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2024 MOOT PROBLEM

The Palm Attack: Oil vs Spoil

The Federation of Palmenna

1. The Federation of Palmenna (“**Palmenna**”) is a country located in Southeast Asia. It is bordered by the Independent State of Kenweed to the north and connected to the Republic of Sokiyasu via a causeway in the south. Palmenna is a Member State of the Commonwealth of Nations. Prior to gaining independence, Palmenna was under the British colonial administration. Due to its desire to engage in international cooperation and promote economic development, Palmenna maintains a historical and contemporary connection to the Commonwealth.
2. Palmenna is known and characterised by diverse landscapes, including coastal plains, mountain ranges and tropical rainforests. Its capital city, Appam, is a vibrant metropolis known for its modern skyline and diverse shopping districts. The country typically experiences two monsoon seasons: the southwest monsoon from May to September and the northeast monsoon from November to February. The climate situation in Palmenna has been proven optimal for palm oil cultivation which requires a tropical climate with consistent warmth, high humidity, sufficient rainfall and well-drained soil. In 2020, Palmenna exported around 15 million metric tons of palm oil and palm-based products which were valued at USD35 billion. In that same year, the palm oil industry contributed an estimated USD10 billion to Palmenna’s total gross domestic product. This makes Palmenna one of the world’s leading producers of palm oil.

The Independent State of Kenweed

3. The Independent State of Kenweed (“**Kenweed**”) has a diverse geography which includes mountainous regions in the north, extensive plains and plateaus in the central and tropical beaches and islands in the south. Its plateau region is characterised by dry, arid landscapes and is primarily agricultural with rice farming being a prominent activity. Kenweed’s strategic location at the crossroads of Southeast Asia has contributed to its appeal as a tourist destination and facilitated trade and cultural exchange throughout history. Tourism is vital for Kenweed, contributing almost 30% to its GDP and employment. However, the tourism industry is highly vulnerable to external shocks, such as natural disasters, political instability and global health crises.

4. The political instability in Kenweed is no secret. The country faces military coups and street protests almost every year. The political uncertainty in Kenweed has undermined investor confidence, disrupted economic activities, and hindered long-term planning and development. This eventually led to poorly regulated environments such as labour exploitation, low wages, poor working conditions and lack of social protections. In light of this, the newly elected Prime Minister Gan Ridhimajoo pledged to take urgent action to tackle its *'sick economy'* and provide for a more stable revenue for the country. *"I will do whatever it takes to help the people. Cash handouts no longer work. I will invest for this country and make sure it gets the revenue it deserves"* said Gan moments after he was appointed as Prime Minister in January 2018.

The Neoteric

5. Following his success at the General Elections, Prime Minister Gan immediately established the Ministry of Trade and Investment ("**MTI**") to explore alternative methods of generating revenue for the country from within, and beyond its borders. After establishing MTI, Prime Minister Gan decided to hold a dual role in his administration and later appointed himself as the Minister of MTI. His decision received harsh criticisms and backlash from the leader of the opposition party, Ms Soh Kwee Sun who was quoted saying *"This man is a joke. He has now officially put himself in a position of conflict since government funds that are being approved by the Prime Minister are now being channelled to another ministry held by the same person. Where is accountability? There is none because the Minister of MTI will report to the Prime Minister and there is no way the Prime Minister is going to question his own doing in another ministry!"*. Prime Minister Gan later instructed his lawyers to issue a cease-and-desist letter against Ms Soh. Following the press statement, several enforcement and investigative actions were coincidentally initiated against Ms Soh and her political party. Ever since, Ms Soh has gone under the radar and reportedly lost her seat in her party elections.
6. Prime Minister Gan remained focused. Within one year of MTI's establishment, Prime Minister Gan has set up two wholly owned subsidiaries under MTI – Quick Tech Solutions Corporation and BRC Rubber Corp. These two companies were set up to specialise and invest in IT-related matters and rubber manufacturing and were already profiting hundreds of millions by the end of 2020. Prime Minister Gan's ability to grow Kenweed's economy and source of income received high praise from his international counterparts, many of whom initially criticised his decision to commercialise the Kenweed government.

7. Due to his expert understanding of business principles and skills, Prime Minister Gan was invited to meet some of the prominent companies and CEOs in Kenweed. On 2 February 2021, a meeting was held between Prime Minister Gan and the CEOs of KS Group (one of Kenweed's largest conglomerates, with interests in agribusiness and food processing), Ken Cement Group (a leading company in Kenweed with core business in cement, building materials and packaging), Pengko Bank (one of the largest banks in Kenweed and Southeast Asia), Makel Group (diversified conglomerate with interests in retail, real estate and hospitality), KLT Company Limited ("**KLT**") (Kenweed's largest energy company, involved in oil and gas exploration and distribution) and SZN Company Limited ("**SZN**") (a startup company with high ambitions of venturing into the sustainable energy sector). This meeting garnered the public's attention and further fuelled support for the government led by Prime Minister Gan. However, some questioned the presence of SZN at the meeting, citing the lack of track records and reputation proving that SZN was an established company in Kenweed.
8. At that meeting, Prime Minister Gan expressed his hopes that the companies would come together and collaborate with MTI to ensure a steady income for the government which will ultimately benefit the people of Kenweed. Prime Minister Gan assured the CEOs that the government will always give its support and provide the necessary approvals to ensure the successful management and growth of the Kenweed economy. Realising that this paves access to the government's resources, KLT's CEO immediately drew up a business proposal for Prime Minister Gan's consideration.
9. Two weeks after that meeting, KLT's CEO, Tara Sharma organised a lunch meeting with Prime Minister Gan to discuss potential collaboration for the oil and gas industry. CEO Tara Sharma is a prominent businesswoman and was ranked the top 20 outstanding female entrepreneurs and business leaders in the Asia-Pacific region by Forbes Asia 2019. She was previously rumoured to be dating Prime Minister Gan in 2012, where intimate photographs of the two were circulated on social media. The rumours however were never verified and soon after the leaked photos, CEO Tara Sharma got engaged to her long-term boyfriend, Luke Nathan. Luke Nathan is the owner of SZN and the son of Marie Nathan, a tycoon in Kenweed with extensive connections across many sectors. Marie Nathan is notorious for his ability to identify budding business opportunities in which he sees enormous potential. His motto is "*fake it till you make it*".

