



**NOVICE ARBITRATION MOOTING COMPETITION
2018**

MOOT PROBLEM

NAMCO Moot Problem 2018

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KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION
ARBITRATION NO. KLRCA – 29 – 11 - 2017

Between

ACURA OILS (ASIA) PT. LTD.

...CLAIMANT

And

GOVERNMENT OF RHEA

...RESPONDENT

Background Facts

The Parties

1. Acura Oils (Asia) Pt. Ltd. ("**Acura**") is a multinational oil and gas company incorporated under the laws of Singapore.
2. Acura has over 20 years' experience in the oil and gas industry. Acura's successful projects include oil and gas exploration and development of offshore facilities in parts of Asia and the Middle East.
3. Chronos Frontiers Inc. ("**Chronos**"), a multi-billion dollar energy conglomerate based in the United States of America, is the holding company of Acura.
4. Republic of Rhea ("**Rhea**") is a tropical nation and a resource-rich archipelago in Southeast Asia.
5. Rhea is located in the South China Sea, some 300 km north of Sabah, Malaysia.

6. Rhea is governed by a federal parliamentary republic under the English common law system.
7. Rhea's core industries are crude oil, precious stones and tourism. Beyond its pristine waters, Rhea is surrounded by extensive reefs and numerous oil fields.
8. Rhea has strong diplomatic ties with its ASEAN neighbours. Rhea's active commercial presence in the region is seen through various bilateral trades with its neighbouring ASEAN states, amounting to a total of USD 30 billion in 2016.
9. The bilateral trades are regulated under bilateral treaties with the respective states, one of which is the "*Bilateral Investment Treaty for Mutual Economic Advancement*" with Singapore dated 17 August 2000 ("**Investment Treaty**").

Discovery of Oils

10. Sometime in December 2015, Rhea's geologists discovered a large untapped oil field in the basin around its islands.
11. In February 2016, Rhea carried out a field evaluation on the oil field to determine the volume of oil and gas in the reservoir.
12. Realising the potential economic benefits this discovery may bring to Rhea, a company called Gaia Energy Initiatives Inc. ("**Gaia Energy**") was established to undertake the development of the oil field.
13. The Government of Rhea directly appointed Gaia Energy's management and funded its operations.

14. Gaia Energy managed and executed its own policies and the Government of Rhea did not interfere with the company's governance and operations.

The Tender for Project Blackgold

15. Gaia Energy invited oil exploration companies to submit a tender to develop the oil field in September 2016. The national project to develop the oil field is named as Project Blackgold.
16. To qualify for tender submission - companies must possess a minimum of 10 years' experience in oil and gas exploration, have a minimum financial liquidity of USD75 million and submit a strategic plan in developing the oil field.
17. The successful company will be given the concession to operate, maintain and extract from the oil fields for a period of 15 years under a production sharing arrangement with Rhea. Experts estimate the oil field would produce an average of 20,000 barrels per day.
18. Teraju Awana Bhd. from Malaysia, Citadel Oil Ventures Inc. from USA and Achuneiger from Europe submitted tenders for Project Blackgold.
19. Chronos, wishing to establish a foothold in the emerging Southeast Asia energy industry, directed Acura to submit a tender.
20. Commencing from September 2016, Acura expended the following costs over the next few months in respect of the tender submission:
 - a. USD 1.2 million in consultation fees to prepare the required strategic plan for the tender; and
 - b. USD 2 million in relocation exercise when Acura transferred its resources, including manpower, to its project site in Rhea.

21. The national oil company of Rhea, National Oils of Rhea (“**National Oils**”) also submitted a tender for Project Blackgold – despite only having 9 years of experience in the industry.
22. National Oils’ board of directors include government officials and prominent corporate figures from Malaysia, Singapore, Indonesia and Thailand respectively (albeit in minority). One of the directors is a high-ranking government official from Rhea’s Ministry of Energy.

Backlash against the participation of National Oils

23. International media raised their concerns over National Oil’s participation, citing words such as “*vested interest*” and “*natural preference towards state-owned entity*”. One news portal, Asean Financial Post (“**AFP**”), even went as far to publish the following “*the whole tender process is merely an elaborate sham to award a direct tender to National Oils*”.
24. Rhea promptly responded via an official statement by its Minister of Energy, Aryn Nadya. Minister Aryn stated that the tender process would be “*fair, transparent and based on merits*”.
25. Minister Aryn further affirmed that “*the Government will not tolerate any baseless aspersions against it. We will not hesitate to take stern actions against those who make false claims to smear the good name of Rhea.*”
26. Rhea’s national media is supportive of National Oil’s participation, unequivocally stating that “*the oils are in the sovereign waters of Rhea and National Oils should be given equal opportunity to develop it.*”

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The Tender Outcome

27. On 3 September 2017, after evaluating all bids received during the tender process, Gaia Energy awarded Project Blackgold to National Oils.

