

# Specon LLC v Ssangyong Engineering & Construction Co. Ltd (Dubai Branch); and Be

Arbitration on 3 to 21 February 2025

DIAC Case No. 220063

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By Jaswant patel

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Page	Level	Source Text	[ Bundle   Tab   Page ]	Doc title
<a href="#">1-28</a>		ude@dlapiper.com; w <div>Fact Sheet</div>	[ A1   A   <a href="#">1-28</a> ]	Exhibit No.

**IN THE MATTER OF AN ARBITRATION**  
**IN THE EMIRATE OF DUBAI**

**PURSUANT TO THE RULES OF THE DUBAI INTERNATIONAL ARBITRATION CENTRE**  
**("DIAC")**

**SPECON LLC**

Claimant

and

**(1) SSANGYONG ENGINEERING & CONSTRUCTION CO. LTD**  
**(DUBAI BRANCH)**

First Respondent

AND

**(2) BESIX CONSTRUCT LLC**

Second Respondent

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**REQUEST FOR ARBITRATION**

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**DLA Piper Middle East LLP**  
PO Box 121662  
Level 9, Standard Chartered Tower  
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Tel: +971 4 438 6100  
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## THE PARTIES & COUNSEL

1. The Claimant is Specon LLC ("**Specon**"), a limited liability company organised under the laws of the UAE, whose registered office is located at PO Box 87134, Dubai, UAE.
2. Specon is represented in this arbitration by:

### **DLA Piper Middle East LLP**

Level 9, Standard Chartered Building,

Emaar Square, Downtown Dubai,

PO Box 121662, U.A.E

Tel: +971 4438 6100

Email: daniel.jude@dlapiper.com; wissam.dagher@dlapiper.com;  
malcolm.jezewski@dlapiper.com; tom.parkin@dlapiper.com;  
kareena.tralongo@dlapiper.com

3. All future communications should be sent to the Claimant's counsel using the contact details provided above.
4. The Respondents are:
  - 4.1 **First Respondent:** Ssangyong Engineering & Construction Co. Ltd. (Dubai Branch) ("**Ssangyong**"), the Dubai branch of Ssangyong Engineering & Construction Co. Ltd., a company organised under the laws of the Republic of Korea, with its branch office at 505-508, Business Atrium Building, Umm Hurair Road, Oud Metha, Dubai, UAE; and its head office at 299 Olympic-ro Songpa-gu, Seoul, 05510 Republic of Korea; and
  - 4.2 **Second Respondent:** Belhasa Six Construction LLC, which is understood to have changed its name to BESIX Construct LLC ("**Besix**"), a company organised under the laws of the UAE with its registered office at PO Box 13055, Al Quoz Industrial Area 4, Bur Dubai, UAE.
5. The Respondents formed an unincorporated joint venture ("**SBJV**").
6. The contact details of the Respondents are as follows:

**First Respondent**

Address: 505-508, Business Atrium Building, Umm Hurair Road, Oud Metha, PO Box 33189, Dubai, United Arab Emirates

Telephone number: +971 43591931

Email address: [ayman993344@gmail.com](mailto:ayman993344@gmail.com)

**Second Respondent**

Address: 11A Street, Al Quoz 3, Dubai, United Arab Emirates

Telephone number: +971 45092222

Email address: [rap@ssyenc-besix.com](mailto:rap@ssyenc-besix.com)

## THE ARBITRATION AGREEMENT AND APPLICABLE LAW

7. Clause 25 of the Subcontract<sup>1</sup> contains the dispute resolution provisions. Clause 25.1 sets out the pre-arbitration steps in relation to any dispute that may arise between the SBJV and Specon:

### *"25. DISPUTE RESOLUTION*

#### *Dispute Committee*

*25.1 If a dispute arises between the Contractor and the Subcontractor in connection with, or arising out of, the Subcontract or the carrying out of the Subcontract Works, whether during the carrying out of the Subcontract Works or after their completion and whether before or after any termination of the Subcontract (the "Dispute") it shall first be referred to a committee consisting of the chief executive officer (or a senior management designee thereof) of each Party (the "Dispute Committee") for amicable settlement.*

*A Party seeking such settlement shall prepare a written statement setting forth (a) a succinct statement of the Dispute, (b) why such party believes it is a proper subject for settlement by the Dispute Committee and (c) a proposed remedy for settling the Dispute (the "Statement of Dispute") and shall deliver a copy of the Statement of Dispute to the other Party.*

*The Parties shall procure that the Dispute Committee first meets within ten (10) days of delivery of the Statement of Dispute, to resolve the Dispute. If the Dispute Committee has failed to agree upon a unanimous resolution of the Dispute within forty (40) days following the delivery of the Statement of Dispute to the Dispute Committee then either Party may give notice to the other Party of his intention to commence arbitration, as hereinafter provided, as to such Dispute. If amicable settlement has not been reached within fifty six (56) days after which the notice to commence arbitration was given, arbitration may be commenced by either party. No arbitration in respect thereof may be commenced unless such notice is given and the fifty six (56) day period referred to herein has lapsed."*

8. Clause 25.1 above provides for various steps to be taken, namely:
- 8.1 the Party raising the dispute must submit a written Statement of Dispute to the other Party;
  - 8.2 within 10 days of submission of the Statement of Dispute, the Dispute Committee must meet to resolve the dispute;
  - 8.3 if the Dispute Committee fails to agree a unanimous resolution of the dispute within 40 days of delivery of the Statement of Dispute to the Dispute Committee, then either Party may give notice to the other of its intention to commence arbitration; and

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<sup>1</sup> Exhibit C-1.

8.4 if an amicable settlement is not reached within 56 days after notice of intention to commence arbitration was given, either party may commence an arbitration.

