

**1st SURANA & SURANA – SCHOOL OF LAW, CHRIST
INTERNATIONAL INVESTMENT & ARBITRATION
MOOT COURT COMPETITION 2018**

20 – 23 September 2018

Professional Partner &
Joint Organiser



Host &
Joint Organisers



Surana & Surana
International Attorneys

School of Law,
CHRIST (Deemed to be University)
Bengaluru

Venue

School of Law
CHRIST (Deemed to be University)
Hosur Road, Bengaluru – 560 029
Karnataka, INDIA
Email: moot@law.christuniversity.in

CHANGES TO THE MOOT PROPOSITION

Under **Representation by the Parties on page 7 of the Proposition:**

TO AVOID CONFUSION, PLEASE SUBSTITUTE THE FOLLOWING:

Claimant No. 2 - Oxford hired the international law firm of Diplomacy & Associates to represent it before an ad hoc tribunal operating under the Singapore International Arbitration Centre (SIAC) rules.

WITH:

Claimant No. 2 - Oxford hired the international law firm of Diplomacy & Associates to represent it before an ad hoc tribunal operating under the **UNCITRAL Rules**.

CLARIFICATIONS

1. Clarification is needed on the seat of arbitration and ad-hoc tribunal

Answer: The seat of arbitration is different for both Claim 1 and 2, and is mentioned in the proposition. UNCITRAL Rules shall apply in both the arbitrations, not SIAC. Kindly make this correction in the proposition.

2. Whether the laws of Binda are *pari materia* to India?

Answer: No clarification required

3. Whether the teams are supposed to submit two memorials, one for each claim, given that the rules state that “venue” must be mentioned in the memorial?

Answer: Whether the teams are supposed to submit two memorials, one for each claim, given that the rules state that “venue” must be mentioned in the memorial? Memorials must be submitted for both sides (Claimant and Respondent). The rules state that the Forum being approached must be mentioned in the Memorial. Needs no clarification.

4. Whether both the BITs have entered into force?

Answer: Yes.

5. Whether Oxford invested in Binda before coming into force of Petrollar Binda treaty?

Answer: No. After coming into force.

6. In Annexure-5, the notice of challenge of Arbitrator, was it pursuant to UNCITRAL rules or SIAC rules?

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7. Memorial Rules under Section VIII (j) states that the cover for the side... Claimant/Respondent needs the name of the forum on it.

Considering that the Problem has two claims with two different adhoc tribunals and two different venues and forums, what is it that we put on the cover of the memorial? What claim takes the cover page? Or do we put both details on one single cover? Or do we add two cover pages?

Answer: The rules under Part VIII (Memorials) specify that there must be one cover page for each memorial. Since the proposition incorporates two different ad-hoc tribunals for the claims mentioned, the teams are allowed to include details of both in a **single cover page** in

consonance with the contents as mentioned in **Rule VIII (j)**. *There can, however, be one page per claim for summary of facts and summary of pleadings.*

8. In paragraph 16 of the Moot Proposition, it is stated that Binda is a dualist Nation-State with treaty-making subject to Article 253. However, in the 4th line of the same para, it is suggested that treaty law is considered on par with national legislation by default. Kindly clarify whether it is necessary for Binda to ratify international treaties such as the two BITs in the proposition. If it is necessary, kindly clarify whether Binda has ratified these treaties as per Article 253.

Answer: Article 253 requires treaty-making to be ratified. Binda has not ratified the 2 treaties. Assume that Binda's Constitution is identical to India's Constitution.

9. With regards to Claim 2, the Moot Proposition states that the Arbitration shall be conducted as per SIAC rules. However,

- i. the relevant BIT only authorises ICSID rules and UNCITRAL rules. As per Art. 16.1 of the BIT for Claim 2, The only rules under which a disputing investor can submit a claim to arbitration are the ICSID convention, the ICSID Rules, and the UNCITRAL Arbitration Rules 2010. Therefore, the entire problem is rendered redundant if SIAC Rules are to be followed. Kindly clarify the discrepancy.

Answer:

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ii. Further, the relevant BIT also prescribes rules of its own which effectively nullify all other rules, especially with respect to the standard for Arbitrator Disqualification.

Answer: Teams may read the treaty provisions in harmony with the UNCITRAL Rules 2010.

10. In paragraph f of Facts relating to Claim 2, the second line states “under an exemption in Bingee’s National Legislation”. However, Bingee is a state, while Binda is a Nation. Therefore, kindly clarify whether the phrase should be “Bingee’s state legislation”, or “Binda’s National Legislation”.

Answer: It should read “under an exemption in Binda’s national legislation, were not affected...”

11. In Claim 1, the Moot Proposition states that Airfresh went on appeal to the Appellate NGT. However, there exists no Appellate NGT as the NGT operates via Circuit Benches. In fact, the Moot Proposition itself notes this under paragraph b, page 5, by stating “the NGT is meant to adjudicate expeditiously on matters placed before it, and the Appellate Authority is primarily the Supreme Court”. The only form of remedy which does not involve going to the Supreme Court would be a review petition before the relevant NGT. Accordingly, kindly clarify what manner of appeal this was, and by which body it was heard/dismissed.

Answer: Teams may proceed with the given information.

12. The treaty between Binda and Nuland does not have any "full protection and security" clause. However, Claim 1 has an issue where the CLAIMANT alleges a failure of Binda to provide its' investment with full protection and security. Please clarify whether this is a typographical error.

Answer: This is to inform that no clarification is required. Teams are to analyse from the proposition and the annexures given, in its entirety and argue on the basis of the same. There is no error in the Annexures referred to in the question.

13. Whether both the parties have accepted the SIAC rules in claim 2? Whether both the parties have accepted the UNCITRAL Rules under claim 1?

Answer: In both Claim 1 and 2, parties have accepted the UNCITRAL Rules.

14. Is a table of abbreviations required?

Answer: Yes

15. What is the citation style required?

Answer: 19th Edition, Bluebook

16. Is the clause "*Please note that for all purposes of this Competition the laws and procedures of treaty making of Binda are identical to that of Republic of India*" limited to treaty making? Or does it include all the laws of India?

Answer: Limited to treaty making; Also refer to Clarification Question No. 8;

17. With regards to Claim 2: Whether Oxford exhausted its domestic remedies?

Answer: Teams need to look into the facts and background information provided in the problem set and take legal positions on the same.