

**2405-R**

**19th ANNUAL LAWASIA INTERNATIONAL MOOT COMPETITION**

**12 OCTOBER TO 14 OCTOBER 2024**

**ASIAN INTERNATIONAL ARBITRATION CENTRE**

**IN KUALA LUMPUR, MALAYSIA**

**MEMORANDUM FOR THE RESPONDENT**

**RESPONDENT**

**CANSTONE Ltd.**

**v.**

**CLAIMANT**

**THE FEDERATION OF PALMENNA**

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## STATEMENT OF JURISDICTION

The Claimant (Federation of Palmenna) have submitted the dispute to the International Arbitration Centre (AIC), Kuala Lumpur, Malaysia pursuant to Article 12 (c) Palmenna Kenweed Bilateral Investment Treaty (PK-BIT) in accordance with the Rule 1.1 of Arbitration rules of Asian International Arbitration Centre (AIAC) which states:

“1.1. Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules, then: (a) such dispute shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules;”

Therefore, the Federation of Palmenna and Canstone Ltd. have accepted the jurisdiction of the International Arbitration Centre and agreed to accept the award of the Arbitrator as final and binding.

**QUESTIONS PRESENTED**

- I. Whether the pre-arbitration steps must be complied before arbitration proceedings may be commenced by the Federation of Palmenna against Canstone;
- II. Whether the Federation 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.

**STATEMENT OF FACTS**

1. Federation of Palmenna and Canstone Fly Ltd are the parties involved in this arbitration. Palmenna is a country with extensive palm oil plantations, while Canstone Fly Ltd is a company engaged in biofuel operations in two cities in Palmenna, namely Appam and Karheis.
2. M Akbar, the Prime Minister of Palmenna, entered into cooperation with Prime Minister Gan, the leader of Kenweed, as outlined in a memorandum of understanding between Palmenna and Kenweed. This memorandum details five key principles and commitments agreed upon by both parties. This agreement later became the Palmenna-Kenweed Bilateral Investment Treaty (PK-BIT) on October 3, 2021.
3. Building on the success of PK-BIT, Canstone Ltd was established, with Mehstone Ltd owning 70% and SZN owning 30%. Mehstone Ltd is a company from Kenweed owned by Prime Minister Gan and Tara Sharma. Consequently, the investors in Canstone Ltd are Luke Nathan, Tara Sharma, and Prime Minister Gan, with Alan Becky appointed as QC.
4. In February 2023, Canstone received an unsigned note suggesting a possible leak in one of the tanks used at the Karheis plant to store processed palm oil, which had been depleted through transesterification. However, Alan Becky dismissed this as a hoax, stating there were no signs of leakage, and no further investigation was conducted.
5. On September 6, 2023, following the incident in Karheis, a board meeting of Canstone was held, attended by Luke Nathan and Tara Sharma. Alan Becky, as QC, and Luke Nathan, as senior management, requested additional resources for a thorough inspection and potential upgrade of equipment, including raw material processing equipment, fermentation tanks,

- reactors, storage tanks, and power generation equipment. Alan also requested an Environmental Impact Assessment (EIA) on behalf of Canstone by hiring a consulting firm.
6. Since early November, Palmenna has experienced heavy rain lasting several days, posing a risk of flooding in the rural area of Karheis, prompting Alan to travel to Karheis on November 23, 2023, to oversee the monitoring and control systems of the storage tanks. Meanwhile, a neighboring factory in Appam shut down operations for the next three days, while Canstone continued operations as usual.
  7. On November 26, 2023, the situation in Appam worsened, leading to severe flash flooding that caused water to accumulate on roads and low-lying areas. This also affected the Appam factory facilities, requiring an additional day for the floodwaters to recede compared to other areas in Appam.
  8. The incident resulted in respiratory injuries to 129 people in Appam, with 39 hospitalized. According to doctors, these injuries were due to inhalation of irritating gases or exposure to corrosive chemicals flowing through the inland waters of the river. Among the affected were 13 employees working at the Canstone Appam plant.
  9. The incident caused public unrest, leading to an urgent board meeting at Canstone and an investigation into its facilities, which revealed that the pressure relief valve on its storage tank was damaged, likely due to the floodwaters.
  10. Canstone's internal doctor, who treated some of the affected employees, stated that it could not be concluded whether the infections were caused by the damaged relief valve.
  11. It is known that Appam had previously experienced flooding, but the Palmenna government failed to take proactive measures to address this issue.



