FIFTH INTERNATIONAL

ALTERNATIVE DISPUTE RESOLUTION

MOOTING COMPETITION

27 JULY – 2 AUGUST 2014

HONG KONG

ON BEHALF OF CLAIMANT	AGAINST RESPONDENT
CONGLOMERATED NANYU TOBACCO LTD.	REAL QUICK CONVENIENCE STORES LTD.
142 LONGJIANG DRIVE NANYU CITY NANYU	42 ABRAMS DRIVE SOLANGA GONDWANA

MEMORANDUM FOR CLAIMANT

Team No. 568 C

List of Abbreviations

Abbreviation	Content
¶	Paragraph
AfA	Application for Arbitration
Art.	Article
Bill 275	Godwandan Senate Bill 275/2011
Branded Merchandise	Branded merchandise provided by Conglomerated Nanyu Tobacco Ltd
CIETAC	China International Economic and Trade Arbitration Commission
CIETAC Rules	China International Economic and Trade Arbitration Commission CIETAC Arbitration Rules
CIETAC Model Clause	China International Economic and Trade Arbitration Commission Model Arbitration Clause
CISG	International Sale of Goods (CISG) & Related Transactions, 1980
CLAIMANT	Conglomerated Nanyu Tobacco Ltd

Clarifications	Procedure Order No.2
Cl. Ex.	Claimant's Exhibit
Clause 65.1	The Dispute Resolution Clause of PARITES Agreement (Can be found at p.11 of the record)
HK. Arb. Ord.	Chapter:609 Hong Kong Arbitration Ordinance
IBA Rules	International Bar Association, Rules on the Taking Evidence in International Arbitration
n.	footnote
No.	Number
NY Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958
p.	page
PARTIES	Conglomerated Nanyu Tobacco Ltd. and Real Quick Convenience Stores Ltd.
Res. Ex.	Respondent's Exhibit
RESPONDENT	Real Quick Convenience Stores Ltd
Sec.	Section

SoD	Statement of Defense
Sub.	Subsection
Tobacco Products	Licensed tabacoo products provided by Conglomerated Nanyu Tobacco Ltd.
the Agreement	The distribution agreement between Conglomerated Nanyu Tobacco Ltd. And Real Quick Convenience Stores Ltd.
the Tribunal	Ms.Sara Fan, Pro. John Worthington and Mr. Richard Castle(chief).

Table of Authority

Book

Cited As	Content	Citing Paragraph
Born	Gary B. Born, International Commercial Arbitration, Second Edition, Kluwer Law International (2014).	6, 9
Kröll et.al	Kröll,, Loukas A Mistelis & Pilar Perales Viscasillas Stefan, UN Convention on Contracts for the International Sale of Goods (CISG) : [commentary] , Beck/Hart (2011).	31, 32, 33
Schlechtriem	Peter Schlechtriem(editor), Commentary on the UN Convention of the International Sale of Goods(CISG), Second Edition, Oxford University Press(2010).	34
BRUNNER	Christoph Brunner, Force Majeure and Hardship under General Contract Principles, Kluwer Law International (2008).	31

Article

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Sturinin & Hui	Andrea Sturini & Lorrain Hui, *Commentary on the Arbitration Rules of the Chian International Economic and Trade Arbitration Commission*, 15 THE VINDOBONA JOURNAL OF INTERNATIONAL COMMERCIAL LAW AND ARBITRATION 267(2012).	20
Jolles	Alenxander Jolles, *Consequences of Multi-tier Arbitraion Clauses: Issues of Enforcement,* 72 Arbitration 329(2006)	6
Levine	Eugenia Levine, *Amicus Curiae in International Investment Arbitration: The Implications of an Increase in Third-Party Participation*, 29 BERKELEY JOURNAL OF INTERNATIONAL LAW 200(2011).	24

Internet Resource

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Herbert Smith	Herbert Smith , *The Inside Track-How Blues Chips Are Using ADR*(2007), available at : www.hks.harvard.edu/m-rcbg/CSRI/ga/smith_adr.pdf(2007).	7