10. At the lunch meeting, Tara laid down the future of palm oil as a biofuel by combining 5% palm biodiesel with 95% petroleum diesel. The percentage of palm biodiesel is capped due to the available supply and high costs of palm oil in Kenweed. Tara convinced Prime Minister Gan that biodiesel from palm oil has certain advantages in its physical and chemical characteristics. This includes lower sulphur content and lower carbon build-up in a diesel engine. Prime Minister Gan was convinced and informed Tara that further discussions would ensue to materialise the proposal. On 16 May 2021, Mehstone Star Limited (“**Mehstone Ltd**”) was established for the purposes of harvesting, extracting and refining palm oil to produce biofuel. The MTI owns 60% of the shares in Mehstone Ltd whereas KLT owns the remaining 40% shares. In exchange for MTI holding the majority shares of Mehstone Ltd, KLT is given access to Kenweed’s limited palm oil plantations.

The Narcissist

11. Since 2020, Palmenna has been experiencing harsher rainfall and heavy flooding which have caused losses to its people and damage to the environment and its major cities. These societal and ecological challenges have been exploited as a political instrument to overthrow the incumbent government, led by Prime Minister Elsie. The situation was exacerbated when photographs surfaced showing Prime Minister Elsie indulging in her evening masala chai at the Majestic Seasons Hotel, a luxury establishment in Appam, during the flood season. Seizing this opportunity, opposition leader M Akbar garnered support from disgruntled citizens. M Akbar is a political nobody but for the fact that his father served as a Minister of Finance in Palmenna from 1997 – 2002. Wanting to prove his worth in honour of his late father, M Akbar was determined to make a name for himself with substantial political donations, M Akbar promptly organised the evacuation of at-risk individuals and pledged his party’s commitment to implementing measures to prevent such disasters in the future.
12. Inspired by the persuasive appeals of the charismatic M Akbar, citizens took to the streets in peaceful protest against Prime Minister Elsie, urging her resignation due to what they perceived as a lack of prompt action in addressing the flooding crisis. This wave of dissent sparked movements aimed at initiating a vote of no confidence in Parliament to replace Prime Minister Elsie. Following months of parliamentary manoeuvres, political negotiations and purportedly sponsored defections, the government under Prime Minister Elsie ultimately collapsed. Subsequently, M Akbar was elected as the new Prime Minister of Palmenna on 3 June 2021.

13. Filled with a sense of accomplishment at the thought of heralding a new chapter in the nation's leadership, Prime Minister Akbar took it upon himself to arrange several overseas visits to personally introduce himself to fellow world leaders. Given the geographical proximity between the two nations, Prime Minister Akbar was observed making two visits to Prime Minister Gan in Kenweed in June and July 2021. Desperate to instil confidence in his constituents, Prime Minister Akbar put forward a proposal for Palmenna to enter into a Memorandum of Understanding with Kenweed, with the aim of securing potential future investments for Palmenna. Prime Minister Gan responded with a smile and proposed to discuss the matter further in the presence of his "*business partner*".
14. In late July 2021, Prime Minister Akbar paid another visit to Prime Minister Gan. This time, their meeting included the presence of CEO Tara Sharma who had been assigned the task of exploring potential collaborations with Palmenna. Recognising the extensive presence of palm oil plantations across Palmenna, CEO Tara Sharma bounced the possibility of Mehstone Ltd setting up a subsidiary in Appam to stabilise the costs and revenue for the production of its biofuel. The setting-up of a subsidiary in Palmenna may also lead to the increase of the palm oil percentage in Mehstone Ltd's production of biofuel. Prime Minister Gan expressed agreement with the proposal and suggested that the new subsidiary prioritise the employment of at least 70% Palmennian citizens, thereby bolstering local employment rates and indirectly supporting thousands of livelihoods in Palmenna.
15. Prime Minister Akbar welcomed the idea but emphasised the importance of sustainability to his nation. Despite its economic importance, palm oil production in Palmenna faces sustainability challenges, including deforestation, biodiversity loss and environmental degradation. As such, M Akbar impressed the need to put in efforts to address these issues and implement sustainable practices. "*As long as you do what it takes to ensure your business is environmentally sound, I will help you and do whatever it takes for your company to set up in Palmenna. I even have some suggestions of strategic locations for you to set up your biodiesel plants*", said M Akbar.
16. On 27 August 2021, in the capital city of Palmenna, Prime Minister Akbar and Prime Minister Gan formalised their agreement by signing a Memorandum of Understanding outlining the 5 key principles and commitments agreed by both countries. The event garnered significant media attention at the request of M Akbar, who was perceived as achieving significant milestones within his first three months in office. A media personnel sighted Luke Nathan at the signing ceremony.