12. On December 15, 2023, activists brought the issue to court, suing the Palmenna government and SZN for negligence. The Palmenna government argued that the issues around the Canstone facilities were not its responsibility. On the other hand, SZN argued that responsibility should only lie with the Palmenna government. On February 14, 2024, the High Court ruled that the Palmenna government and SZN were jointly responsible for negligence and ordered compensation to be paid to the victims of the incident. Both the Palmenna government and SZN appealed the decision.
13. On March 1, 2024, Prime Minister Akbar held a conference call with Tara Sharma, Alan, and Luke Nathan to seek a solution, but the discussions did not yield a resolution, leaving the issue unresolved.
14. On March 6, 2024, the Palmenna government initiated arbitration against Canstone based on Article 12 of the PK-BIT, claiming that Canstone had been negligent and had violated the PK-BIT. In its response, Canstone argued that the Palmenna government failed to utilize pre-arbitration steps as required by Article 12 and that arbitration was being used merely as a tool to overturn the High Court's decision.

## SUMMARY OF PLEADINGS

### **I. THE FEDERATION OF PALMENNA FAILED TO UNDERTAKE AND ADHERE TO THE PRE-ARBITRATION STEPS BEFORE STARTING THE ARBITRATION PROCESS**

The Federation of Palmenna has failed to implement the pre-arbitration steps as outlined in the PK-BIT and AIAC rules. First, the Federation of Palmenna did not undertake adequate peaceful or mediation efforts, even though the provisions state that mediation must occur before proceeding to arbitration. Second, the Federation of Palmenna did not provide official notice regarding the initiation of arbitration proceedings. This notice is crucial to start the pre-arbitration process and give the opposing party an opportunity to respond. Importantly, the Federation of Palmenna did not adhere to the arbitration agreement's provisions by taking unilateral actions without referencing the agreed-upon agreement and without prior approval.

### **II. WHETHER THE FEDERATION OF PALMENNA IS PRECLUDED FROM INITIATING AN ARBITRATION AGAINST CANSTONE**

The Federation of Palmenna egregiously breaches the stipulations of Article 12 of the PK BIT by disregarding the mandatory pre-arbitration procedures that require genuine mediation and negotiation within a 90-day timeframe. The mediation conducted by The Federation is insincere and appears to serve merely as a procedural formality to expedite the arbitration process. Moreover, the appointment of the Asian International Arbitration Centre (AIAC) is legally flawed, as the arbitration commences without satisfying the

essential pre-arbitration requirements and without obtaining consent from Canstone, contravening AIAC regulations.

**III. WHETHER CANSTONE HAD BREACHED ITS OBLIGATIONS UNDER THE PK-BIT**

The incident at Canstone's Appam plant was a purely unforeseen natural disaster. The damage to the pressure relief valve on the storage tank was caused by a severe flood due to the Palmenna government's inadequate attention to drainage and irrigation systems, particularly in Appam, leading to rising water levels in rivers and streams. Water also accumulated on roads and low-lying areas. The Palmenna government did not take preventive measures against the large flood and was unprepared for a larger-scale flood, ultimately harming all parties, including the public and Canston. Canstone repaired the pressure relief valve on the storage tank damaged by the flood in Appam after the floodwaters receded. This was done as a measure to minimize the impact of the incident and protect against future risks.