Merriam-Webster	Merriam-Webster Online Dictionary 11th edition, available at : http://www.merriam-webster.com/dictionary/a's	12
IBA Subcommitee	1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, *Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration*, available at :http://www.ibanet.org/Document/Default.aspx?DocumentUid=DD240932-0E08-40D4-9866-309A635487C0	22
ILA Report	International Law Association, *Committee on International Commercial Arbitration*, *New Delhi Conference (2002*), *Final Report on Public Policy as a Bar to Enforcement of International Arbitral Award*, available at: http://www.ila-hq.org/en/committees/index.cfm/cid/19	39
Jan van den Berg	Jan van den Berg, *The New York Convention of 1958: An Overview*, A.J. van den Berg (ed.), available at: http://www.kluwerarbitration.com	35

Cases

Cited As	Content	Citing Paragraph
	AAA	

Adviso Case	Adviso N.V. v. Korea Overseas Construction Corp., YCA XXI (1996), 612	40
German Case	CLOUT Case No. 443: MAL 36(1)(a)(i); 36(1)(b)(ii), Germany: Oberlandesgericht Dresden; 11 Sch 06/98	40
Macromex v. Globex	American Arbitration Association(2007) Case No. 50181T 0036406 Macromex Srl. v. Globex International Inc. http://cisgw3.law.pace.edu/cases/071023a5.html	32
ICC		
ICC Case No. 8445	Final Award, Case Number 8445 ICCA Yearbook Commercial Arbitration XXVI (2001) p.167	11
Netherland		
Malaysia v. Dairex	Rechtbank's-Hertogenbosch(1998) rolnr. 9981 / HA ZA 95-2299 Malaysia Dairy Industries Pte. Ltd. v. Dairex Holland BV http://www.unilex.info/case.cfm?id=443	31
Parsons Case	Parsons & Whittemore Overseas Co., Inc., v. Société Générale de l'Industrie du Papier RAKTA and Bank of America, 508 F.2d 969 (2nd Cir., 1974).	39
SCC ***Stockholm Chamber of Commerce***		

Licensor v. Manufacturer	Licensor and buyer v. Manufacturer Interim Award and Final Award 17 July, 1992	6
United States		
BG Group v. Argentina	BG Group PLC v. Republic of Argentina Supreme Court of the United States March 5, 2014 572 U.S. ___(2014)	8
Him Portland v. Devito Builders	HIM PORTLAND, LLC v. DEVITO BUILDERS, INC ,317 F.3d 41 United States Court of Appeals, First Circuit No. 02-1955. Heard Dec. 4, 2002. Decided Jan. 17, 2003.	6

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Argument

I. THE TRIBUNAL HAS JURISDICTION OVER THE LIQUIDATED DAMAGES CLAIMS.

1. **CLAIMANT** submits that the Tribunal has jurisdiction because **PARTIES** had entered into a valid arbitration agreement as provided in Clause 65.1.

2. The CIETAC has the power to decide its own jurisdiction [*Art.6 (1) CIETAC Rules*] and the CIETAC should authorize the Tribunal to deal with the liquidated damages claims for the following reasons: **[A] PARTIES** intended to submit their disputes to arbitration by signing an Arbitration Agreement, **[B]** the pre-arbitral procedures are the procedural requirements, which by nature cannot exclude arbitral jurisdiction, and **[C]** even if the Tribunal considers the pre-arbitral procedure as a precondition for the arbitral jurisdiction , **CLAIMANT** submits that **PARTIES** had acted in compliance with the procedures.

A. PARTIES INTENDED TO SUBMIT THEIR DISPUTES TO ARBITRATION BY SIGNING AN ARBITRATION AGREEMENT.

3. **PARTIES** had shown clearly their intent to arbitrate in Clause 65.1, which states, "In the event of a dispute, controversy, or difference *arising out of or in connection with* (*emphasis added*) this Agreement, the Parties shall initially seek a resolution through consultation and negotiation. If, after a period of 12-month has elapsed from the date on which the dispute arose, the Parties have been unable to come to an agreement in regards to the dispute, either Party may submit the dispute to the CIETAC...The arbitral award is final and binding upon both parties."