The PK-BIT

17. The signing of the MOU received mixed reviews and criticisms from the Palmennian citizens. While the majority of the netizens commended M Akbar's first big step as a Prime Minister, a smaller faction of the crowd opposed the view of working hand in glove with Prime Minister Gan. *"Gan is a gangster leader. He gets whatever he wants, and this is usually the first step. He may have fooled the naïve Akbar into getting what he wants"*, says a Birdie user. Another user, Kelvin Malhotra commented *"how do we know Akbar did not just give away our land to Kenweed? I heard that they are already ready to set up shop here cause stupid Akbar gave them lands. I never liked that opportunist Akbar. They better make sure whatever agreement they sign later will be made public"*.
18. These criticisms grew louder as they caught the attention of former Prime Minister Elsie who then demanded that any agreement signed and entered into between Palmenna and Kenweed be made accessible to the public to show accountability and so that the public is not misinformed. This topic later became the subject of the parliamentary discussion on 6 September 2021 where Prime Minister Akbar was cornered into disclosing all details leading up to the signing of the MOU. *"At the moment, I have nothing to disclose except for the MOU which only outlines both parties' commitment. Rest assured, currently, no other agreement has been signed. In any event, I am always advised by the Attorney General in all the country's legal undertakings. This is the same Attorney General that was appointed by former Prime Minister Elsie. So, if she trusted him enough to appoint him, she should trust him now as he continues to advise me"*, said Prime Minister Gan who then received a standing ovation from his cabinet members in Parliament.
19. Despite the minor unease among the parliamentarians and citizens of Palmenna, Prime Minister Akbar pushed for the materialisation of the agreement. Prime Minister Gan expressed his concerns and fear that pursuing the next step so soon will cause unhealthy work competition in Palmenna. Prime Minister Gan also informed that the short turnaround time provided in setting up the local corporation would also prevent Kenweed from ensuring the standard practices can be put in place. *"I want to make this business as environmentally sound as possible. But if we sign this quickly, I will need to rush the setting up of the local company. I will not have the resources to do it"*, said Prime Minister Gan. Prime Minister Akbar assured Gan that he would assist in any way possible and would not rush the timeline of submitting the necessary papers to

the relevant Ministry. Prime Minister Akbar also said *“you are my bro. I asked you to come and invest. What good am I if I now make your life difficult. Take your time dear friend, do only what you are able to at the moment. I am sure we will accommodate. I will remember to tweak certain things to your favour”*. Prime Minister Akbar later informed Gan that he had been advised by the Attorney General to keep the details and terms of the agreement confidential so that any further steps taken to formalise the business relations of both parties would not cause the public unnecessary unrest.

20. On 29 September 2021, the draft bilateral investment treaty was presented to Prime Minister Akbar’s cabinet. One of the key discussions was to ensure that the draft agreement took into consideration the nature of business the State of Kenweed was venturing into. As such, modifications were made to the draft agreement to cover the environmental challenges that may arise. The draft agreement subsequently obtained the cabinet’s approval. On 3 October 2021, Prime Minister Gan attended the signing ceremony of the Palmenna-Kenweed BIT (“**PK BIT**”) in Appam. It was later announced that the parties had decided to reinforce the longstanding traditional ties of friendship and cooperation between them. Despite requests for further elaboration on the terms contained in the PK BIT by the journalists present, both parties assured that everything will go smoothly and that the BIT will facilitate cooperation and utilisation of the greater business opportunities between the nations.

The Creation of Canstone

21. Following the successful signing of the PK-BIT, Canstone Fly Limited (“**Canstone**”) was incorporated in Palmenna on 26 October 2021. Mehstone Ltd owns 70% of Canstone whilst SZN owns 30%. It began operations in November 2021. Canstone successfully secured two biodiesel plants – one in Appam, the capital city of Palmenna and another in Karheis, a city closer to the northern part of Palmenna nearing the border to Kenweed.
22. Whilst appreciating the importance of Canstone, the board of directors of KLT reminded Tara of the need to stay focused on managing the business affairs of KLT in Kenweed. Following several internal discussions, it was determined that the nominees of SZN in Canstone will manage the day-to-day operations of Canstone. On the other hand, CEO Tara Sharma will determine the general policies relating to Canstone.
23. Since the creation of biofuel is still considered a rarity in Palmenna, Canstone faced a slight struggle in hiring employees who had the necessary expertise and background to run its operations. This is made more complicated since Canstone attempted to

stick to its promise of hiring at least 70% Palmennian citizens. When operations first started, Canstone was desperate to make profits and was getting pressured by both nations to be successful. Prime Minister Akbar needed to convince his cabinet members that allowing the incorporation of Canstone in its cities was beneficial to the economy of Palmenna. To ensure operations are not delayed, Canstone started posting job advertisements on the relevant portals – “*Young talents wanted! No prior experience needed.*” In an attempt to attract more young talents, all of Canstone’s adverts were accompanied by a handsome photo of Luke Nathan.

24. Since the postings of the adverts, applications started coming in and this included the role of the in-house experts who are responsible for ensuring that the machinery is in good working order and the plants are operating in accordance with the industry standards. Since CEO Tara Sharma is known not to compromise on the quality and standards of the biodiesel plants, a foreign expert from the Republic of Sokiyasu was hired as the second layer of protection. The foreign expert is expected to confirm and validate the findings of the in-house experts and is empowered to conduct any investigation on the procedures, machinery and safety operations of the plants should any reasonable suspicion that warrants an investigation arise. As such, Alan Becky was engaged as the QC to supervise the biodiesel plants in Appam and Karheis. Alan is recognised as one of the most seasoned professionals in the industry, having dedicated the past 13 years to overseeing biodiesel plants located around Southeast Asia. With a strong network and prior collaboration with CEO Tara Sharma, Alan is reputedly valued by Tara for his loyalty and trustworthiness.
25. Soon after his appointment, Alan requested the two in-house experts located in their respective plants to conduct a brief environmental assessment note and a report on the condition of the machinery and equipment (“**Report**”). At the early stage, the Report would be crucial for the biofuel plants to have a preliminary evaluation of the potential environmental risks associated with their operations and mitigate those risks. The Reports are conducted every 4 months (April, August, December) and presented to the stakeholders to ensure a transparent and informed decision-making process. Further, as a party to the United Nations Framework Convention on Climate Change (UNFCCC), Palmenna’s Ministry of Plantation Industries and Commodities issued a Five-Fuel Diversification Policy 2011 which envisions the use of environmentally friendly, sustainable and viable sources of energy to reduce the dependency on depleting fossil fuels; and enhanced prosperity and well-being of all the stakeholders in the agriculture and commodity-based industries through stable and remunerative prices.