**IV. IF THE ANSWER TO ISSUE III IS IN THE AFFIRMATIVE, WHETHER PALMENNA IS ENTITLED TO AN AWARD OF DECLARATION AND DAMAGES.**

Prior to the incident, there had been no environmental pollution attributed to the biodiesel processing activities at the Canstone facility or the two other companies in the vicinity. However, during the severe flood that affected the area around the Canstone facility, river water became contaminated with chemicals, causing respiratory infections

among the local population. It is noteworthy that there are two other companies near Canstone engaged in the same field—biodiesel processing. Both companies had signage indicating that they were "under maintenance," thus it is highly probable that the environmental contamination following the flood originated from these companies. After the floodwaters receded, Canstone promptly replaced the damaged tank valves.

## PLEADINGS

### I. THE FEDERATION OF PALMENNA FAILED TO UNDERTAKE AND ADHERE TO THE PRE-ARBITRATION STEPS BEFORE STARTING THE ARBITRATION PROCESS

The Federation of Palmenna has failed to implement the pre-arbitration steps as outlined in the PK-BIT and AIAC rules. First, the Federation of Palmenna did not undertake adequate peaceful or mediation efforts, even though the provisions state that mediation must occur before proceeding to arbitration. Second, the Federation of Palmenna did not provide official notice regarding the initiation of arbitration proceedings. This notice is crucial to start the pre-arbitration process and give the opposing party an opportunity to respond. Importantly, the Federation of Palmenna did not adhere to the arbitration agreement's provisions by taking unilateral actions without referencing the agreed-upon agreement and without prior approval.

#### FAILING TO MEET THE PRE-ARBITRATION REQUIREMENTS

1. The Federation of Palmenna failed to meet the requirements outlined in the Bilateral Investment Treaty Between The Federation of Palmenna and The Independent State of Kenweed (“**PK-BIT**”). Article 12 of the PK-BIT specifies that if investment activities encounter problems or disputes, the parties involved must take steps by applying alternative dispute resolution methods. *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.*<sup>1</sup>

2. The Federation of Palmenna did not conduct negotiations with Canstone as required. According to the PK-BIT rules, arbitration is pursued if pre-arbitration measures, such as mediation, do not produce a final resolution.
3. The Federation of Palmenna, represented by M. Akbar, failed to cooperate in the pre-arbitration process and made unilateral decisions, which is inconsistent with Singapore Arbitration 2001 Article 2, Point 1, which states: "An arbitration agreement is the parties' consent to submit to arbitration all or certain disputes arising or that may arise between them in connection with a particular legal relationship, whether contractual or not."<sup>2</sup>
4. Asian International Arbitration Centre Rules 2023 ("**AIAC 2023**") Regulate all provisions related to the dispute between the Federation of Palmenna and Canstone as outlined in Rule 1, Section 1, which states "*Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules*".<sup>3</sup> The Federation of Palmenna did not comply with the rules outlined in the PK-BIT.
5. The Federation of Palmenna did not provide prior notice to Canstone regarding the initiation of arbitration, as required by Article 3 of the Singapore Arbitration Act 2001. This provision states that if one party to an arbitration agreement initiates any legal

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<sup>1</sup> Article 12 Palmenna Kenweed Bilateral Investment Treaty

<sup>2</sup> Article 2 (1) Singapore Arbitration Act 2001

<sup>3</sup> General 1 Article 1 AIAC 2023

proceedings in any court against the other party regarding any matter that is the subject of the agreement, the other party can, at any time after submitting a notice of intention to sue or not sue and before presenting any defense (other than a defense claiming that the court lacks jurisdiction), request the court to stay the proceedings as long as the proceedings relate to the matter at hand.<sup>4</sup>

6. Article 3, Point 1 of the UNCITRAL Arbitration Rules 2021 (“**UNCITRAL 2021**”) states that: *The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.*<sup>5</sup> The Federation of Palmenna did not comply with the provisions stated in this rule.
7. The Federation of Palmenna did not provide information regarding the scope of actions that should have been taken, such as a demand that the dispute be referred to arbitration, which should have been carried out in accordance with the PK-BIT agreement.