9. The arbitration agreement between the parties is set out in clause 25.2, which is reproduced below:

*"Arbitration*

*25.2 Any Dispute in respect of which a settlement has not been reached in accordance with Sub-Clause 25.1 (Dispute Committee) shall be finally settled by arbitration. Unless otherwise agreed in writing by the Contractor and the Subcontractor:*

- (a) the Dispute shall be finally settled under the Arbitration Rules of the Dubai International Arbitration Centre (the "Rules") which Rules are deemed to be incorporated by reference into this Sub-Clause 25.2 (Arbitration);*
- (b) the Dispute shall be settled by three arbitrators appointed in accordance with the Rules;*
- (c) the Contractor and the Subcontractor shall each nominate one arbitrator for appointment in accordance with the Rules and the chairman shall also be appointed in accordance with the Rules unless the Contractor and the Subcontractor are able to agree upon the choice of the chairman following which he shall be appointed in accordance with the Rules;*
- (d) the place or seat of arbitration shall be the Emirate of Dubai;*
- (e) the venue of all arbitration hearings shall be the Emirate of Dubai;*
- (f) the law governing the arbitration shall be the applicable federal laws of the United Arab Emirates and the laws and regulations in force in the Emirate of Dubai;*
- (g) the arbitration shall be conducted in the English language; and*
- (h) all costs of the arbitration proceedings, including without limitation attorneys' fees and costs, shall be borne in the manner determined by the arbitral tribunal.*

*The award rendered by all or a majority of the said arbitrators shall be final and judgment may be entered upon it in any court having jurisdiction. In no event shall this Clause 25 (Dispute Resolution) be construed as conferring upon any court authority or jurisdiction to enquire into or review such award on its merit."*

10. Clause 25.2 provides for arbitration under the DIAC Rules and seated in (onshore) Dubai. The applicable rules are the DIAC Rules 2022.<sup>2</sup> Clause 25.2 also emphasises for the avoidance of doubt that the *lex arbitri* will be that of Dubai and that the arbitration venue will be in Dubai.

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<sup>2</sup> At the date of the agreement the rules in force were the DIAC Rules 2007. The 2007 Rules provide that where the parties agree to submit a dispute to arbitration under the DIAC Rules, that agreement entails a deemed submission to the DIAC Rules in effect on the date of commencement of the arbitration (Article 2.1). The 2022 Rules similarly provide that they apply to arbitrations commenced after the date on which they entered into force, regardless of the date of the underlying arbitration agreement, unless the parties agree otherwise (and in the present case the Parties have not agreed otherwise) (Article 2.3).

11. The Tribunal is to be composed of three arbitrators appointed in accordance with the DIAC Rules, which provide that each Party will nominate one arbitrator to be appointed by DIAC. The Party-appointed arbitrators will agree upon the nomination of the Chairman for confirmation and appointment by DIAC, unless (i) the Parties agree on the appointment of the Chairman or (ii) the Party-appointed arbitrators fail to appoint a Chairman within 10 days of notification of the DIAC Arbitration Court's decision on the appointment of the last co-arbitrator, in which case the Arbitration Court will appoint the Chairman.
12. Specon nominates Mr. Richard Harding QC for its arbitrator, whose contact details are set out below:

Mr Richard Harding QC  
Keating Chambers  
15 Essex Street  
London  
WC2R 3AA  
United Kingdom

Tel: +44(0)207 544 2600

Email: rharding@keatingchambers.com
13. Mr. Richard Harding QC has indicated that he is able and willing to serve on the Tribunal and is clear of conflicts.
14. The Subcontract is governed by the laws of Dubai, United Arab Emirates.<sup>3</sup>

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<sup>3</sup> **Exhibit C-1**, clause 4.2.



## BACKGROUND

15. SBJV was engaged by Atlantis The Palm 2 Development LLC ("**Employer**")<sup>4</sup> as Contractor for the construction of the Royal Atlantis Resort and Residences, a mega mixed use project comprised of a hotel and residences located on the eastern crescent of The Palm Jumeirah, Dubai, next to the iconic Atlantis hotel.
16. The project is shown in the image below. The project is primarily divided into two parts. On the left hand side of the photograph are three hotel towers<sup>5</sup> originally of 47 floors, 38 floors and 25 floors respectively and on the right hand side of the image, three residential towers originally of 22 floors, 31 floors and 39 floors. The towers are each made of reinforced concrete and the highest rises to 187 metres above ground.
17. The hotel and residential towers are linked together at the podium level which serves a shared lobby and amenity space for both. The hotel and residential sections are also connected by a 45 metre-long sky bridge that links the 18<sup>th</sup> through to the 22<sup>nd</sup> floors of two of the towers. The hotel and residential towers respectively are also connected by a series of sky courts linking them together.



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<sup>4</sup> Other relevant parties included Faithful & Gould as the Employer's '*Project Manager*' (later replaced by Turner International); Dynamic Engineering Consultants LLC as the '*Engineer*' under the Main Contract and Arcadis as the Employer's '*Cost Consultant*'.

<sup>5</sup> The total hotel guest rooms number 795.

18. It is understood that SBJV originally divided the Main Contract Works into 36 subcontract packages<sup>6</sup> namely:
- 18.1 14 civil and architectural packages (C1 to C16);
  - 18.2 10 fit out packages (F1 to F9b); and
  - 18.3 12 MEP packages (M1 to M12).
19. Specon's initial tender was submitted in 2016 and was based on a set of tender documents prepared by the Employer's MEP consultants. On receipt of Specon's initial offer, the Employer and SBJV made it clear that the offer was in excess of its budget and following discussions Specon was requested to produce a "*Best & Final Offer*" which was submitted to SBJV in January 2017. Following the provision of that document between January and August 2017, Specon and its consultant "*Black & White*"<sup>7</sup>, SBJV and the Employer and its consultants participated in a series of collaborative meetings and value engineering exercises in an attempt to identify and eliminate unwanted costs and improve the function and quality of the Subcontract Works.<sup>8</sup>
20. By its Commencement Instruction dated 3 April 2017,<sup>9</sup> SBJV formally confirmed Specon's engagement as a subcontractor for the execution of the M2 and M3 packages which consisted of:
- 20.1 M2 package - MEP Services for Basement, Podium, Tower Risers, Sky Bridge and Services including ELV, Integrator, SNG, and BMS for the entire project);<sup>10</sup> and
  - 20.2 M3 package - MEP Services to Hotel Towers.<sup>11</sup>
21. These two packages constituted the large majority by value of the MEP works on the Project.