26. Despite having to travel between the two cities to provide equal supervision of the plants, Alan preferred to spend most of his time in Appam. This is because Lee, the Senior Manager at the Appam facility, was a fellow graduate from Alan's university and spent their final year as roommates. At times, Alan would drop by the plant facility in Appam just to have a drink and chit-chat with the Senior Manager at the facility's executive lounge. As his leisure visits grew often, Alan's relationship with Fey Lin, the in-house expert stationed in Appam also grew closer and friendlier. A rumour amongst the employees then circulated that Alan was intimately involved with Fey Lin. When they were confronted by Lee to verify the truth of the speculation, Fey Lin said the rumour was ill-intended and driven by jealousy amongst the employees. Alan smirked and tapped the shoulder of the Senior Manager in a friendly manner.

The Palm Before The Storm

27. Due to Canstone's perseverance and the dedication of its workforce, Canstone achieved profitability by the end of 2022, contributing 20% to the total production capacity of 2,722,000 tonnes per year in Palmenna. In a press statement by Luke Nathan, it was announced that Canstone would generously reward its employees with substantial bonuses of up to USD 10k each. Canstone has pledged that profits will continue to rise as the company further delves into its operations. Due to Luke Nathan's consistent appearance in public, SZN was deemed the "*face*" and "*operating force*" of Canstone in Palmenna.
28. In mid-February 2023, Canstone faced its first real challenge in its Karheis facility where an unsigned note was received, purportedly by a neighbouring factory, detailing a potential leak in one of the tanks used to store the refined palm oil that has gone through transesterification. Transesterification is a chemical process in which palm oil is reacted with an alcohol and a catalyst to break down the triglycerides in the oil into methyl or ethyl esters (biodiesel) and glycerin. After transesterification, the oil mixture is stored in tanks made up of stainless steel which are compatible with biodiesel and resistant to corrosion, allowing the biodiesel to separate from the glycerine and any remaining impurities. Only after, the biodiesel is washed and purified to remove excess alcohol, catalyst residues and other contaminants.
29. Jakey Jake, the in-house expert at the Karheis facility immediately phoned Alan and requested for an urgent examination of the machinery and equipment at the facility. Alan arrived two days later and began the inspection. Following that, Alan examined the Report prepared in December 2022 to confirm his findings. Alan later signed off a report concluding that the note was a hoax and there was no sign of a leak as

suggested in the unsigned note. Jakey's request for a detailed investigation to be commenced into the Karheis facility was rejected by Alan. *"You are young and naïve. If I have to commence an investigation and invest the company's resources every time we receive unsigned reports, you will be driving this company to bankruptcy. If you still insist on the investigation, I will be happy to do it. But the costs of the investigation will be deducted from your next bonus"*, said Alan while letting out a chuckle. Alan left the Karheis facility after 3 hours to rush back to Appam. Before leaving the facility, Alan told Jakey that he would personally update the relevant stakeholders on the unfounded allegation of a "leaked leak" and propose for an environmental impact assessment ("EIA") to be conducted.

30. Two weeks following the incident, news portals reported cases of nearby farmers being hospitalised due to suspected contamination. Pursuant to reports made by the victims' families, investigations were conducted but the findings were not disclosed. Jakey was later informed by one of his employees that an undisclosed sum of compensation was paid to the victims in exchange for them withdrawing their reports. The source of the compensation is, however, unknown. Worried that this was caused by the alleged oil leak, Jakey travelled to Appam to meet with Lee and Alan.

The One That Got Away

31. Jakey appraised Lee and Alan of the developments in Karheis and shared his suspicions of the alleged cover-up. Jakey highlighted the personal relationship between Alan and Tara Sharma which may have led to the cover-up. Following the accusation thrown by Jakey, a heated discussion ensued where Alan informed Jakey that there was no proof to connect Canstone or Alan to the cover-up. The discussion went on for another 15 minutes. Nearby employees allegedly heard yelling going on in the room but could not make out the words that were said.
32. Alan then stormed out of Lee's office. He returned 10 minutes later with a thick white envelope in his hand. An employee then saw Jakey hurriedly leaving the facility. One employee noted that Jakey looked very happy as he left the facility. In that same evening, Lee called for an urgent meeting with the employees to avoid any speculations. Lee informed the employees that there was a misunderstanding about an incident that occurred in Karheis. Alan subsequently assured the employees that everything was under control and that any concerns should immediately be brought to the attention of Lee or himself to avoid any future misunderstanding. The next day, Alan travelled to Karheis and only returned to the Appam facility a month later.

33. On 6 September 2023, the Board of Directors had a meeting with the senior management of Canstone, including Luke Nathan. The Board meeting was also attended by Tara Sharma who travelled all the way from Kenweed. Alan appraised the Board members on the current status of the facilities – this included a presentation on the Reports prepared by the respective in-house experts. As the company is now generating large revenues, Luke Nathan and Alan requested for additional provisions and resources to be allocated during that meeting to allow for a thorough examination and potential upgrading of the feedstock processing equipment, fermentation tanks, reactors, storage tanks and power generation equipment. Alan also requested for a consulting firm to be hired to conduct an EIA on behalf of Canstone. Alan explained the need to have a locally qualified person with the necessary expertise in environmental science, ecology, engineering and other relevant fields to ensure that Canstone is well insulated. The Board responded that it would deliberate on the requests and get the necessary approvals from the stakeholders. Tara Sharma assured Luke Nathan and Alan that the Board will provide an answer no later than 15 December 2023. Until then, Alan decided to put further Reports on hold until the Board reached a decision.