### **NO NOTICE PROVIDED**

8. Since Canstone is a party to the PK-BIT agreement, Canstone has the right to file objections and seek the annulment of the arbitration initiation by the Federation of Palmenna due to the government's failure to properly implement the pre-arbitration steps. This statement refers to Part 3, Article 6, Point 1 “*Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after filing and serving a notice of intention to contest or not contest and before delivering any pleading (other than a pleading asserting that the court does not have jurisdiction in*

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<sup>4</sup> Part 3 Singapore Arbitration Act 2001

<sup>5</sup> Article 3 (1) Singapore Arbitration Act 2001

*the proceedings) or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter”.*<sup>6</sup>

9. Canstone can challenge the recognition and enforcement of the arbitration process by proving that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or the arbitration proceedings, or was otherwise unable to present their case.<sup>7</sup>
10. *The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.*<sup>8</sup>
11. The arbitration procedure cannot proceed because the pre-arbitration requirements were not properly fulfilled by the Federation of Palmenna. This situation not only violates the rules of the PK-BIT but also breaches Article 5 (d) of the New York Convention 1958 “*The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.*”<sup>9</sup>

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<sup>6</sup> Part 3 Article 6 (1) Arbitration Act 2001

<sup>7</sup> Article 5 (b) New York Convention 1958

<sup>8</sup> Article 5 (c) New York Convention 1958

<sup>9</sup> Article 5 (d) New York Convention 1958



## **II. WHETHER THE FEDERATION OF PALMENNA IS PRECLUDED FROM INITIATING AN ARBITRATION AGAINST CANSTONE;**

The Federation of Palmenna egregiously breaches the stipulations of Article 12 of the PK BIT by disregarding the mandatory pre-arbitration procedures that require genuine mediation and negotiation within a 90-day timeframe. The mediation conducted by The Federation is insincere and appears to serve merely as a procedural formality to expedite the arbitration process. Moreover, the appointment of the Asian International Arbitration Centre (AIAC) is legally flawed, as the arbitration commences without satisfying the essential pre-arbitration requirements and without obtaining consent from Canstone, contravening AIAC regulations. Furthermore, The Government 's allegations of damages lack substantial legal basis and fail to establish a causal link between the alleged losses and leaks from the oil production process. These actions constitute a clear deviation from proper legal procedures and substantially impair the integrity of the arbitration proceedings.

### **VIOLATION OF ARBITRATION CLAUSE**

#### Article 12: Dispute Resolution

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.<sup>10</sup>

In accordance with the fundamental principles enshrined in Article 12 of the PK BIT, it is unequivocally mandated that parties engage in earnest efforts to resolve disputes through negotiation and mediation within a precisely defined period of 90 days. This procedural requirement underscores the importance of exhausting all avenues of amicable settlement before invoking arbitration as a last resort. However, in the present case, the claimant, namely The Federation of Palmenna, has conspicuously failed to provide sufficient evidence that the mediation process was conducted in a manner consistent with both the letter and the spirit of Article 12 of the PK BIT. The absence of such evidence not only calls into question the validity of the mediation process itself but also fundamentally undermines the legitimacy of The Federation of Palmenna's decision to bypass these critical pre-arbitration steps. Consequently, their precipitous move to initiate arbitration constitutes a clear violation of the procedural safeguards and conditions explicitly set forth in Article 12 of the PK BIT. This violation strikes at the heart of the BIT's

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<sup>10</sup> Article 12 Palmenna Kenweed Bilateral Investment Treaty

intended purpose, which is to foster a fair and structured process for the resolution of disputes, thereby preserving the integrity of the arbitral proceedings.

