INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

LOTUS PROJE AKARYAKIT ENERJI MADENCILIK TELEKOMINIKASYON İNŞAAT SANAYI TAAH. VE TIC. A.Ş.

Claimant

and

TURKMENISTAN

Respondent

ICSID CASE NO. ARB/24/13

ORDER OF DISCONTINUANCE

Members of the Tribunal
Ms. Meg Kinnear, President of the Tribunal
Ms. Lucy Greenwood, Arbitrator
Mr. John M. Townsend, Arbitrator

Secretary of the Tribunal
Mr. Govert Coppens

Date of dispatch to the Parties:
April 14, 2026

REPRESENTATION OF THE PARTIES

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I. INTRODUCTION

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") on the basis of the Energy Charter Treaty, which entered into force on April 16, 1998 (the "**ECT**"), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on October 14, 1966 (the "**ICSID Convention**").

2. The Claimant is Lotus Proje Akaryakıt Enerji Madencilik Telekominikasyon İnşaat Sanayi Taah. Ve Tic. A.Ş. ("**Lotus**" or the "**Claimant**"), a company organized under the laws of the Republic of Türkiye.

3. The Respondent is Turkmenistan (the "**Respondent**").

4. Together, the Claimant and the Respondent are referred to as the "**Parties**".

5. The arbitration concerns what Lotus describes as its investment in the construction of energy facilities in Turkmenistan.

6. The Tribunal confirms that it has reviewed and duly considered all of the submissions and arguments presented by the Parties. The Tribunal recites only those points which it considers most relevant for its decision, and an absence of express reference to specific facts or arguments should not be taken as an indication that such facts or arguments have not been considered.

II. RELEVANT PROCEDURAL HISTORY

7. Lotus filed the Request for Arbitration ("**RFA**") against Turkmenistan on April 13, 2024, supplemented by letters of May 13 and 16, 2024. In the RFA, Lotus alleged that Turkmenistan breached its obligations under the ECT, causing loss or damage to Lotus of "no less than EUR 100,000,000.00."[1] On May 20, 2024, the ICSID Secretary-General

[1] RFA, para. 156(b).

registered the RFA, as supplemented, pursuant to Article 36 of the ICSID Convention and Rules 6 and 7 of the ICSID Institution Rules.

8. By correspondence dated September 24, 2025, the Parties informed ICSID that they had agreed to constitute the tribunal in this case pursuant to Article 37(2)(a) of the ICSID Convention, whereby the tribunal would consist of three arbitrators, with one arbitrator appointed by each Party, and the third, presiding, arbitrator appointed by the two co-arbitrators in consultation with the Parties.

9. On January 23, 2025, the ICSID Secretary-General informed the Parties that the Tribunal had been constituted pursuant to Rule 21(1) of the ICSID Rules of Procedure for Arbitration Proceedings 2022 (the "**ICSID Arbitration Rules**" or "**AR**"). The Tribunal is comprised of Ms. Lucy Greenwood, a national of the United Kingdom, as arbitrator appointed by the Claimant; Mr. John Townsend, a national of the United States of America, as arbitrator appointed by the Respondent; and Ms. Meg Kinnear, a national of Canada, as President of the Tribunal appointed by the co-arbitrators in consultation with the Parties (the "**Tribunal**").

10. Pursuant to ICSID Arbitration Rule 29(1), the Tribunal held a first session with the Parties on February 19, 2025, by video conference.[2]

11. Procedural Orders No. 1 and 2 were issued on February 27, 2025. Annex B to Procedural Order No. 1 set out a timetable for the arbitration that contemplated a hearing on jurisdiction and merits commencing on September 21, 2026.[3]

12. The subsequent progress of this case is well documented in Procedural Orders No. 3 to 9. On March 7, 2025, the Respondent filed a request for Security for Costs ("**SFC**") pursuant to AR 53. The Parties filed extensive briefs on the SFC request, and the Tribunal held a hearing on the issue on April 16, 2025.[4]

[2] *See* Procedural Order No. 3, April 28, 2025 ("**PO3**"), paras. 1-4.

[3] Procedural Order No. 1, February 27, 2025, Annex B.

[4] PO3, paras. 6-8.