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<sup>6</sup> Subsequently SBJV sub-divided a number of the packages which compounded the design and construction co-ordination issues on the Project.

<sup>7</sup> *Black & White* were originally part of the Employer's design team but were retained by Specon as part of the value engineering exercises carried out in accordance with the Subcontract.

<sup>8</sup> The MEP was a provisional sum in the Main Contract.

<sup>9</sup> **Exhibit C-2.** This Commencement Instruction was subsequently updated by SBJV's Letter of Acceptance Letter, see **Exhibit C-3.**

<sup>10</sup> This covered an area of 175,000 m<sup>2</sup>.

<sup>11</sup> This covered an area of 102,000 m<sup>2</sup>. It should also be noted that the M4 Subcontract package was for MEP Services to the residential towers and was awarded to Future Metro LLC. It is understood Future Metro also had their bonds encashed by SBJV and has instigated dispute resolution proceedings against SBJV.

22. SBJV and Specon executed the formal Subcontract Agreement on 13 March 2018. Item 2 of the Subcontract Agreement lists the documents forming the basis of the Subcontract and copies of the first three documents are exhibited.<sup>12</sup>

*"The following documents shall be deemed to form and shall be read and construed as the Subcontract:*

*this Form of Subcontract Agreement;*

*the Signed Letter of Acceptance (Contractor's Letter Ref. TRA/SBJ/BWO/2.12.19/17/00903);*

*the Conditions of Subcontract;*

*the Subcontract Scope of Work and Matrix of Attendances;*

*the Subcontract Drawings;*

*the Subcontract Specifications;*

*the Subcontract Bills of Quantities, Preambles and Preliminaries;*

*the Instructions to the Subcontract Tenderer; and*

*the Subcontract Supplementary Information."*

23. The Subcontract Sum was agreed at the amount of AED 608,000,000<sup>13</sup> which sum was broken down as follows:

23.1 Fixed Price Lump Sum: AED 683,374,965

23.2 Provisional Sum for Wild Air: AED 4,096,094

23.3 Less Fixed Value Engineering: (AED 67,052,931)

23.4 Less Target Value Engineering: (AED 12,418,128)

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<sup>12</sup> **Exhibit C-4; Exhibit C-3; Exhibit C-1.**

<sup>13</sup> Provisional Sums in the amount of AED 122,325,000 were included within the Subcontract Sum to complete works in areas that were not designed at the time of Subcontract award.

24. The Subcontract Commencement Date was 15 March 2017 and the original Time for Completion was 31 August 2019 (a period of 899 days).
25. The MEP services involved the following works:
- 25.1 Plumbing – domestic hot and cold water systems and drainage;
  - 25.2 Mechanical ventilation system;
  - 25.3 Chilled water system;
  - 25.4 Electrical power distribution;
  - 25.5 Lighting;
  - 25.6 Fire alarm and firefighting systems;
  - 25.7 Audio-visual system;
  - 25.8 Security, CCTV, access control and parking management systems;
  - 25.9 ICT and BMS systems active and passive components, structured cabling; and
  - 25.10 Central battery and emergency power systems.
26. The Project (Site) was also split into different levels and different areas and each level and area also comprised a number of sub-areas. The levels and areas were to be handed over to Specon sequentially in order to carry out the construction of the MEP works. For example, the below image shows the areas of work in the Lower Ground Floor level.



27. The Project was what is sometimes referred to in the industry as a "*fast track*" project, as SBJV (and the Employer) required an aggressive programme for completion of the Project. The starting point for any delay analysis is Specon's "*Rev 06*" baseline programme which was discussed and developed collaboratively in conjunction with SBJV and included all project activities including SBJV's activities as well as other subcontractor activities. "*Rev 06*" was approved by SBJV in accordance with clause 13.3 on 24 August 2017.<sup>14</sup>
28. The achievement of Specon's programme was critically dependent, amongst other things, on SBJV fulfilling its own obligations including:
- 28.1 the expeditious conclusion of the value engineering and provisional sum design;
  - 28.2 timeous provision of IFC drawings;
  - 28.3 the provision of co-ordinated shop drawings of other subcontract packages and SBJV's co-ordinated architectural shop drawings, (where these interfaced with the Subcontract Works); and
  - 28.4 the completion of all the necessary civil construction activities which were precedent to Specon's MEP construction activities.
29. However, the Project was afflicted by serious problems from the outset and suffered from significant delay. These problems were caused by the acts or omissions of SBJV and/or other parties for whom SBJV was contractually responsible.
30. The design of the MEP works became an iterative process, and the Subcontract Works was significantly delayed by (inter alia):
- 30.1 **Late IFC design:** Pursuant to Specon's programme, the IFC drawings for the MEP design were supposed to be provided by 15 March 2017. However, as demonstrated by the table below, which summarizes the IFC design drawings actually received by Specon up to September 2018, SBJV failed to provide the IFC drawings timeously in accordance with Specon's programme. In addition, a much greater number of IFC drawings than reasonably

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<sup>14</sup> SBJV approved the *Rev 06* programme by a Workflow Transmittal on Aconex addressed entitled "*Final WF00829 M2 – 006 SBJV Internal Review – Planning/Programme*".

planned were also received, not least because a large number of the IFC drawings issued were subsequently revised multiple times. These revisions further delayed progress because MEP systems require an extensive process to refine the design which takes several months to engineer shop drawings that need to be submitted and approved before materials can be procured and delivered to enable installation on site.