### **MEDIATION NOT CONDUCTED IN GOOD FAITH**

The Federation of Palmenna asserts that it engaged in mediation as a requisite step in the dispute resolution process. However, a closer examination reveals that this mediation was not conducted with the requisite good faith that is essential to the spirit of the PK BIT. Instead, the mediation appears to have been treated as a perfunctory exercise, intended merely to fulfill a procedural obligation and hasten the path to arbitration. This is evidenced by The Federation of Palmenna's unilateral declaration that the mediation was unsuccessful, a conclusion reached without allowing for a sufficiently comprehensive mediation process. Such an approach not only contravenes the expectations set forth in the PK BIT, which explicitly mandates a 90-day period for meaningful mediation efforts, but it also undermines the fundamental principles of equitable dispute resolution. The premature and unilateral termination of the mediation process calls into question The Federation of Palmenna's commitment to resolving the dispute through peaceful and cooperative means, as envisaged by the BIT.

Indeed, on March 1, 2024<sup>11</sup>, the parties only initiated negotiations in accordance with Article 12, point (a) of the PK BIT. However, in a strikingly brief period of just five days, by March 6, 2024,<sup>12</sup>The Federation of Palmenna precipitously filed for arbitration. This hasty progression from commencement of negotiations to the initiation of arbitration proceedings raises significant concerns regarding the sincerity and adequacy of The Federation of Palmenna's engagement in the pre-arbitration process. Such an expedited move suggests a predetermined

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<sup>11</sup> Moot Problem, [49].

<sup>12</sup> Moot Problem, [54].

intent to proceed to arbitration rather than a genuine attempt to resolve the dispute through the negotiated and mediated efforts mandated by the PK BIT. This action not only disregards the procedural requirements set forth in the treaty but also undermines the very purpose of the dispute resolution framework, which is to encourage thorough and good-faith efforts to resolve conflicts before resorting to arbitration.

### **APPOINTMENT OF AIAC**

While The Federation of Palmenna has appointed the Asian International Arbitration Centre (AIAC) as the arbitration body, ostensibly in line with the provisions of the PK BIT, this action is fundamentally flawed from a legal perspective.<sup>13</sup> The crux of the issue lies in the fact that the mandatory pre-arbitration steps, as prescribed under Article 12 of the PK BIT, were not duly followed. Specifically, The Federation of Palmenna unilaterally initiated the arbitration process without ensuring that the essential conditions precedent to arbitration—namely, the proper conduct of negotiations and mediation—had been fulfilled.

Furthermore, The Federation of Palmenna proceeded to make payments associated with the arbitration without securing the requisite consent from the Cantone party<sup>14</sup>. This unilateral action not only contravenes the cooperative spirit envisioned by the PK BIT but also violates the procedural safeguards outlined in Article 2 of the AIAC rules. According to these rules, the commencement of arbitration requires confirmation that all preconditions have been met. The Federation of Palmenna's failure to adhere to these conditions renders the appointment of the AIAC legally questionable and undermines the integrity of the arbitration proceedings.

### **Rule 2 – Commencement of Arbitration**

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<sup>13</sup> Moot Problem, [54].

<sup>14</sup> Moot Problem, [54].

"Confirmation that all existing pre-conditions to arbitration have been satisfied;"<sup>15</sup>

Based on this, The Federation of Palmenna should not have submitted the arbitration resolution without the consent of the Cantone party.

### **UNSUBSTANTIATED CLAIMS OF LOSSES**

The Federation of Palmenna claims that Cantone has violated various provisions in the Contract, resulting in various losses, such as respiratory issues caused by leaks from the oil production process<sup>16</sup>. However, this claim lacks sufficient legal basis. It has not been proven that the respiratory problems suffered by the Palmenna community were caused by leaks or contamination from the oil production process. The economic losses mentioned cannot be legally attributed to the Cantone party. If there are any losses, they result from the policies of The Federation of Palmenna, which cannot be considered Cantone's responsibility. Therefore, Cantone denies responsibility for the impacts claimed by Palmenna.