The Disaster

34. Since early November, Palmenna has been experiencing heavy rainfall that lasted for several days. As rainfall continues, water levels in rivers and streams begin to rise. On 23 November 2023, news reports alerted of a flooding risk in the rural parts of the city in Karheis. Upon hearing this news, Alan travelled to Karheis to supervise the monitoring and control systems of the storage tanks. Automated monitoring and control systems are installed in storage tanks to track inventory levels, monitor temperature and pressure, and detect any abnormalities or leaks in the storage tanks. This allows operators to maintain optimal conditions and respond quickly to any issues that arise. Neighbouring factories at the Appam plant facility decided to immediately shut down their operations for the next 3 days and ordered an emergency evacuation. At that point, Lee attempted to contact Alan to confirm if Canstone should resume its operations. However, since Lee did not receive any call from Alan, he ordered operations to resume as normal and for all employees to continue working hard to get good bonuses.
35. As the weather settled in Karheis, the situation worsened in Appam. On 26 November 2023, the high rainfall intensity in the urban city caused water to accumulate on streets and low-lying areas. The high percentage of impervious surfaces like roads, highways and buildings in Appam exacerbated runoff and increased the risk of flash

flooding. On that day, Appam witnessed one of the worst flash floods it has ever experienced. The flood receded relatively quickly on the next day once the rainfall intensity diminished. However, the areas surrounding the Appam plant facility took more than a day for floodwaters to fully subside.

36. Shortly after the disaster subsided, nearby occupiers were admitted to the hospital due to respiratory tract injuries. The doctors found that the injury could have been caused by the inhalation of irritant gases or exposure to corrosive chemicals which had travelled through the inland waters or river. More than 129 people were affected in that area while 39 individuals were hospitalised. Among the 39 hospitalised, 13 of them were employees working at the Canstone plant facility in Appam. These hospitalised patients were exhibiting similar symptoms and had difficulty breathing. Upon hearing the news, former Prime Minister Elsie took to Birdie and expressed her views on what transpired – *“Today is a sad day for all. Today, news portals reported that 39 innocent Palmennian citizens suffered from respiratory tract injuries and were rushed to the hospital. These respiratory infections affected the citizens staying near the industrial area where Canstone, a creature of Prime Minister Akbar was found to be operating. At the time of the incident, Canstone was the only factory that was in full operation. This shows that they are willing to put their greed for money above the welfare and safety of our citizens. This is how little Akbar values the lives of our people for as long as he remains in power. These are your people. Speak up now and do not be silenced”*.
37. The comments by former Prime Minister Elsie gained traction and sparked outrage among the local activists in Appam. The activists, led by a nationalist, Kelvin Malhotra, took to the streets in protest against the government for its lack of action and hushed approach to resolving the issues.
38. In response to former Prime Minister Elsie’s comments, Luke Nathan called for an urgent Board meeting to discuss the issues. Shortly after the meeting, Luke Nathan posted on Birdie, expressing that *“Canstone is cognisant of the risks posed by the flood. That is exactly why we stationed our employees at our plants to ensure that all our facilities are maintained and to quickly respond to any emergency which may occur. Elsie should stop politicising issues without knowing the truth behind them...”*.
39. Following the flooding event, Canstone initiated an independent investigation into its facilities, revealing that the pressure relief valves on its storage tanks were compromised, possibly due to the impact of the floodwaters. Proper ventilation is crucial for preventing the accumulation of pressure or hazardous fumes within the

storage tanks. The proper functioning of the pressure relief valves in ventilation systems plays a vital role in maintaining a safe operational environment. Canstone swiftly repaired and enhanced its ventilation systems to minimise the impact of the incident and safeguard against future risks.

40. Canstone's internal doctor treated some of the affected employees but stated that it was inconclusive whether the infection was caused by the broken relief valve. In his medical report, Dr Ragu stated that *"the flood could have potentially carried other various toxic chemicals, dispersing them throughout the area and contributed to the spread of the infection. This seems to be a plausible cause of the infection"*.

The Legal Battle

41. High-spirited, the activists initiated legal actions against the Government of Palmenna and SZN on the grounds of negligence on 15 December 2023. The activists cited the inadequacies of Canstone's drainage and ventilation systems. At trial, several key allegations by the activists were made public:
 - 41.1. The drainage system in place exhibited flaws in its design and engineering. It lacked the capacity to handle significant volumes of liquid, especially during periods of heavy rain and flooding.
 - 41.2. Despite previous instances of flooding, heavy rain and warnings from experts regarding the vulnerability of the drainage system, the authorities failed to take proactive measures to mitigate these risks.
 - 41.3. The ventilation systems were found to be lacking in functionality and compliance with safety standards. The ventilation systems suffered from neglect and insufficient maintenance.
 - 41.4. The Government of Palmenna was lackadaisical in enforcing environmental laws and taking preventative measures against the impending floods.
42. In its vigorous defence against the lawsuit, SZN raised several objections, one of which is the contention that a thorough investigation cannot be conducted until the conclusion of the monsoon season. It argued that the volatile weather conditions during the monsoon made it challenging to accurately assess the extent of the damage and identify the root causes of the ventilation system failures, and in extension, the infection. SZN further argued that it had been wrongly named in the suit and that the

action should instead be solely against the Government of Palmenna. In this regard, SZN reserved the right to strike out the lawsuit brought against it.