IFC Drawing								
Month	Electrical	Fire Alarm	Fire Protection	Ductworks and chilled water	Plumbing	Telecom	Security	Total
Mar-17	789	428	347	690	884		156	3,294
Apr-Aug-17								0
Sep-17	671	294	357	521	757			2,600
Oct-17		8			294			302
Nov-17	476	104	68		405			1,053
Dec-17	12	17	16		26			71
Jan-18					16	821		837
Feb-18	105	9	24		44	9		191
Mar-18	8	50	13		23	57	40	191
Apr-18	213	55	49	130	8		10	465
May-18	207	3	20	14	4	5	14	267
Jun-18	84	9	18	15	10	10		146
Jul-18	9	4	212	7	9			241
Aug-18	119	3	19	17	18	2	3	181
Sep-18	60	9	171	133	211	21	7	612
<b>Total</b>	<b>2,753</b>	<b>993</b>	<b>1,314</b>	<b>1,527</b>	<b>2,709</b>	<b>925</b>	<b>230</b>	<b>10,451</b>

- 30.2 **Employer driven value engineering and provisional sums:** the completion of the design of the value engineering and provisional sum items in the Subcontract took much longer than envisaged by Specon's programme. To illustrate, by way of only one (of many) examples, "*Project 211*" was a value engineering exercise undertaken by the Employer which involved an extensive redesign over 36 floors in the hotel towers and podium, basement, lower ground, and grounds levels. The scope of the changes introduced by *Project 211* was significant and included deletion of 3 floors in the Hotel (Floors 30, 34 & 40) as well as modifications to various restaurants and dining areas. While Specon were issued with some IFC drawings covering the *Project 211* scope in January 2018, even then the designs received remained incomplete and deficient to the extent that the Project

Manager was compelled on 25 March 2018 to issue its letter entitled "*Project 211 Group 1 Guide to Changes*".

30.3 **Design deficiencies** - for example the deficiencies between the DEWA Approved Load Schedules and the IFC Rev.3 LV Load Schedules<sup>15</sup> identified by Specon's letter of 5 April 2018.<sup>16</sup> This involved Specon providing a 60 page report on the impact of the inconsistent electrical loads on various pieces of equipment including Main Distribution Board's; Sub Main Distribution Boards; Distribution Board's, Control Panels, Motor Control Centre Capacitor Banks and Bus Bars and other major equipment. Until these issues were resolved, crucial parts of the first and second fix MEP works (including specialist sub-contractor trades) could not proceed. In relation to this:

30.3.1 On 10 May 2018, SBJV issued a "*Contractor's Instruction to Proceed*" No. 0128<sup>17</sup> to Specon to carry out the development and submission of small power, lighting and ELV layout drawings for non-standard Type A and Type B hotel guestrooms, on behalf of the Employer's designers.

30.3.2 Following a request from the Employer's designers, on 10 June 2018, SBJV issued a "*Contractor's Instruction to Proceed*" No. 0162<sup>18</sup> to Specon to review, engineer, reformat and incorporate all requirements to "*meet the associated Authority and Fire and Life Safety codes of practise in the Contract and resubmit the sketches for workshop sign off by the Designer (WSP) and the Engineer (DEC)*".

30.3.3 On 11 June 2018, SBJV issued a "*Contractor's Instruction to Proceed*" No. 0171<sup>19</sup> to Specon to carry out any required engineering and co-ordination of the current electrical design information previously delivered. The instruction included a letter from the Employer's Project Manager, Faithful & Gould, which acknowledged that the Hotel Single Line Diagrams did not contain sufficient detail and the resources

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<sup>15</sup> Electrical Load Schedules are critical as they affect the load ratings of all equipment on the electrical distribution network. The electrical load schedules need to be clarified in advance so that calculations can be performed to ensure code compliance before materials, equipment and components are selected.

<sup>16</sup> **Exhibit C-5.**

<sup>17</sup> **Exhibit C-6.**

<sup>18</sup> **Exhibit C-7.**

<sup>19</sup> **Exhibit C-8.**

required the input of 15 electrical draftsman and 5 electrical design engineers for a period of 100 working days.

- 30.4 **Incomplete and revisions to design issued for construction** – Further delays were caused throughout the life of the Project by the Employer's near-constant amendments to the design, which inevitably meant that SBJV delayed the provision of the design required by Specon to carry out its works. The IFC drawings for the Project were revised numerous times, reflecting the failure to provide a finalised and co-ordinated design to allow Specon's Subcontract Works to proceed, with on-going changes occurring throughout, and even at very late stages of the Project. For example, by late 2018, 1,147 Engineer's Instructions had been issued in addition to which the Project also introduced additional procedures by way of "SDR's" (Site Design Resolutions) and "FCR's" (Field Change Requests) to seek to expedite delays caused by the failure to co-ordinate design. In addition, up to December 2020, Specon had to submit 2,547 Requests For Information to clarify the design intent to cover scope gaps and design deficiencies. As a result of the above, ultimately, Specon were required to produce over 27,000 shop drawings compared to the originally envisaged 5,200 shop drawings.
- 30.5 A disrupted flow of design information also meant that fully coordinated IFC shop drawings could not be produced. For example, air-conditioning duct sizes and layouts may impact the sprinkler system design or cable tray layout. In addition, when only partial designs are available, Specon were prevented from deploying its labour to install various systems in a logical and efficient sequence.
- 30.6 Variations and late instructions not only impact the value of works tendered, they also impact the execution of the original works. To address the changes in design, parts of the Subcontract Works are '*suspended*' (by the issue of suspension orders by the Engineer) while the IFC designs are revised. Frequent changes issued through variations and late instructions increases the difficulty of construction and disrupts the work sequence. Re-planning of work, rearrangement of workforce is necessary when variations and late instructions are received, which also significantly reduces manpower productivity.
31. As a result of the constantly evolving design Specon was also unable to demobilise its planned engineering and CAD resources when it had planned and indeed, had to substantially increase its engineering and CAD resources and also employ third parties to supplement the same.