### **III. WHETHER CANSTONE HAD BREACHED ITS OBLIGATIONS UNDER THE PK-BIT**

The incident at Canstone's Appam plant was a purely unforeseen natural disaster. The damage to the pressure relief valve on the storage tank was caused by a severe flood due to the Palmenna government's inadequate attention to drainage and irrigation systems, particularly in Appam, leading to rising water levels in rivers and streams. Water also accumulated on roads and low-lying areas. The Palmenna government did not take preventive measures against the large

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<sup>15</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

<sup>16</sup> Moot Problem.

flood and was unprepared for a larger-scale flood, ultimately harming all parties, including the public and Canstone

Canstone repaired the pressure relief valve on the storage tank damaged by the flood in Appam after the floodwaters receded. This was done as a measure to minimize the impact of the incident and protect against future risks

1. The Federation of Palmenna is a British Commonwealth country with a diverse range of landscapes, including coastal plains, mountains, and tropical rainforests. This geographical variety gives Palmenna two seasons: the southwest monsoon from May to September and the northeast monsoon from November to February. The climate and geography make Palmenna an optimal region for palm oil cultivation. Consequently, Palmenna has become one of the world's leading palm oil producers, exporting around 15 million metric tons of palm oil and palm-based products worth USD 35 billion in 2020.<sup>17</sup>
2. Kenweed is an independent country that geographically encompasses northern mountains, central highlands, and southern tropical beaches and islands. Given its rich natural conditions, tourism is an important sector for Kenweed.<sup>18</sup> Under Prime Minister Gan's leadership, Kenweed has transformed into a trade and investment-focused nation by establishing the Ministry of Trade and Investment (MTI) directly under his authority. To achieve his goals, Prime Minister Gan has attracted several major Kenweed companies to invest in Kenweed, such as KLT Company Limited, which operates in the energy sector, and SZN Company Limited, a startup focused on sustainable energy.<sup>19</sup>

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<sup>17</sup> Moot Problem, [1].

<sup>18</sup> Moot Problem, [2].

<sup>19</sup> Moot Problem, [7].

3. Kenweed made an agreement with Tara Sharma, CEO of KLT, to establish Mehstone Star Limited with the aim of harvesting, extracting, and refining palm oil to produce biofuel.<sup>20</sup>
4. Palmenna and Kenweed established cooperation through an MOU formalized on August 27, 2021, outlining 5 key principles and commitments agreed upon by both countries.<sup>21</sup> Two months later, a treaty was signed between the two countries known as the Palmenna-Kenweed Bilateral Investment Treaty (PK-BIT).<sup>22</sup>
5. The Federation of Palmenna and the State of Kenweed are parties to the 1969 Vienna Convention on the Law of Treaties. As part of the Vienna Convention, both countries must comply with all regulations stipulated in the PK-BIT.<sup>23</sup> The formation of the PK-BIT realized the previously outlined ideas among Prime Minister Gan, Prime Minister Akbar, and Tara Sharma with the establishment of Canstone Fly Limited, which is 70% owned by Mehstone Ltd and the remainder by SZN.<sup>24</sup>
6. In facts, the PK-BIT is not accessible to all parties. Only Prime Minister Gan, shareholders including Tara Sharma and Luke Nathan, and the board of directors of Canstone Ltd have access.<sup>25</sup>
7. Canstone has adhered to the five-fuel diversification policy issued in 2011 by the Ministry of Plantation and Commodity Industries of Palmenna, which promotes the use of environmentally friendly, sustainable, and viable energy sources to reduce carbon emissions, decrease dependence on dwindling fossil fuels, and enhance the prosperity and welfare of stakeholders in the agriculture and commodity-based industries through stable

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<sup>20</sup> Moot Problem, [10].

<sup>21</sup> Moot Problem, [16].

<sup>22</sup> Moot Problem, [21].

<sup>23</sup> Clarification, [4].

<sup>24</sup> Moot Problem, [21].