13. On April 28, 2025, the Tribunal issued Procedural Order No. 3 granting the request for SFC, ordering the Claimant to post a USD 2 million security in favor of the Respondent, and giving the Claimant an election as to the form of SFC (bank guarantee, cash into an escrow account, or ATE insurance coverage). The Order required the Claimant to provide the Tribunal sufficient details to approve the security, and to post the security within 30 days of such approval.[5]

14. On May 28, 2025, the Claimant advised the Tribunal that its third-party funder had agreed to pay for SFC, but that it required an extension of time to comply with the order. The Tribunal granted an extension until June 30, 2025 for the Claimant to revert to the Tribunal with details concerning the SFC it had obtained. In the interim, the procedural calendar continued to run.[6]

15. On June 9, 2025, the Claimant asked for an extension of time to file its Memorial. The Tribunal granted an extension to July 28, 2025, with a commensurate extension of time for the Respondent.[7] On July 2, 2025, the Tribunal issued an updated procedural timetable and gave the Claimant until July 5, 2025 to provide an update on obtaining SFC.[8]

16. In early July 2025, the Claimant advised the Tribunal and the Respondent that it elected to provide SFC in the form of an ATE policy issued by Neova Katilim Sigorta A.S., backed by a reinsurance policy issued by Mosaic Insurance.

17. The Claimant filed its Memorial on Jurisdiction and the Merits on July 28, 2025.

18. Between July 5 and September 12, 2025, the Parties exchanged information and questions about the proposed terms of the ATE and the Tribunal posed several questions concerning the proposed policy. During this exchange the Claimant agreed to many (but not all) changes or additions to the policy terms requested by the Respondent.

[5] *Id.*, para. 86.

[6] Procedural Order No. 4, June 2, 2025, para. 6.

[7] Procedural Order No. 5, June 18, 2025, para. 14.

[8] Procedural Order No. 6, July 2, 2025, para. 4.

19. At the same time, significant confusion about the ATE remained. On August 14, 2025, the Tribunal invited the Claimant to advise when it would provide the updated Neova draft policy (i.e., the "**Neova-Lotus Insurance Policy**") and to provide the updated insurance policy schedule, reinsurance policy schedule and anti-avoidance endorsement reflecting the amendments agreed to by the Claimant on July 30, 2025.[9]

20. By September 18, 2025, it was evident that the Parties had different understandings of the policy, and the Tribunal was not in a position to approve (or disapprove) the SFC policy. As a result, the Tribunal convened a remote hearing with the Parties on September 26, 2025 to clarify the terms of the proposed policy and the Parties' respective positions.

21. By the end of the hearing a number of issues were clarified, but a number of unaddressed issues remained. The Claimant undertook to provide a clear, updated and complete Neova-Lotus Insurance Policy that, to the extent possible, addressed all outstanding issues that had caused confusion. This version was to be discussed with the Respondent and then submitted to the Tribunal and the Respondent by October 15, 2025. The Respondent was to comment on the policy by October 24, 2025, and thereafter the Tribunal would consider whether the new version of the policy could be approved.[10]

22. The Claimant provided an updated policy on October 15, 2025, which the Tribunal reviewed. The Tribunal assessed that it now had sufficient information, and it approved of the ATE policy with several minor clarifications. As a result, the Claimant was given 30 days (until November 26, 2025) to put the ATE policy into effect. The Tribunal also addressed a motion by the Respondent concerning the status of documents that might be addressed in the Claimant's Reply.[11]

23. The Claimant did not put the ATE policy into effect by November 26, 2025, as it was required to do. Instead, on November 26, 2025, the Claimant sent a request for a 3-month suspension of the proceeding pursuant to AR 54, claiming the Parties had recently held

[9] Procedural Order No. 7, September 29, 2025, para. 7.

[10] *Id*., para. 24.

[11] Procedural Order No. 8, October 27, 2025, para. 16.

constructive discussions and that there was a genuine possibility of a settlement that would resolve the dispute.

24. By letter dated December 3, 2025, the Respondent denied that any settlement discussions had been held, stated that it had no intention of settling the matter, and that it did not consent to a suspension pursuant to AR 54. The Respondent also requested an immediate suspension of the proceeding pursuant to AR 53(6) and dismissal of the arbitration if the Claimant failed to meet its obligations regarding SFC within the following 90 days.[12]

25. The Tribunal held a remote hearing on December 17, 2025 to address these cross-applications. At the hearing, the Claimant confirmed that the SFC was not yet in place, and, consequentially, that it had not notified the Tribunal or the Respondent concerning putting the SFC in effect.

26. In its Procedural Order No. 9, the Tribunal denied the Claimant's request for a suspension pursuant to AR 54 as it was clear that the SFC had not been posted, that the time for doing so had expired, and that the Respondent did not consent to such a suspension. The Tribunal granted the Respondent's request for a suspension pursuant to AR 53(6) and suspended the proceeding effective December 18, 2025. The Tribunal also asked the Parties to provide it with a status report by March 23, 2026, so that it could determine next steps.[13]

27. On March 17, 2026, the Claimant advised the Tribunal and the Respondent that negotiations between the Claimant and the Respondent's officials were ongoing and possessed "genuine potential to yield an amicable solution." As a result, it requested an extension of the deadline to meet its obligations regarding security for costs to March 30, 2026, and an extension of the deadline to submit the status report to April 2, 2026.[14]

28. On March 18, 2026, the Respondent informed the Tribunal "that no discussions of any kind are taking place with Claimant." On the same day, the Tribunal directed the Claimant to

[12] Procedural Order No. 9, December 18, 2025, para. 10.