32. In addition to delays caused by the incomplete design, significant delay was also caused by Specon being prevented, timeously or at all, from obtaining access to levels and areas to carry out its works. In accordance with the Subcontract, SBJV was contractually obliged to provide Specon with sufficient access to, and possession of, the Site to allow Specon to carry out its planned works in accordance with its programme.
33. However, the Project levels and areas were handed over late and incomplete to Specon and access to them was obstructed. SBJV's completion of civil and architectural works was essential to provide Specon with the necessary access to the site to perform 1st and 2nd fix MEP activities and also final fix MEP activities. However, SBJV failed to progress timeously or at all with such activities. Simply by way of example, Specon's letter of 18 June 2018 identifies areas of the Site that ought to have been made available to Specon in accordance with the Rev 06 Programme.<sup>20</sup> The letter attaches 15 pages of records showing the planned and actual Site access to perform 1st and 2nd fix MEP activities in 420 separate areas and highlights the number of days of actual and ongoing delays in each area. The status of handover as at 18 June 2018 is summarized in the table below and shows that only 16 out of a total 128 zones had been handed over by SBJV.

Access to commence 1 <sup>st</sup> and 2 <sup>nd</sup> fix MEP activities		
Level	Planned No. of zones to be handed over as per Rev 06 programme	Actual No. of zones handed over as per Rev 06 programme
Basement	21	None
LG	7	None
GL	5	None
L1, L2, L3	9	None
HT1 L5 – 42	37	5
HT2 L4 - 34	30	5
HT3 L4 - 23	19	6
<b>Total</b>	<b>128 zones</b>	<b>16 zones</b>

34. Specon was also prevented from meeting its planned progress by constant interference in the Project by SBJV (which would direct on an ad-hoc basis, weekly and sometimes even daily, which levels and areas of the Site Specon was able to work on) and Specon was persistently hindered by the SBJV's other subcontractors, with whom Specon's works interfaced, who had failed to progress

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<sup>20</sup> Exhibit C-9.

their work timeously or at all. As a result, Specon's access to, and/or possession of levels and areas of the Site on the relevant as planned dates was prevented or severely inhibited due to:

- 34.1 late and/or incomplete access to levels and areas;
  - 34.2 the preceding construction works either being incomplete or poorly performed; and
  - 34.3 the continued presence of SBJV and/or its other subcontractors' labour, plant and materials in levels and areas which had purportedly been handed over to Specon.
35. As a result of SBJV's micro-management and restriction of the levels and areas in which Specon could work, Specon was also forced to increase its labour resources due to the failure of SBJV and its subcontractors to perform their respective obligations. Further, additional resources were consequently required to supervise and manage the additional labour resources (which had been introduced by Specon over and above those considered necessary within the resource loaded "Rev 06" programme).
36. The Subcontract Works were also delayed and disrupted as a result of the preventative measures introduced by the UAE government for the construction sector as a result of the COVID-19 pandemic.
37. As a result of the above, over the course of the execution of the Subcontract Works, numerous differences and/or disputes arose between Specon and SBJV in relation to the amounts to be certified and payable under the Subcontract, including in relation to the evaluation of Specon's claims for extensions of time.
38. Clause 14.1 of the Subcontract entitles Specon to an extension of time of the Subcontract Works in the following circumstances:

*"Extensions of Time*

*14.2 If the Subcontractor shall be delayed in the completion of the whole of the Subcontract Works or any Section or Portion thereof by any:*

*a) events or circumstances in regard to which the Contractor is entitled to receive from the Engineer an extension of the Time for Completion of the whole of the Works or of any Section or Portion of the Works under the Main Contract;*

*b) instruction pursuant to Sub-Clause 2.2 (Decisions, Orders and Instructions under Subcontract) to which paragraph (a) of this Sub-Clause 14.2 (Extensions of Time) does not apply; or*

*c) breach of the Subcontract by the Contractor or for which the Contractor is responsible,*

*then in any such event the Subcontractor shall be entitled to such extension of the Subcontractor's Time for Completion of the whole of the Subcontract Works or any such Section or Portion thereof as may in all the circumstances be reasonable."*

39. As a result during the period from 24 April 2018 to 18 October 2020, Specon submitted five interim consolidated extension of time claims as follows:
- 39.1 **Extension of Time and Prolongation Claim No. 1 dated 24 April 2018** – The results of Specon's delay analysis sought demonstrated, on a prospective basis, an extension of time to the Subcontractor's Time for Completion of 312 days from 31 August 2019 to 7 July 2020 and sought recovery of prolongation costs in the amount of AED 19,888,083.70.
  - 39.2 **Extension of Time and Prolongation Claim No. 2 dated 13 February 2019** – The results of Specon's delay analysis demonstrated an extension of time to the Subcontractor's Time for Completion of 297 days from 31 August 2019 to 23 June 2020 and sought recovery of prolongation costs in the amount of AED 23,653,361.00 and disruption costs of AED 15,606,354.00.
  - 39.3 **Extension of Time and Prolongation Claim No. 2.1 dated 16 June 2019** – This consolidated claim assessed delay events that had been notified up to 28 February 2019 and demonstrated an extension of time to the Subcontractor's Time for Completion of 327 days from 31 August 2019 to 22 July 2020 and sought recovery of prolongation costs in the amount of AED 27,785,793.00.
  - 39.4 **Extension of Time and Prolongation Claim dated 7 October 2019** – This consolidated claim assessed delay events that had been notified up to 31 August 2019 and demonstrated an extension of time to the Subcontractor's Time for Completion of 420 days from 31 August 2019 to 24 October 2020 and sought recovery of prolongation costs in the amount of AED 41,476,129.00.
  - 39.5 **Extension of Time and Prolongation Claim No. 3 dated 18 October 2020**– Specon's last interim consolidated claim assessed delay events that had been notified up to 31 July 2020 and requested an extension of time of 779 days from 31 August 2019 to 18 October 2021. The claim also sought recovery of prolongation costs of AED 104,055,634.