<sup>25</sup> Clarification, [5].

and profitable pricing. In this regard, the biofuel produced by Canstone has lower sulfur content and reduced carbon buildup in diesel engines, thereby mitigating health and environmental impacts.<sup>26</sup>

8. Canstone employs a Quality Control, Alan Becky, who has 13 years of experience overseeing biodiesel plants in Southeast Asia. Both the Appam and Karheis plants each have internal experts responsible for conducting brief environmental assessments and reports on machinery and equipment conditions every four months (April, August, and December) and these are submitted to stakeholders to ensure a transparent and informed decision-making process.
9. The board has not provided answers as it requires approval and careful consideration of the company's next steps. Additionally, requests made by Alan Becky and Luke Nathan, such as for provisions and additional resources for thorough inspections, potential upgrades to raw material processing equipment, fermentation tanks, reactors, and storage tanks, as well as hiring a consultant to conduct an environmental impact assessment on behalf of Canstone and acquiring experts in environmental science, ecology, engineering, and related fields to ensure proper isolation by Canstone, are not decisions that can be made quickly. Therefore, the board needs at least 3 months to respond to each request.
10. The incident at Canstone's Appam plant was a purely unforeseen natural disaster. The damage to the pressure relief valve on the storage tank was caused by a severe flood due to the Palmenna government's inadequate attention to drainage and irrigation systems, particularly in Appam, leading to rising water levels in rivers and streams. Water also

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<sup>26</sup> Moot Problem, [10].



accumulated on roads and low-lying areas. This is evident from the extended time required for the floodwaters to fully recede at the Appam plant facility.

11. Canstone repaired the pressure relief valve on the storage tank damaged by the flood in Appam after the floodwaters receded. This was done as a measure to minimize the impact of the incident and protect against future risks.
12. Canstone continued operating during the heavy rain because it was aware of the risks posed by the flood. Therefore, employees were stationed at the plant to ensure all facilities were maintained and to quickly respond to any emergencies that might arise.<sup>27</sup>
13. Canstone had established good drainage, but due to the high intensity of rain on November 26, the drainage system was insufficient to handle the water.<sup>28</sup>
14. Canstone's internal doctor, Dr. Ragu, stated, "Flooding potentially brings various other toxic chemicals, spreading them across the area and contributing to the spread of infections. This seems to be a reasonable cause for the infection."<sup>29</sup>
15. There are other factories around Canstone, and both are chemical plants. Petroleum diesel is abundant in the Kenweed and Palmenna regions, while palm oil is plentiful in Palmenna. The doctor found that injuries might be caused by inhalation of irritating gases or exposure to corrosive chemicals flowing through inland waters or rivers. The corrosive chemicals mentioned by the doctor cannot be conclusively attributed to Canstone, as nearby factories are also chemical plants.

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<sup>27</sup> Moot Problem, [38].

<sup>28</sup> Moot Problem, [35].

<sup>29</sup> Moot Problem, [40].

16. The Palmenna government did not take preventive measures against the large flood and was unprepared for a larger-scale flood, ultimately harming all parties, including the public and Canstone.
17. Jakey's claim that Canstone was involved in bribery to cover up oil spill cases and that Alan was pressured by the Palmenna government to make such statements in exchange for an agreement between them is false.
18. M Akbar prioritized his interests during the conference call on March 1, 2024, pressing Canstone to admit to faults it had not previously committed, rather than seeking a solution beneficial to both parties.<sup>30</sup>

**IV. IF THE ANSWER TO ISSUE III IS IN THE AFFIRMATIVE, WHETHER PALMENNA IS ENTITLED TO AN AWARD OF DECLARATION AND DAMAGES.**

Prior to the incident, there had been no environmental pollution attributed to the biodiesel processing activities at the Canstone facility or the two other companies in the vicinity. However, during the severe flood that affected the area around the Canstone facility, river water became contaminated with chemicals, causing respiratory infections among the local population. It is noteworthy that there are two other companies near Canstone engaged in the same field—biodiesel processing. Both companies had signage indicating that they were "under maintenance," thus it is highly probable that the environmental contamination following the flood originated from these companies. After the floodwaters receded, Canstone promptly replaced the damaged tank valves.

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<sup>30</sup> Moot Problem, [51].

Consequently, the government of Palmenna is unable to seek compensation from Canstone, as Canstone did not breach the regulations stipulated in the PK-BIT.