43. Meanwhile, the Government of Palmenna argued that since the damage, injury and infection only occurred to citizens within the vicinity of Canstone's facility, the Government of Palmenna bears no liability in what transpired. *"This is an act of God, the heavy rain is a blessing to all. Even if you install a million-dollar worth of drainage and pipelines with the highest quality there is, there is still no guarantee that what happened will not happen. But one certain thing is that the Government is not at fault, and we have done all that we could to protect the citizens"*, argued the Senior Federal counsel for Palmenna.
44. The activists asserted that the urgency of addressing the systemic failures and neglect in the drainage and ventilation systems cannot be understated. Delaying investigations and remedial actions until after the monsoon season prolongs the exposure of Palmenna citizens to further health hazards. Immediate intervention is necessary to mitigate these risks and prevent further harm to the community. Further, it was contended that delays in conducting the investigation would compromise the integrity of the evidence and hinder the interest of justice.

The Ruling

45. On 14 February 2024, the High Court of Palmenna handed down its decision in favour of the activists. The High Court found the Government of Palmenna and SZN jointly liable for negligence and ordered for compensation to be paid to the victims of the incident.
46. When interviewed by the media, Kelvin Malhorta expressed that *"the High Court's decision is a vindication of the rights of those who have suffered due to the indiscriminate actions of the government and Luke Nathan!"*. On the other hand, Luke Nathan, who was photographed and interviewed right after the ruling was handed down said *"SZN is appealing against this decision. Our previous lawyers were negligent in protecting our interests and they have been terminated with immediate effect 3 days ago. SZN has always maintained that it was not the proper party to the suit. Despite this, our instructions were not executed by the previous lawyers. As such, we hope that justice will be achieved when the matter is heard at the Court of Appeal."*
47. The situation escalated with the Government of Palmenna appealing the High Court's decision in holding them liable for negligence and compensation. In a bid to reverse

the ruling, the Government of Palmenna enlisted the support of Jakey, who signed a statutory declaration after the ruling alleging that Canstone had been engaging in bribery to cover up cases relating to oil spills. Jakey further disclosed Alan's lackadaisical approach to his responsibilities, claiming that Alan had been signing off reports without proper scrutiny. *"I also state that I have been informed by my colleagues in the Appam facility that in most of his site visits, Alan would spend 80% of the time drinking with his friends in the executive lounge instead of conducting proper assessment and monitoring and supervising the plants. I reasonably believe that Alan's gross incompetence had caused the damage and injury to the citizens during the flood"* said Jakey in his statutory declaration.

48. However, the veracity of Jakey's claims was called into question when accusations arose that he may have been coerced into making these statements by the Government of Palmenna in exchange for a deal. Allegations surfaced suggesting that Jakey had previously accepted bribes from Alan to maintain his silence regarding the unethical practices. Amidst the controversy, Fey Lin emerged as a staunch supporter of Alan, vehemently defending him against the allegations made by Jakey, *"Alan is the most hardworking person I have ever met. He takes initiatives in making sure the plants are safe and kept in proper working order"*. Fey Lin's unwavering support further complicates the situation, adding layers of intrigue and confusion to the already contentious legal battle.

The Walk Away

49. The tension within the Government of Palmenna reached a boiling point as M Akbar found himself increasingly frustrated by the unfolding storm surrounding what was supposed to be his vanguard of political development in Palmenna. On 1 March 2024, M Akbar convened a conference call involving Tara Sharma, Alan and Luke Nathan. M Akbar wanted a solution.
50. As the conference call commenced, emotions ran high, and a heated discussion ensued. M Akbar emphasised the urgency of finding a solution to the ongoing challenges plaguing the political landscape in Palmenna. The opposing end of the call presented their perspectives and proposed courses of action, resulting in vigorous debate and disagreement over the best path forward.
51. Despite efforts to reach a consensus, the discussion reached an impasse, and tensions escalated further. Frustrated, the parties abruptly concluded the call, leaving the matter unresolved and the path forward uncertain. Before leaving the call, Tara

Sharma told M Akbar *“I can’t believe you are being so unreasonable... we cannot admit to things we did not do... seems like there is no point in talking to you anymore”*.

52. Rumour has it that former Prime Minister Elsie has been conniving with members of the Parliament of Palmenna to overthrow the incumbent government led by M Akbar. On 3 March 2024, a surreptitious meeting was held at the Majestic Seasons Hotel, attended by countless members of the political parties in Palmenna.
53. In a show of power, M Akbar summoned his cabinet ministers and members of his political party for a meeting on 5 March 2024. In that meeting, M Akbar reminded the attendees that any activity considered detrimental to parliamentary democracy constitutes an offence, before proceeding to state that *“the High Court ruling serves as a reminder that the judiciary is functioning independently. This does not make them right, but I respect their errors in judgment. You have my word, that I will do the necessary to overturn that decision. To me, this is straightforward. There is already an agreement. If you do not follow the wording of the agreement, you are guilty. Let us await the big reveal tomorrow”*.

Initiation of AIAC Proceedings

54. On 6 March 2024, the Government of Palmenna commenced arbitration proceedings against Canstone pursuant to Article 12 of the PK-BIT. The Government of Palmenna has paid the security deposits and necessary fees under the AIAC Rules 2023 to the AIAC.
55. The crux of Palmenna’s claim centres on allegations that Canstone’s actions or omissions have breached the PK-BIT. As part of its claim, Palmenna is seeking both declaratory reliefs and damages. The declaration sought reads as follows:

“A declaration that the failure and/or omission of Canstone to abide by the terms of the BIT had resulted in respiratory tract infections amongst the citizens of Palmenna.”
56. Canstone, in response to the Government of Palmenna’s invocation of Article 12 of the PK-BIT to initiate arbitration proceedings, presented a series of counter-arguments aimed at challenging the validity of the arbitration process.
57. Among others, Canstone contends that legal proceedings of a similar nature were already commenced against SZN. As such, the commencement of arbitration

proceedings against Canstone is precluded. Further, Canstone contends that the Government of Palmenna failed to avail of the pre-arbitration steps as required pursuant to Article 12 of the PK-BIT and that the arbitration is used as a mere tool to void the High Court ruling against the Government of Palmenna. On the same day, the news reported that CEO Tara Sharma has described the allegations against Canstone as frivolous – *“They must be joking. What is clear to me is that they are not entitled to anything from Canstone. I am sure there is no basis to claim for any reliefs against us.”*