4. The scope of the Arbitration Agreement includes "differences arising out of or in connection with" the Agreement. The dispute at issue involves the liquidated damage claim stemmed in the Clause 60.2, which obliged the Buyer to pay liquidated damages if he sought to terminate the Agreement. Besides, the award is final and binding upon **PARTIES**. There is no doubt that such dispute falls within the scope of the Agreement and **PARTIES** intended to recourse to arbitration by signing the Arbitration Agreement.

B. THE PRE-ARBITRAL PROCEDURES ARE THE PROCEDURAL REQUIREMENTS, BECAUSE THE PARTIES DO NOT INTENT TO MAKE THEM CONDITION TO

ARBITRATION.

5. Clause 65.1 contained two pre-arbitral procedures:(a) the negotiation and consultation procedures and (b) the second 12-months period dated from the time when the dispute arose. [*Claimant memo* ¶3]. **CLAIMANT** submits that these procedures are not the premise for arbitral jurisdiction.

6. There must be express terms in the Agreement at issue to provide the pre-arbitration procedure with an effect to exclude the arbitral jurisdiction [*Jollies, p.335*]. Otherwise, the pre-arbitration rules are presumed to be procedural [*Born, p. 936*]. In addition, a Tribunal expressed the same opinion by stating, “If the Parties' common intention had been to make the right to resort to arbitration contingent upon the fulfillment of more specific conditions, they should have so stipulated in express terms [*Licensor v. Manufacturer*].” The express terms should be as specific as, for example, "... be subject *to mediation as a condition precedent (emphasis added)* to arbitration..." [*Him v. Devito*]. In the present case, **PARTIES** clearly did not have the intention to set preconditions for the right to arbitration.

7. Instead, the wording in Clause 65.1 should be read as an encouragement for negotiation and consultation procedures, which might successfully solve the

disputes by themselves. In commercial practices, the parties often refuse to adopt the compulsory ADR clause other than arbitration [*Herbert Smith*].

8. In short, the 12-month period should not be presumed as exclusion for arbitration in that period. At most, the temporal requirement determines "when" the contractual duty to arbitrate arose, rather than "whether" a contractual duty to arbitrate existed [*BG Group v. Argentina*]. That is to say, **PARTIES** may resort to, although they are not obliged to, arbitration, before the period has elapsed. Clause 65.1 stipulated: "if, after a period of 12 months has elapsed from the date on which the dispute arose...either Party may submit the dispute to the CIETAC for arbitration." If the parties had indented to exclude arbitral jurisdiction, they could have formed the sentences in more imperative way, such as using the word "unless" or "only if" in the said Clause.

9. To conclude, the pre-arbitral procedures are procedural rules, which do not affect the parties' substantive right to be heard [*Born, p.935*]. As elaborated previously, the negotiation and consultation procedures and the 12-month period are both procedural rules, and not complying fully with the two procedures does not affect the parties right to arbitration. Therefore, the Tribunal still has jurisdiction.

C. EVEN IF THE PRE-ARBITRAL PROCEDURES EXCLUDE ARBITRAL JURISDICTION, PARTIES HAD FULFILLED ALL OF THE PROCEDURES REQUIRED.

10. Even if the Tribunal considers the pre-arbitral procedures exclude arbitral jurisdiction, **CLAIMANT** submits that **PARTIES** had complied with pre-arbitral procedures set out in the Clause 65.1.

11. **CLAIMANT** argues that the requirements of negotiation and consultation are fulfilled, once the parties have commenced them. The clause calling for attempts to settle a dispute amicably should not be applied to oblige the Parties to engage in fruitless negotiations again [*ICC Case No.8445*]. In the present case, **PARTIES** had negotiated on 11 April 2013 and they saw no possibility in further negotiations on the matter.