## **FACILITY DAMAGE**

1. The agreement between Palmenna and Kenweed, namely the PK-BIT, is not publicly accessible; it can only be accessed by Prime Minister Gan, shareholders including Tara Sharma and Luke Nathan, and the board of directors of Canstone Ltd.<sup>31</sup>
2. The tank valves were damaged due to the flood. Prior to the flood, there had been no incidents of damage leading to environmental contamination by Canstone.<sup>32</sup>
3. There are other companies in the vicinity of Canstone, and these two companies operate in the same field—biodiesel processing<sup>33</sup>
4. Canstone's internal doctor, Dr. Ragu, stated that “the flood has the potential to carry various other toxic chemicals, spreading them throughout the area and contributing to the spread of infections. This seems to be a plausible cause of the infections. However, it cannot yet be confirmed whether the infections originated from Canstone's facility or from chemical exposure from the companies around the Canstone facility.”<sup>34</sup>
5. There is an issue suggesting that the factories near Canstone are damaged, as indicated by the signs stating “Under Maintenance” on the entrance of these two factories. This raises the possibility that these factories could have been responsible for contaminating the river near the facility.<sup>35</sup>

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<sup>31</sup> Moot Problem, [18]

<sup>32</sup> Moot Problem, [39]

<sup>33</sup> Clarification, [10]

<sup>34</sup> Moot Problem, [40]

<sup>35</sup> Clarification, [10]

6. After the flood, tank trucks were seen entering and leaving the facilities of the two companies around Canstone, suggesting that these two factories continued to operate despite being under maintenance.
7. After the floodwaters receded, Canstone immediately replaced the damaged valves caused by the floodwater inundation to reduce the potential for chemical contamination from biodiesel raw materials affecting the surrounding environment.

## **DEFAMATION**

8. Jakey's claim that Canstone was involved in bribery to cover up oil spill cases is a baseless accusation that cannot be substantiated and indicates that Alan, who has shown disregard for his responsibilities, was possibly coerced by the Government of Palmenna to make such statements in exchange for a deal between them.

## **DISPUTE**

9. On March 1, M. Akbar acted selfishly during a conference call and pressured Canstone to admit to faults that had not occurred. The emotional escalation during this conference call led to a heated debate that left the issue unresolved.<sup>36</sup>
10. On March 6, 2024, the Government of Palmenna unilaterally initiated arbitration proceedings against Canstone under Article 12 of the PK-BIT.<sup>37</sup> The Government of Palmenna has paid the required security deposit and fees under the AIAC 2023 Rules to the AIAC.<sup>38</sup>

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<sup>36</sup> Moot Problem, [49]

<sup>37</sup> Article 12 Palmenna Kenweed Bilateral Investment Treatie

<sup>38</sup> Asian International Arbitration Centre 2023

## **GOVERNMENT NEGLIGENCE**

11. The Government of Palmenna did not take preventive measures against the large-scale flood and was unprepared for such a scale of flooding, ultimately causing harm to all parties, including the public and Canstone.
12. The Government of Palmenna acted slowly in monitoring the Appam area, leading to a flood incident that could have been managed if the government had consistently attended to the environmental conditions.

## **COMPENSATION**

13. The Government of Palmenna cannot seek compensation from Canstone as the flood at Canstone was a large-scale, unforeseeable event, qualifying as force majeure, a situation of compelling necessity or risk that cannot be controlled or anticipated by any party.

**PRAYERS FOR RELIEF**

For the foregoing reasons, the **RESPONDENT** respectfully pleads for this Tribunal to adjudge and declare that:

1. The Federation of Palmenna **FAILED** to adhere to the pre-arbitration steps before initiating the arbitration process.
2. The Federation of Palmenna is **PROHIBITED** from initiating arbitration against Canstone.
3. Canstone did **NOT BREACH** it's obligations under the PK-BIT.
4. The Federation of Palmenna is **NOT ENTITLED** to compensation and damages from Canstone.

*Respectfully submitted,*

**THE REPUBLIC INDEPENDENT STATE OF KENWEED,**

**THE RESPONDENT**