[13] *Id*., paras. 23-24.

[14] Email from Claimant to the Tribunal, March 17, 2023.

provide its status report by March 23, 2026, and to advise the Respondent of the names of the interlocutors with whom it was discussing settlement.

29. The Claimant provided its status report on March 23, 2026. In the report it explained that serious efforts were underway to obtain the SFC at a commercially viable rate and also that it was hopeful the settlement negotiations would succeed. Given the prejudice that discontinuance would cause the Claimant and its creditors, the Claimant asked the Tribunal to maintain the status quo and to revisit the question of discontinuance in mid-May 2026.[15]

30. The Respondent replied on March 28, 2026, advising that the interlocutors identified by the Claimant were not authorized to negotiate or settle the matter on behalf of the Respondent and that the Respondent was not interested in settlement given its assessment that the claim lacked merit. It underlined that the Claimant had received at least 5 extensions since the SFC was ordered in April 2025 yet still had not posted security. The Respondent urged the Tribunal to discontinue the proceeding.

31. On April 1, 2026, the Tribunal asked the Parties to attend a case management conference on April 10, 2026. On April 7, 2026, the Claimant sent the Tribunal and the Respondent an update on recent developments in the matter. The Claimant recounted that the funder had decided not to proceed with the SFC for financial and commercial reasons and hence it had not been able to implement the SFC. It advised that it was actively seeking alternative funding solutions at a commercially viable rate. The Claimant appended a decision from the Bankruptcy Administrators of Lotus taking note of the failure to post SFC, stating that Lotus was seeking alternate sources of funding and SFC, and urging its counsel to obtain a short extension of time to secure the funding.[16]

32. The Claimant urged the Tribunal not to discontinue the matter, stating that "the procedural accommodation sought by the Claimant remains strictly limited to the period ending on 15 May 2026."[17]

[15] Claimant's Status Report, March 23, 2026.

[16] Ankara Bankruptcy Court, Case No. 2016/30, Decision No. 41, April 6, 2026.

[17] Email from the Claimant to the Tribunal, April 7, 2026.

33. On April 9, 2026, in response to a query from the Tribunal, the Respondent advised that it would address the Claimant's most recent submission at the case management conference on April 10 but noted two main points. First, that the Tribunal had ordered the Claimant to provide security on April 28, 2025, and that the Claimant had applied for, and the Tribunal had granted, five extensions of its time to do so since then. The Respondent argued that the Claimant "has had more than ample opportunity to secure the ordered security and has plainly demonstrated that it is unable to do so. Respondent submits that no further extensions are warranted." Second, "notwithstanding repeated confirmations from the Ministry of Justice that no amicable settlement discussions are ongoing, Claimant persists in asserting that such negotiations are underway. They are not." The Respondent stated that the Claimant's continued assertions to the contrary "must now be regarded as deliberate misrepresentations" and weighed "heavily in favor of dismissal pursuant to ICSID Arbitration Rule 53(6)."[18]

34. The Tribunal held a remote hearing with the Parties on April 10, 2026, focused on whether it should exercise its discretion under AR 53(6) to order discontinuance of the proceeding.

35. At the hearing, the Claimant noted that the bankruptcy administrators of Lotus and its counsel had been working diligently and in good faith to obtain funding and put SFC in place. It advised that its funder had recently decided not to fund the matter any longer, although it was unable to specify when the funder had withdrawn from the arbitration. However, the Claimant assured the Tribunal that it was not refusing to comply with the order but rather was simply unable to do so at this moment.

36. The Claimant argued that its bankruptcy was in large part, if not fully, due to the alleged misconduct of the Respondent which was the subject of the arbitration, and that discontinuance of the matter at this point would amount to a denial of access to justice for Lotus, its creditors and the bankruptcy administration.

[18] Email from the Respondent to the Tribunal, April 9, 2026.

37. The Claimant also stated that, while the interlocutors with whom it was engaging in the settlement discussions had not confirmed their involvement to the Respondent, the discussions were nonetheless real and promising, albeit informal.

38. The Claimant also candidly stated that in current circumstances it would need an extension of time, at least until May 15, 2026, and that ideally a longer extension would be granted as it could not guarantee when it would have a new funder and security in place.

39. The Claimant noted that working through a bankruptcy administration involved administrative delay, but that the bankruptcy administrators would also be exploring a new source of third-party funding in the very near future and were dedicated to obtaining such funding and preserving the arbitration.

