

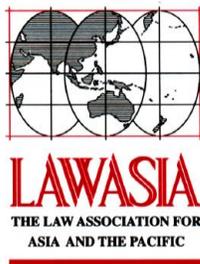


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# 12<sup>th</sup> LAWASIA International Moot

## ADDITIONAL CLARIFICATIONS TO THE MOOT PROBLEM

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Organiser of the LAWASIA International Moot Competition

# ADDITIONAL CLARIFICATIONS

## ADDITIONAL CORRECTION TO THE MOOT PROBLEM

Paragraph 38 of the Moot Problem should read as follows:

‘U Thein Kyaw discussed Green’s proposal with one of his closest confidantes in SPT, U Soe Myint. U Soe Myint informed U Thein Kyaw that the morale of the employees and students are at an all time low, as they have lost respect for their Japanese counterparts.’ (emphasis added)

The first line to the Partnership Agreement (Annexure 1) should read as follows:

‘We, Asamura International Development Co., Ltd. and Shwe Pwint Thone Co., Ltd. are in agreement of the following at Lucky Moon Tea Shop on 9 September 2008.’ (emphasis added)

## ADDITIONAL CLARIFICATIONS (in no particular order)

The answers to the questions raised<sup>1</sup> by a few institutions are as follows:-

Question 1: Who are the Claimant and the Respondent in this case?

**Answer: Claimant: AID, Respondent: SPT**

Question 2: Was 'JADEYE' registered copyrights or patents under Japanese law or any other law?

**Answer: No.**

Question 3: Does Dr. Fiona Lum hold a managerial position in AID?

**Answer: No. She is a non-executive director.**

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<sup>1</sup> Kindly note that not all questions raised are answered here as some of the questions raised relate to issues that are to be addressed during the moot while the answers to some questions can be discovered by the mooters themselves.

Question 4: Did U Thein Kyaw, the owner of SPT freely consent to the arbitration proceedings?

**Answer: Yes.**

Question 5: In paragraph 35, were benefits (including material and immaterial) earned from AID's USD 1.2 million contract with HCL shared with SPT or only AID enjoyed it?

**Answer: Shared.**

Question 6: In paragraph 16, were the second hand machinery and equipment including dump trucks, excavators, and drilling machines not available in Myanmar until being imported from Japan?

**Answer: There were no locally manufactured machinery and equipment, and as such all companies would import their machinery and equipment from other countries, including from Japan.**

Question 7: Was the jadeit venture operated with or without permit from the Myanmar Foreign Investment Commission (MIC)?

**Answer: It was without permit.**

Question 8: Were the jade-mining machinery and equipment sourced, purchased and reconditioned by AID registered under the name of AID at any where? Or SPT was the only one who was recorded as owner of them on the relevant permits in Myanmar?

**Answer: There are no applicable product registration requirements. SPT is named as the importer of the equipment and machinery.**

Question 9: Was AID the only one who spent money on purchasing the machinery and equipment mentioned in paragraph 16?

**Answer: Yes.**

Question 10: In paragraph 17, after March 2009 when parties made capital contributions to the partnership, has any machinery or equipment been provided by AID and imported into Myanmar by SPT?

**Answer: Yes.**

Question 11: How and where did AID and SPT use the dump trucks, excavators, drilling machines mentioned in paragraph 16, in which activities involved in the jadeite venture?

**Answer: For exploration, extraction, breaking and cutting. At the Hpakant site.**

Question 12: What were the operational costs? Did the capital contributions cover the operational costs borne by AID before the funds were made in March 2009?

**Answer: The capital contributions were made on top of the operational costs already borne by AID. AID had spent almost USD 1 million on the venture as of February 2009.**

Question 13: In paragraph 17, how was the fund used afterward?

**Answer: For operational costs.**

Question 14: Who pay the salary for AID's employees working in Myanmar under the Partnership Agreement?

**Answer: Their salary were paid by AID.**

Question 15: Where did Joe Yamashita created the JADEYE? In Japan or in Myanmar?

**Answer: Mainly in Myanmar.**

Question 16: Which activities mentioned in paragraph 19 was JADEYE used for?

**Answer: Mainly for exploration and extraction. Also used for breaking and cutting, and some processing work.**

Question 17: Was Joe Yamashita one of 25 AID's employees working in Myanmar under the Partnership Agreement?

**Answer: Yes.**

Question 18: Did Joe start working on JADEYE before or after U Thein Kyaw contacted Dr. Yugi Asamura to discuss the partnership between AID and SPT?

**Answer: After.**

Question 19: What were the positions of Dr. Yugi Asamura and Dr. Fiona Lum Ka Ching in AID? How many shares do they own each?

**Answer: Dr. Yugi Asamura holds 70% shares and is the chairman. Dr. Fiona Lum is not an existing shareholder of AID. She is a non-executive director.**

Question 20: Whether the land in Hpakant is a personal property of U Thein Kyaw or is it the property the partnership between AID and SPT ?

**Answer: U Thein Kyaw.**

Question 21: In Paragraph 35, it is stated that AID entered into a contract with HCL to supply jades. What types of jades are being supplied, are they raw jades or processed jade?

**Answer: Semi-processed jades. Not end products.**

Question 22: As in Paragraph 31, when will the new legal reforms be implemented? Or has it been implemented?

**Answer: It has already been implemented.**

Question 23: The machinery and the equipment of jade mining were transferred by land or by sea?

**Answer: Sea.**

Question 24: is the JADEYE software registered under any law in Japan?

**Answer: No.**

Question 25: Is there any Bill of Lading that addresses SPT as a consignee/endorsee for the machineries and equipment?

**Answer: Yes.**

Question 26: Under whose order did Joe Yamashita created the software? AID or the partnership?

**Answer: Neither. The idea came to his mind when he was thinking of how to improve the efficiency of their operations for financial efficacy.**

Question 27: Was there a title deed for the machineries and equipment held by AID in Japan?

**Answer: No. Just invoices and receipts for the purchase of the machinery and equipment.**

Question 28: Is the software is listed as one of the partnership property?

**Answer: There is no list of partnership properties.**

Question 29: Is the software registered under patent or copyright in Japan?

**Answer: No.**

Question 30: Who bore the cost of the shipping of the machineries from Japan to Myanmar?

**Answer: SPT.**

Question 31: How did both parties consent to solve the disputes by arbitration?

**Answer: By mutual agreement after meeting Farid Zakwan.**

Question 32: How did Dr. Yugi Asamura order the software to be installed in all the computers and equipment used on the sites?

**Answer: By asking Joe Yamashita to do so.**

Question 33: Does AID have its own office or any kind of divisions in Myanmar?

**Answer: Yes. A registered company, fully-owned subsidiary of AID.**

Question 34: Was AID or Dr. Yugi Asamura aware of the fact that U Thein Kyaw attempted to present Joe Yamashita with USD 18,000 in cash?

**Answer: Yes.**

Question 35: Are both parties aware of the facts stated in paragraph 20?

**Answer: Yes.**

Question 36: Does JADEYE have its EULA or any other kind of terms of use? If any, does it include regulations on reversal engineering?

**Answer: No.**

Question 37: To which extent have SPT managed to conduct reversal engineering?

**Answer: SPT has not done anything yet as they are waiting for the outcome of the arbitration.**

Question 38: Have U Soe Myint been bribed by Patrick Green or his company?

**Answer: No.**

Question 39: Have SPT or U Thein Kyaw paid for JADEYE?

**Answer: No.**

---End of additional clarifications---