40. It is submitted that the assessment of any extension of time should be calculated contemporaneously at or around the time of the delaying events. However, the administration of the Subcontract was not carried out fairly by SBJV who failed to operate the contractual machinery for extensions of time. Despite the obvious delays for which SBJV was responsible, SBJV failed to substantively respond to Specon's Extension of Time and Prolongation Claims no's 1, 2, 2.1, and dated 7 October 2019 referred to at paragraphs 39.1 to 39.4 above.
41. This failure to operate the contractual machinery for extension of time and refusal on the part of SBJV to treat Specon fairly and in good faith from the outset, set the tone for the Project and provides an example of the difficulties Specon faced throughout its involvement in the construction of the Project. SBJV failed in its obligations under clause 18.2 to notify Specon of its steps in securing contractual benefits from the Employer on account of events or circumstances encountered in carrying out the Subcontract Works.
42. Eventually by its letter dated 22 January 2020,<sup>21</sup> SBJV did agree to meet with Specon to discuss its interim claims for extensions of time including the method for evaluating the impact of delay events; in circumstances where SBJV stated it had not agreed a methodology with the Employer/Engineer and therefore contended it was unable to confirm an accepted methodology to Specon. That meeting took place on 18 February 2020 where SBJV proceeded to reject Specon's claims alleging in its letter of 1 March 2020 that there were a number of *"fundamental deficiencies in the claims and programme analysis for the interim claim submissions which necessitate a full resubmission of the claim."*<sup>22</sup> This was denied by Specon for the reasons set out in its letter of 28 June 2020.<sup>23</sup>
43. On 4 February 2021,<sup>24</sup> SBJV provided what was described as a *"detailed review"* of Specon's Extension of Time and Prolongation Claim No. 3 dated 18 October 2020. SBJV alleged the claim was *"deficient in form and content and therefore does not demonstrate M2M3 claim for time and costs. There are valid delay events that can potentially give entitlement, however, the EOT submittal documentation does not provide a robust delay analysis, as assessed according to the guidelines of delay analysis protocol AACE 29R-03, having incorrect progress updates and an*

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<sup>21</sup> **Exhibit C-10.**

<sup>22</sup> **Exhibit C-11.**

<sup>23</sup> **Exhibit C-12.**

<sup>24</sup> **Exhibit C-13.**

*unapproved baseline programme."* SBJV continued to identify a potential EOT entitlement to Specon of **292 days** in "*Attachment C.2 SBJV Review with Limited Corrections*" but then contended that was not a "*determination of nor award of an entitlement for time and/or costs.*"

44. It is evident that the reason for the differences between the parties was the result of SBJV's raising issues as to Specon's use of *Rev 06* as the baseline programme used for the Subcontract Works, while the basis of SBJV's review were "*Rev 07*" and "*Rev 08*" programmes, which were never approved in accordance with the provisions of the Subcontract.
45. Separately to Specon's extension of time claims, on 31 March 2021, some **19 months after** the original completion date for the Subcontract, SBJV wrote informing Specon that SBJV had been granted an extension of time from the Employer from 30 April 2019 to 10 December 2019.<sup>25</sup> The extension of time appeared unconnected to Specon's notified claims and was stated by SBJV to be pursuant to clause 14.2(a) of the Subcontract i.e. SBJV simply passed to Specon an extension of time apparently granted to SBJV under the Main Contract. This is why the date of 30 April 2019 was stated in SBJV's letter (as this was SBJV's Completion Date under the Main Contract). Specon's original Completion Date was in fact 31 August 2019, making the extension of time of 101 days only. SBJV concluded by stating that the Employer was in the process of reviewing additional claims that would further extend the Project's time for completion and that Specon would be notified on the conclusion of those reviews. However, Specon heard nothing further from SBJV in this regard or indeed in relation to any contractual benefits SBJV received from the Employer on account of events or circumstances encountered in carrying out the Subcontract Works.
46. In light of Specon's applications for extensions of time and additional amounts, Specon and SBJV entered commercial negotiations and, in an attempt to resolve their differences, the parties entered into the Subcontractor Supplementary Agreement dated 6 June 2021 ("**Supplementary Agreement**")<sup>26</sup> in which Specon's claims for variations, delay and disruption, and SBJV's claims for liquidated damages and/or delay, were consolidated into additional payments ("**Incentive Payments**") payable to Specon on the condition that SBJV completed certain Works (i.e., the Final Milestone) by **2 December 2021**.<sup>27</sup>

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<sup>25</sup> **Exhibit C-14.**

<sup>26</sup> **Exhibit C-15.** It is understood that SBJV had negotiated a similar agreement with the Employer.

<sup>27</sup> It is understood that the Employer and SBJV entered into a similar agreement upstream, although the details are not known.

47. If, for whatever reason, the Final Milestone was not achieved by SBJV by 2 December 2021, the sums properly due to Specon were to be determined in accordance with the terms of the Subcontract.
48. The additional payments due under the Supplementary Agreement were to comprise the following:
- 48.1 an offer of AED 737,903,856 in respect of Specon's entitlements under the Subcontract, including its claims for variations, delay and disruption up to 31 August 2020; and
- 48.2 an "*Incentive Payment*" of between AED 34 million and AED 99 million, which would be payable if the Final Milestone were achieved by SBJV and would include claims for variations, delay and disruption before 31 August 2020.
49. It followed that any claims by Specon for variations, delay and disruption **after** 31 August 2020 would be addressed separately to the above amounts.<sup>28</sup>
50. In parallel, the parties entered into a Protocol to Agree on 10 June 2021 ("**Protocol to Agree**")<sup>29</sup> pursuant to which a third party engineer<sup>30</sup> was to be appointed to value Specon's claims and disputed variations up to 31 August 2020, which would form the basis for the determination of the "*Incentive Payment*" referred to at paragraph 48.2 above. It was agreed pursuant to the Protocol to Agree that Specon's entitlements under the Subcontract for the Works (including variations and claims up to 31 August 2020) would be capped at AED 850 million. In addition, it was agreed that Specon's minimum entitlement would be AED 785 million.

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<sup>28</sup> It should be recognized that post-August 2020, additional varied works of approximately AED 43 million were instructed by SBJV.

