible for ensuring that its Participants who will attend the Hearing have reliable, high-speed Internet connections offering and suitable video and audio capabilities and equipment. The Secretariat will conduct test sessions with the participants on the week before the Hearing. The details of these test sessions will be communicated in due course.
41. If available, participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
42. The Hearing platform will also offer a dial-in telephone audio connection as a backup option should a participant experience a temporary technical difficulty with a computer online connection.

iii. Equipment and Set-Up

43. Other than for the introductions noted at paragraph 46 below, the Parties are advised to keep the number of video connections to a minimum, and, in any event, to Participants that will have an active speaking role (“**Active Participants**”) only. Passive attendees (“**Passive Participants**”) should join the meeting through their computer but connecting only their audio (i.e. turning their video off).
44. For optimum sound quality, especially for the audio recording and the transcription, the Tribunal highly recommends that Active Participants use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. If they do not have access to an external

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microphone, Active Participants are asked to speak close to the internal microphone of their device.

45. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online real-time transcript; and (iii) offline documents.

iv. Videoconference Etiquette

46. Upon joining the Zoom videoconference, Participants using a computer should turn on both their audio and video. The President of the Tribunal will invite each Party to introduce its team. After each Party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak shall turn off their video feed and mute their microphones.
47. Once admitted to the Zoom videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives are to remain connected throughout the Hearing.
48. Participants shall use the “mute microphone” function unless they are speaking in order to reduce background noise and to avoid interference with the audio recording. The service provider serving as host of the video conference shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
49. To facilitate accurate transcription, speakers are advised to speak at a reasonable speed and with pauses between phrases.
50. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

v. Break-out rooms

51. The Secretary of the Tribunal will arrange break-out rooms separate from the Hearing room, to be used securely by the Tribunal, Claimant and Respondent during breaks.

vi. Declaration of the Parties

52. The Parties confirm that they have conducted their own investigation of the suitability and appropriateness of the Zoom platform for their proposed use for the Hearing and of any risks of using such platform, including risks related to its security, privacy or confidentiality, and agree to use it to hold the Hearing.

G. GENERAL PROVISIONS

i. Confidentiality

53. This ICSID proceeding, including all communications, is confidential. Participants in the Hearing must continue to comply with any applicable legal and ethical obligations with respect to confidentiality. All Participants providing services shall (i) keep confidential all documents and information coming to their knowledge as a result of their participation in the Hearing; (ii) not use, or authorize any other person to use, such documents and information other than for the purpose of performing their work at the Hearing; and (iii) dispose all documents if printed, as confidential material, and delete all electronic copies that might be stored on personal devices when their Hearing-related work has been completed.

ii. Data Privacy

54. Should the List of Participants for the Hearing contain personal data provided to ICSID (including names and contact information, such as business email addresses and telephone numbers), this data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other Participants providing services for the Hearing.

For and on behalf of the Tribunal,

[signed]

Ms. Loretta Malintoppi
President of the Tribunal
Date: April 30, 2025

ANNEX A
Hearing Schedule

Wednesday, May 28, 2025

EDT	BST/WAT	CEST	EAT	GST	SGT	PROCEDURAL STEP/DURATION
DC	London/ Abuja	Vienna	Nairobi	Abu Dhabi	Singapore	
06:00 AM	11:00 AM	12:00 PM	01:00 PM	02:00 PM	06:00 PM	Housekeeping [15min.]
06:15 AM	11:15 AM	12:15 PM	01:15 PM	02:15 PM	06:15 PM	Respondent's Opening Statement [1h 30min.]
07:45 AM	12:45 PM	01:45 PM	02:45 PM	03:45 PM	07:45 PM	Break [15min.]
08:00 AM	01:00 PM	02:00 PM	03:00 PM	04:00 PM	08:00 PM	Claimant's Opening statement [1h 30min.]
09:30 AM	02:30 PM	03:30 PM	04:30 PM	05:30 PM	09:30 PM	Break [30min.]
10:00 AM	03:00 PM	04:00 PM	05:00 PM	06:00 PM	10:00 PM	Respondent's Rebuttal [30min.]
10:30 AM	03:30 PM	04:30 PM	05:30 PM	06:30 PM	10:30 PM	Claimant's Rebuttal [30min.]
11:00 AM	04:00 PM	05:00 PM	06:00 PM	07:00 PM	11:00 PM	Tribunal Reserved Time [1 hour]
12:00 PM	05:00 PM	06:00 PM	07:00 PM	08:00 PM	12:00 AM	Closing [15min.]