The Broil

58. Pursuant to Article 12 of the PK-BIT, a panel was constituted at the AIAC. For the hearing, Parties are required to present arguments on the following issues:
- I. Whether the pre-arbitration steps must be complied before arbitration proceedings may be commenced by the Government of Palmenna against Canstone;
 - II. Whether the Government of Palmenna is precluded from initiating an arbitration against Canstone;
 - III. Whether Canstone had breached its obligations under the PK-BIT; and
 - IV. If the answer to issue III is in the affirmative, whether Palmenna is entitled to an award of declaration and damages.



BILATERAL INVESTMENT TREATY

BETWEEN

THE FEDERATION OF PALMENNA

AND

**THE INDEPENDENT STATE OF
KENWEED**

dated this 3rd day of October 2021

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PREAMBLE

The Government of Palmenna and the Government of Kenweed (hereinafter referred to as “the Parties”),

DESIRING to promote greater economic cooperation between them with respect to investment by nationals and enterprises of one Party in the territory of the other Party;

REINFORCING the traditional ties of friendship and cooperation between them;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and its Covered Agreements, and other multilateral, regional and bilateral agreements to which they are both parties;

RECOGNISING the important role and contribution of business and the need to further promote and facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement;

UPHOLDING the need to protect against climate change and to safeguard the environment in line with the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement, and the Convention on Biological Diversity (CBD);

AGREEING that a stable framework for investment will maximise effective utilisation of economic resources and improve living standards;

SEEKING to establish clear and mutually advantageous rules governing their trade of goods and services and further liberalise and expand bilateral trade and investment;

PROMOTING a transparent business environment that will assist enterprises in planning effectively and using resources efficiently;

Have agreed as follows:

Article 1: Objectives and Scope of Application

1. The objectives of this Bilateral Investment Treaty (hereinafter referred to as “BIT”) are to promote closer integration between the economies of the Parties through:

- (a) the reduction and/or elimination of customs duties on trade in goods between the Parties;
 - (b) the establishment of a bilateral framework of principles and rules for trade in goods and services with a view to the expansion of such trade under conditions of transparency;
 - (c) facilitating trade in goods and services between the Parties;
 - (d) promoting clear and mutually beneficial investment between the Parties;
 - (e) upholding the need to protect against climate change and to safeguard the environment;
 - (f) promoting economic cooperation, partnership and growth of all Parties.
2. To protect the interests of both Parties and their respective investor(s).
 3. For the avoidance of doubt, the obligations stated therein shall be enforceable by the investor(s) of the Parties, against the investor(s) of the Parties or, between the Parties themselves as against one another.
 4. For greater certainty, this BIT does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this BIT.

Article 2: Fairness and Transparency

1. Each Party shall ensure that its laws, regulations, judicial decisions, policies, procedures, and administrative rulings of general application with respect to any matter covered by this BIT are promptly published or made available in such a manner as to enable interested persons and the other Party to become acquainted with them. Whenever possible, such instruments will be made available through the internet in English.
2. Each Party undertakes to implement its laws, regulations, judicial decisions, policies, procedures, and administrative rulings of general application in a fair, reasonable, just and transparent manner.

3. The Parties agree to consult periodically on ways to improve the transparency practices set out in this Article.

Article 3: Rule of law

1. The Parties shall guarantee the principles of good administrative behaviour, such as consistency, impartiality, independence, openness and transparency, in all issues that relate to the scope and aim of this BIT.
2. Each Party shall ensure that investor(s) have access to effective mechanisms of dispute resolution and enforcement, such as judicial, quasi-judicial or administrative tribunals or procedures for the purpose of prompt review, which mechanisms should be fair, impartial, independent, transparent and based on the rule of law.
3. As part of their duty to protect against business-related human rights abuse, the Parties must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy. These mechanisms should be fair, impartial, independent, transparent and based on the rule of law.

Article 4: Sustainability

1. Any investor(s) carrying out any activity in any of the Party which may have significant environmental impact shall appoint a qualified person to conduct an environmental impact assessment and to submit a report thereof to the relevant ministry of the Party.
2. For the avoidance of doubt, activities which may have significant environmental impact shall include the following:
 - (a) Agriculture
 - i. Land development schemes covering an area of 20 hectares or more but less than 500 hectares to bring forest into agricultural production.
 - ii. Development of agricultural estates covering an area of 500 hectares or more involving changes in types of agricultural use.

- (b) Aerodome
 - i. Construction of a new aerodrome involving a runway of 1,000 metres or longer.
 - ii. Construction of aerodrome in or adjacent or near to any state park, national park, national marine park, island surrounding marine park or environmentally sensitive area.

- (c) Drainage and irrigation
 - i. Construction of man-made lakes and artificial enlargement of lakes with surface areas of 50 hectares or more in or adjacent or near to environmentally sensitive areas.
 - ii. Any drainage of wetland, wild-life habitat or of dry inland forest covering an area of 20 hectares or more.

- (d) Fisheries
 - i. Land based aquaculture projects accompanied by clearing of mangrove forests, peat swamp forests or fresh water swamp forests covering an area of 50 hectares or more.

- (e) Industry

Non-ferrous:

- (i) Primary smelting aluminium (all sizes).
- (ii) Primary smelting copper (all sizes).
- (iii) Primary smelting of other non-ferrous (producing 50 tonnes of product or more per day).