40. The Respondent replied that the Claimant had had since April 2025 to put the SFC in place and had been given five extensions to do so. As of April 2026, the Claimant no longer had its funder and had not secured SFC, making the circumstances even more precarious than previously.

41. The Respondent also emphasized that that no settlement negotiations were ongoing, nor did it intend to settle the matter. The Respondent's counsel advised that their client had contacted the interlocutors identified by the Claimant and allegedly involved in settlement and that none of them confirmed they were involved in settlement negotiations.

42. The Respondent's counsel also noted the need for finality in the arbitration and expressed concern that further costs should not be incurred by their client, arguing that the Claimant had been given ample opportunity to meet its obligations but that the time had come to discontinue the proceeding.

III. ANALYSIS OF THE TRIBUNAL

43. Arbitration Rule 53(6) provides:

> *If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.*

44. As of the date of this Order, it is undisputed that the security for costs ordered in April 2025 has not been posted by the Claimant and that the proceeding has been suspended for far longer than 90 days. As a result, the only question is whether the Tribunal should exercise its discretion to discontinue the proceeding now.

45. AR 53 does not provide the Tribunal with specific criteria to apply in addressing this question. In exercising its discretion under AR 53(6), the Tribunal considers that it must address the likelihood of security being posted, weigh the implications of discontinuance for each of the Parties, and balance the relative prejudice to each Party of discontinuing or not discontinuing the arbitration.

46. The Tribunal recognizes that the Claimant and its counsel have worked tirelessly to obtain a commercially viable security so that the case may be pursued on its merits. However, the fact remains that, after over 11 months, the Claimant does not appear any closer to being able to post SFC. Indeed, the Claimant is now faced both with finding a new litigation funder and obtaining a source of SFC.

47. Likewise, the Tribunal understands that the Claimant is optimistic about the settlement discussions it is pursuing. However, given the few details available on the status of such discussions, the very informal status of such conversations and the position articulated by the Respondent on settlement, it is difficult to assume that a settlement is likely, much less imminent.

48. The Tribunal recognizes that a discontinuance of this arbitration will constrain, and perhaps prevent, the Claimant, its trustee in bankruptcy, and its creditors from recouping any of its losses allegedly arising out of its investment in Turkmenistan. It will leave the ongoing bankruptcy process to address such losses, apparently with minimal financial resources available to it. However, as a discontinuance pursuant to AR 53(6) does not have *res judicata* effect, the Claimant could recommence proceedings if it obtains funding and the ability to meet SFC.

49. Mindful of the consequences of discontinuance for the Claimant, the Tribunal has allowed the Claimant numerous opportunities to obtain the necessary security and has acceded to the Claimant's numerous requests for extensions of time to address the matter.

50. However, the situation of the Claimant must be balanced against the interests of the Respondent. Like all parties, the Respondent is entitled to a proceeding that is conducted in "an expeditious and cost-effective manner."[19] To date, the Respondent has participated constructively in several remote hearings and filed various submissions in the last year concerning posting of SFC. Nonetheless, this arbitration is on the cusp of a more cost-intensive phase where disclosure, submissions and a hearing will be scheduled. Were the arbitration to continue, the Respondent (and the Claimant) would incur significant costs in defending their interests.

51. Unfortunately, it does not appear likely that the Claimant will be able to post security in this arbitration soon, if at all. The Claimant is in the very difficult position of having lost its funder and not having a source of funding for SFC, and hence unable to take necessary steps to advance its case.

52. In light of these circumstances, the Tribunal believes that the time has come to discontinue this proceeding pursuant to AR 53(6) for failure to comply with the order to post SFC. As a result, it orders the matter to be discontinued effective on the date of this Order.

53. The Tribunal orders that the Parties share the costs of the Tribunal and administration of the case to date on an equal basis.

54. The Tribunal also orders that the Parties bear their own costs to date. It notes that neither Party applied for costs at the hearing of April 10, 2026, and that in any event, given the financial situation of the Claimant and the serious ramifications of discontinuance for the bankrupt estate and its creditors, it would not be appropriate to order costs.

[19] AR 3, "General Duties."

IV. DECISION

55. For the foregoing reasons, the Tribunal orders as follows:

a. This proceeding is discontinued pursuant to AR 53(6) as of the date of this order; and

b. The Parties shall bear their own costs and shall be equally responsible for the costs of the Tribunal and the administration of the arbitration to date.

Dated as of April 14, 2026:

[signed]
Ms. Lucy Greenwood
Arbitrator

[signed]
Mr. John M. Townsend
Arbitrator

[signed]
Ms. Meg Kinnear
President of the Tribunal