<sup>29</sup> **Exhibit C-16.**

<sup>30</sup> Ultimately, no such appointment was made by the parties.

## WRONGFUL TERMINATION

51. Pursuant to the Supplementary Agreement, Specon achieved timeous completion of five milestones, readiness for inspection by the Department of Civil Defence and full DEWA power (project wide) by 3 November 2021. As at this date, Specon had completed approximately 93% of the Subcontract Works.
52. Despite this, on 7 November 2021,<sup>31</sup> SBJV issued a notice to Specon wrongfully giving 14 days' notice of termination allegedly in accordance with clauses 24.2(a) and (b) of the Subcontract. In this notice, SBJV alleged various breaches of the contract by Specon, all of which were unfounded, as Specon had pointed out to SBJV in its letters of 2, 3 and 4 November 2021.<sup>32</sup> SBJV appeared to rely on alleged poor performance and delays by Specon, citing Specon's alleged failure to:
- 52.1 address SBJV's 64 alleged concerns recorded in SBJV's first letter of 2 November 2021, within the 5 days stipulated;<sup>33</sup>
  - 52.2 address the alleged lack of manpower recorded in SBJV's second letter of 2 November 2021, within the 5 days stipulated;<sup>34</sup> and
  - 52.3 provide a Performance Bond in the requested amount of AED 82,500,000.
53. Also on 7 November 2021, and without any prior indication, SBJV made a demand to HSBC Middle East Limited ("**HSBC**") for payment of the entirety of the sums under the Performance Bond, Retention Bond and Advance Payment Bond (collectively "**Bonds**") issued under the Subcontract in favour of SBJV, which sums were paid to SBJV by HSBC on 14 November 2021 in the aggregate sum of **AED 133,154,586**.<sup>35</sup>

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<sup>31</sup> **Exhibit C-17.**

<sup>32</sup> **Exhibit C-18; Exhibit C-19; Exhibit C-20.**

<sup>33</sup> On **2 November 2021**, SBJV wrote to Specon referring to 64 alleged "*concerns*" regarding the progress of the Subcontract Works including references to slow progress, reduced labour on site and damage to third party works. The contractual status of these "*concerns*" is not clear; however, the letter concluded with reference to clause 24.1 of the Subcontract and gave Specon only five calendar days to remedy these alleged defaults. See **Exhibit C-21**.

<sup>34</sup> On **2 November 2021**, SBJV wrote to Specon a separate letter which again alleged a lack of manpower on site and slow progress. In a similar vein, five calendar days were given in accordance with clause 24.1 to rectify this issue. See **Exhibit C-22**.

<sup>35</sup> **Exhibit C-23; Exhibit C-24; Exhibit C-25.**

54. On 21 November 2021, SBJV purported to terminate the Subcontract pursuant to clause 24.2 and instructed Specon to depart from site.<sup>36</sup>
55. SBJV did **not** ultimately achieve timeous completion of the Final Milestone on 2 December 2021. Indeed, following the termination of the Subcontract there was no demonstrable improvement with (and if anything, an even slower rate of) progress and, as at the date of this Request for Arbitration, the Project has still not yet been completed by SBJV.
56. The purported justification for Specon's termination will require examination by the Tribunal, but on any view it is clear that SBJV failed to take any account of its own breaches of contract and inadequacies in deciding to terminate. SBJV's decision making process was wholly flawed. Specon maintains that the termination was wrongful and there was no proper basis for demands to be made under the Bonds. Specon will be seeking damages from the SBJV in connection with the same.
57. It is in that context that the lack of merits of SBJV's position, can be seen from the following fairly unusual features of the case:
- 57.1 there was a termination when the Subcontract was very close to completion;
- 57.2 only one, very limited, extension of time was awarded to Specon, late during the course of the Subcontract, but it is likely to be accepted that SBJV was aware that very substantial further extensions were due to Specon during the life of the Subcontract and no doubt SBJV was itself claiming and/or had been granted such extensions of time under the Main Contract<sup>37</sup>; and
- 57.3 despite SBJV's allegations as to Specon's performance, the Project continued to be afflicted by delay even after the termination of the Subcontract and a number of other subcontractors have also had their subcontracts terminated and bonds cashed by SBJV. It appears SBJV have adopted a "*scatter-gun*" approach in seeking to apportion blame to anybody but themselves for the delays to the Project.

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<sup>36</sup> **Exhibit C-26.**

<sup>37</sup> It should be recognised that SBJV has also submitted significant claims for extensions of time to the Employer and must therefore acknowledge as a matter of fact that the project was severely affected by delay for which Specon is not responsible.



58. Without prejudice to Specon's position that SBJV's termination of the Subcontract was unlawful, SBJV was in any event obliged, by clause 24.4 of the Subcontract, to issue a final valuation. Clause 24.4 provides that in the event of exercising its right to terminate under clause 24.2, SBJV shall "*as soon as may be practicable after such expulsion of the Subcontractor, make such investigation and enquiries as it may think necessary and from the results thereof shall prepare a final account which in its opinion shows all amounts which should have been within paragraphs (a), (c) and (d) of Sub-Clause 23.3 (Payment after Vacation from Site) had the expulsion been an instruction by the Contractor to the Subcontractor to vacate the Site under Sub-Clause 23.1 (Subcontractor to Vacate Site)*". In those circumstances, the final account would show the amounts payable by SBJV to Specon, being:
- 58.1 the Subcontract value of the Subcontract Works carried out in according with the Subcontract;
- 58.2 any amounts not otherwise included under paragraphs 23.3 (a) or (b) to which Specon was entitled under the Subcontract; and
- 58.3 any amounts which SBJV was entitled to deduct or otherwise recover from the Subcontractor.
59. To date, no such valuation or final account have been produced by SBJV apparently as the costs to complete are still being ascertained.
60. Pursuant to clause 25.1 of the Subcontract,<sup>38</sup> following the wrongful termination by SBJV, Specon issued a formal Notice of Dispute on 14 December 2021.<sup>39</sup>
61. Specon and SBJV subsequently met as part of a Dispute Committee Meeting on 23 December 2021 in an attempt to amicably settle the dispute and/or differences between them. Unfortunately, the minutes could not be agreed.<sup>40</sup>

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<sup>38</sup> See paragraphs 7 and 8 above.