Cement:

With a clinker production capacity of 30 tonnes or more per hour.

Iron and steel:

- (i) Using iron ore as raw materials for the production of 100 tonnes or more per day.
- (ii) Using scrap iron as raw materials for the production of 200 tonnes or more per day.

Petrochemicals:

Production capacity of each product or combined product of 50 tonnes or more per day.

Pulp, or pulp and paper:

Production capacity of 50 tonnes or more per day.

- (f) Petroleum
 - (i) Construction of oil refineries, of any nature.
 - (ii) Construction of gas refineries.
 - (iii) Construction of oil and gas refineries.
- (g) Waste treatment and disposal

Scheduled waste:

- (i) Construction of thermal treatment plant.
- (ii) Construction of off-site recovery plant for lead acid battery wastes.
- (iii) Construction of off-site recovery plants or treatment facilities that generate significant amounts of wastewater which is located at the upstream of public water supply intake.
- (iv) Construction of secure landfill facility.

Solid waste:

- (i) Construction of thermal treatment plant.
- (ii) Construction of sanitary landfill facility.
- (iii) Construction of transfer station.

3. The qualified person who submits the report shall:

- (a) be responsible for the environmental impact assessment and the recommendations of the environmental impact assessment;
- (b) ensure that the report and the recommendation do not contain any false or misleading information;

- (c) take professional indemnity insurance for any liability arising from the environmental impact assessment and the recommendations of the environmental impact assessment.
4. Any investor(s) carrying out such activity shall submit the report to the relevant ministry as soon as practically possible.

Article 5: Environmental Obligations

1. Save as expressly authorized by the respective Party, no investor(s) shall discharge, or cause to enter into any river:
- (a) any poisonous, noxious or polluting matter that will render or is likely to render or contribute to rendering such river or part thereof harmful or detrimental or injurious to public health, safety or welfare, or to animal or vegetable life or health or to other beneficial uses of such river;
 - (b) any matter which by virtue of its temperature, chemical or biological content or its effect in discolouring the waters makes or contributes to making such river or part thereof a potential danger to public health, safety or welfare or to animal or vegetable life or health, or affects other beneficial uses of such river;
 - (c) any matter which by virtue of its physical nature, or its effect in discolouring waters, makes or contributes to making such water, difficult to treat; or
 - (d) oil of any nature, used, waste or otherwise.
2. For the purpose of this Article the word "*river*" shall be deemed to include:
- (a) any inland waters;
 - (b) any subterranean water resources; and
 - (c) any water in an estuary or sea adjacent to the coast of the State.
3. Whenever any such entry or discharge has been made, the owner or occupier of the property from which such entry or discharge originates shall, unless the

contrary is proved, be presumed to have discharged it or caused it to enter into such river.

Article 6: Application to Investments

This BIT shall apply to investments made in the territory of either Party in accordance with its laws, regulations or national policies by investors of the other Party prior to as well as after the entry into force of this BIT, but shall not apply to any dispute or any claim concerning an investment which was settled before its entry into force.

Article 7: Expropriation

1. Save as expressly authorised under any written law, neither Party shall nationalize or take any other measures depriving, directly or indirectly, the investor(s) of the other Party of their investments, except:
 - (a) for a public purpose;
 - (b) in accordance with due process of law;
 - (c) in a non-discriminatory manner; and
 - (d) on payment of prompt, adequate and effective compensation.
2. The compensation referred to in paragraph 1(d) shall:
 - (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place;
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realisable and freely transferable.
6. The affected investor(s) or its Home State shall have the right, under the law of the expropriating Party, to a prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.

7. Except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied in good faith to protect legitimate public interests, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity, do not constitute indirect expropriations.

Article 8: National Treatment

Each Party shall accord to investor(s) of the other Party, and covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, treatment that is no less favourable than that it accords, in like circumstances, to its own investors and investments.

Article 9: Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party, and covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, treatment no less favourable than that it accords, in like circumstances, to investors and investments in its territory of investors of any non-Party.

Article 10: Minimum Standard of Treatment

1. Each Party shall accord:
 - (a) covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security;
 - (b) "fair and equitable treatment" requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
 - (b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the investment; and

2. A determination that there has been a breach of a separate international agreement, or any other law, does not establish that there has been a breach of this BIT.

Article 11: Security Exceptions

Nothing in this BIT shall be construed:

- (a) to require a Party to furnish or allow access to any information, the disclosure of which it determines to be contrary to its essential security interest;
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interest; or
- (c) to prevent a Party from taking any action which it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 12: Dispute Resolution

1. Any dispute between the Parties arising from, relating to or in connection with this BIT shall be referred:
 - (a) first, to the higher management of Parties in an attempt to settle such dispute by amicable and good faith negotiation;
 - (b) second, if the dispute is not resolved via negotiation, to mediation;
 - (c) third, if the dispute is not resolved through mediation within 90 (ninety) days from the commencement of the mediation to arbitration administered by the Asian International Arbitration Centre (AIAC) in accordance with its prevailing arbitration rules at the time of the dispute:
 - i. each of the Parties hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator.
 - ii. in the event an agreement on the third arbitrator cannot be reached, the third arbitrator shall be appointed by the Director for the time being of the AIAC.

- iii. unless the Parties otherwise agree, arbitrators shall not be nationals of a Party.
- iv. the seat of the arbitration shall be Kuala Lumpur, Malaysia.
- v. such an arbitration shall be held in the English Language.

Article 13: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a tribunal may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the Parties may agree.

Article 14: Confidentiality

Unless otherwise provided in this Agreement, each Party shall undertake, in accordance with its laws and regulations, to observe the confidentiality of information provided by the other Party.

Article 15: Amendments

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures and on such date as the Parties may agree.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this BIT.



For the Government of Palmenna



For the Government of Kenweed