28. The Chairman of Acura, Mr. Irwin Goodweather, issued the following statement on his personal Twitter and Facebook accounts on the same day:

“The entire tender exercise is rigged! It’s a sham! In my fair view, it’s tainted by conspiracy and fraud to get its own company on board the project!”

29. When questioned by the media whether his social media posts relate to Project Blackgold, Mr. Goodweather firmly denied that the posts relate to Project Blackgold. He mentioned that *“Acura is involved in many energy projects in the world. I could be referring to any of them. After all, I am merely exercising my right to free speech.”*

The Dispute

30. On 5 September 2017, Acura issued a formal notice to the Government of Rhea to state that the Government had violated the Investment Treaty, in particular the following articles:

Bilateral Investment Treaty for Mutual Economic Advancement

Preamble

The Republic of Rhea and the Republic of Singapore equally desire to create favourable conditions for a mutual economic co-

operation and advancement of international trade between the two States.

Definition

“Investment” under the Treaty means every asset of an investor that has the characteristics of an investment including commitment of capital or other resources, expectation of gain or profit or the assumption of risk.

“State Investor” under the Treaty means the State, a State entity or an entity having significant presence in the State, that attempts to invest or investing into the territory of the other State.

Article 2

The States shall accord fair and equitable treatment to State Investors from a State investing into the other State.

Article 7

The States acknowledge that a State must accord fair treatment that is no less favourable to all State Investors, in like circumstances, as it accords to its own investor.

The Arbitration Proceedings

31. On 29 November 2017, Acura commenced arbitration proceedings against the Government of Rhea.

32. Acura invoked **Article 17** of the Investment Treaty as a basis for the arbitration proceedings against the Government of Rhea:

Article 17

To ensure neutrality of forum and venue, in the event of any dispute arising out of or in connection to this Treaty, parties shall resolve the dispute by way of arbitration at the Kuala Lumpur Regional Centre of Arbitration (“KLRCA”) under the KLRCA Rules.

33. Acura alleged that the Government of Rhea violated the Investment Treaty on the following grounds:
- a. The Government of Rhea vis-à-vis Gaia Energy did not exercise fair and equitable treatment by unfairly evaluating Acura’s tender for Project Blackgold; and
 - b. The Government of Rhea gave preferential treatment to its own entity with a view of awarding the tender to National Oils.
34. The Government of Rhea responded by stating that Acura is not entitled to commence arbitration under the Investment Treaty due to the following grounds:
- a. Acura’s tender is not a form of “investment” under the Investment Treaty. On this account alone, Acura does not have a stand to bring an action against the Government of Rhea under the Investment Treaty;

- b. be that as it may, the party awarding the tender is Gaia Energy and not the Government of Rhea. At all times, Gaia Energy and the Government are two separate entities under the law;
- c. hence, the Government should not be made a party to the arbitration as it was not the party responsible in evaluating and deciding the tender award; and
- d. Acura, through the statements of its Chairman, made defamatory statements against the Government of Rhea.

THE ISSUES BEFORE THE ARBITRATION TRIBUNAL

35. At the arbitration proceedings before this Tribunal, parties agreed to resolve the following issues:
- (I) Whether Acura is entitled to invoke Article 17 of the Investment Treaty to commence arbitration against the Government of Rhea.
 - (II) Whether the Government of Rhea is the proper Respondent to this arbitration proceedings.
 - (III) Whether the tender submitted by Acura for Project Blackgold constitutes an “investment” and whether the Government of Rhea unfairly evaluated Acura’s tender.
 - (IV) Whether the Government of Rhea can hold Acura liable for the alleged defamatory statements made by Mr. Irwin Goodweather.

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INSTRUCTIONS

1. If you have any clarifications regarding the background facts, please e-mail your clarifications to mootauthor.namco@gmail.com
2. The clarifications must be submitted by **10.00 p.m., Monday, 11th December 2017** (to follow Malaysian Standard Time pursuant to Rule 1.2 of the NAMCO Rules & Regulations). No late submissions will be entertained.
3. The clarifications are restricted to the background facts contained in the moot question.
4. Teams are reminded to ensure that the request clarifications are relevant and material to the Moot Question. The Moot Author has absolute discretion to determine whether a question is relevant or material.
5. The NAMCO Secretariat will provide the full set of clarifications in a manner and at a date which will be given in due course.