<sup>39</sup> **Exhibit C-27.**

<sup>40</sup> **Exhibit C-28.**

62. Following the above meeting, on 13 January 2022, Specon wrote to SBJV regarding a suggested way forward in relation to a number of the issues in dispute pending final determination of the dispute in arbitration.<sup>41</sup> SBJV rejected Specon's proposal by its letter dated 24 January 2022.<sup>42</sup>
63. As a result, the dispute and/or differences remained unresolved and as a result on 24 January 2022, Specon served a notice of intention to refer the dispute to arbitration.<sup>43</sup>
64. As identified at paragraph 7 and 8.4 above, a further period of 56 days is to be allowed following the service of the notice of intention to refer the dispute to arbitration before any Request for Arbitration can be served by Specon. This period expired on 22 March 2022, without the Parties having been able to agree a resolution to the dispute.

#### **SPECON'S REQUEST FOR RELIEF**

65. Specon wishes in this reference to finally resolve the disputes stated in its notice of intention to refer the dispute to arbitration dated 24 January 2022. In total, Specon seeks payment under the Subcontract or otherwise at law, in the presently estimated sum of **AED 625,000,000** and reserves the right to amend and restate its previous claims as required, following an independent assessment of its entitlement under the Subcontract. Accordingly, Specon respectfully asks the Tribunal to make an order for relief in its favour and seeks the remedies summarised below:

##### **Delay and Disruption & Time Related Claims**

- 65.1 an Extension of Time;
- 65.2 Prolongation Costs;
- 65.3 a declaration that SBJV was in breach of contract for failing to issue instructions for variations and/or issue EOTs and/or SBJV provided a constructive instruction to accelerate;
- 65.4 a declaration that the Respondents were in breach of Contract for failing contemporaneously or at all to award EOT's and/or to obtain and/or notify Specon of any contractual benefits SBJV received from the Employer on account of events or

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<sup>41</sup> **Exhibit C-29.**

<sup>42</sup> **Exhibit C-30.**

<sup>43</sup> **Exhibit C-31.**

circumstances encountered in carrying out the Subcontract Works and loss and damage flowing from that breach; and

- 65.5 loss and damage flowing from delay and disruption caused by SBJV and/or other parties for whom SBJV is contractually responsible.

**Value of the Work carried out**

- 65.6 Payment of the value of works complete as at Termination including variations, materials and equipment left on Site.

**Wrongful Termination**

- 65.7 a declaration that SBJV was in breach of contract in purporting to terminate Specon's employment under the Subcontract; and
- 65.8 loss and damage flowing from the said breach.

**Performance Bond, Retention Bond and Advance Payment Guarantee Bond**

- 65.9 a declaration that SBJV's call on the Bonds was unlawful and repayment of the Bonds;
- 65.10 an order that monies paid to SBJV under the Bonds should be repaid; and
- 65.11 loss and damage flowing from the said breach.

**Financial costs arising out of SBJV's breaches of contract and interest**

- 65.12 Costs incurred as a result of having to extend the Bonds held by SBJV; and
- 65.13 Interest and/or financing charges in relation to any amounts held due to Specon, as of the date those amounts are determined to have become due to Specon, and continuing up to the date of payment of the award.

**Arbitration costs**

65.14 Payment of the costs of this arbitration including all expenses Specon has incurred, legal counsel, experts, and consultants as well as Specon's own internal costs in pursuing this arbitration and all of the fees and expenses of the Tribunal.

**General**

65.15 Any such further orders, directions, declarations or other relief as may be appropriate.

**20 May 2022**

*DLA Piper Middle East LLP*

**DLA PIPER MIDDLE EAST LLP**

### Index of Exhibits to the Request for Arbitration

<b>Exhibit No.</b>	<b>Description</b>	<b>Date</b>
C-1	Conditions of Subcontract	13 March 2018
C-2	Letter from SBJV to Specon	3 April 2017
C-3	Letter from SBJV to Specon	3 August 2017
C-4	Form of Sub-Contract Agreement	14 March 2018
C-5	Letter from Specon to SBJV	5 April 2018
C-6	Contractor's Instruction to Proceed No. 0128	10 May 2018
C-7	Contractor's Instruction to Proceed No. 0162	10 June 2018
C-8	Contractor's Instruction to Proceed No. 0171	11 June 2018
C-9	Letter from Specon to SBJV	18 June 2018
C-10	Letter from SBJV to Specon	22 January 2020
C-11	Letter from SBJV to Specon	1 March 2020
C-12	Letter from Specon to SBJV	28 June 2020
C-13	Letter from SBJV to Specon	4 February 2021
C-14	Letter from SBJV to Specon	31 March 2021
C-15	Subcontractor Supplementary Agreement	6 June 2021
C-16	Protocol to Agree	10 June 2021
C-17	Letter from SBJV to Specon	7 November 2021
C-18	Letter from Specon to SBJV	2 November 2021
C-19	Letter from Specon to SBJV	3 November 2021
C-20	Letter from Specon to SBJV	4 November 2022
C-21	Letter from SBJV to Specon	2 November 2021
C-22	Letter from SBJV to Specon	2 November 2021
C-23	Letter from SBJV to HSBC - Performance Bond	7 November 2021
C-24	Letter from SBJV to HSBC - Retention Bond	7 November 2021

C-25	Letter from SBJV to HSBC - Advance Payment Bond	7 November 2021
C-26	Letter from SBJV to Specon	21 November 2021
C-27	Notice of Dispute	14 December 2021
C-28	Minutes of the Dispute Committee Meeting	4 January 2022
C-29	Letter from Specon to SBJV	13 January 2022
C-30	Letter from SBJV to Specon	24 January 2022
C-31	Notice of Dispute	24 January 2022