12. In addition, **CLAIMANT** argues the 12-months period requirement has elapsed. The period commenced at the time when the difference arose. In the present case, date should be 5 April 2011. The word "difference" means a "disagreement in opinion" [*Merriam-Webster*]. **RESPONDENT** had informed **CLAIMANT** the alleged necessity to renegotiate the contract on 21 March 2011 [*p.18, Cl. Ex. No.3*

¶3], and **CLAIMANT** turned down the request to renegotiate on 5 April 2011 [*p.19,Cl. Ex. No.3 ¶3*]. The opinions between **PARTIES** have already differed on that day. The 12-month would elapse on 5 April 2012. **CLAIMANT** applied for arbitration on 12 January 2013 [*p.1, AfA*], which was almost 8 months after the period have expired.

II. THE ARBITRAL TRIBUNAL SHOULD NOT TAKE INTO ACCOUNT THE *AMICUS CURIAE* BRIEF FROM THE GONDWANDAN GOVERNMENT.

A. NEITHER THE *IBA RULES* NOR THE *CIETAC RULES* ALLOW THE DOCUMENTS PROVIDED BY NON-PARTIES ON THEIR OWN INITIATIVES.

19. The *amicus curiae* brief provided by Gondwandan Government, as non-party, is not allowed under *IBA Rules,* which **PARTIES** had adopted [*p.35, clarification ¶6*]. The *IBA* rules only allows a disputing party to request for an external document or enable the Tribunal to obtain the document on its own initiative [*Art.3.9; Art.3.10 IBA Rules*]. There is no space for the **RESPONDENT's**

government, which is not a party or the Tribunal itself, to submit documents to the Tribunal.

20. As to the institutional rules adopted by **PARTIES** [*p.11, Cl.Ex.No.2, Clause 65.1*], no provision under the *CIETAC Rules* recognizes the admissibility of documents submitted by a non-party. *Art.* 41 *CIETAC Rules* grants the Tribunal the general powers to accept documents not provided by the parties. However, this power is confined to the evidences, which are collected on its initiative as it consider necessary. The power of Tribunal to launch evidence collection does not imply that the Tribunal can accept documents non-disputing party could actively submit documents to the Tribunal [*Sturini & Hui, p.282*].

21. **CLAIMANT** submits that neither *IBA Rules* nor *CIETAC Rules* enable the non-disputing party to submit document to the Tribunal. Therefore, the Tribunal should not accept the *amicus curiae* brief.

B. EVEN IF THE TRIBUNAL COULD ACCEPT THE *AMICUS CURIAE* BRIEF, THE TRIBUNAL SHOULD NOT ACCEPT THE *AMICUS CURIAE* BRIEF.

a. The Tribunal Should Exclude the *Amicus Curiae* Brief Pursuant to

Art.9.2 IBA Rules

22. Even if the Tribunal does have the competence to accept the *amicus curiae* brief, the Tribunal shall exclude evidence that might harm procedural economy, fairness and equality of the parties [*Art. 9.2(g) IBA Rules*]. This provision obliges the Tribunal to maintain fairness between **PARTIES** to present the case. [*IBA Subcommittee, p.*22]. In the present case, acceptance of *amicus curiae* brief would raise concerns about the inequality and unfairness of the proceeding, because **CLAIMANT** was not given the chance to resort to a non-party's help.

b. The *Amicus Curiae* Brief from Gondwandan Government Will Cause Additional Cost and Delay the Arbitral Proceedings.

23. The *amicus curiae* brief about the Bill 275 is not necessary for dispute resolution, the Tribunal should interpret and apply Bill 275 on its own. If the Tribunal decides to accept the *amicus curiae* brief, it shall be examined by **PARTIES** [*CIETAC Rules Art.40*]. The examination will waste time and money [Gómez, *p.552*]. Therefore, **CLAIMANT** suggests that the Tribunal not to accept the *amicus curiae* brief, which is not necessary.

c. The *Amicus Curiae* brief will involves political concerns, which might deters PARTIES from coming to a settlement.

24. If the Tribunal allows the *amicus curiae* brief from **RESPONDENT's** State, then political concerns are involved in the private dispute. Once the dispute was exposed in public domain, **PARTIES** are faced with great pressure to wait for a final award, instead of resorting to settlement during the arbitration procedures [*Leivin*, *p*.220].

25. **CLAIMANT** hereby submits that the Tribunal has no competence to allow the *amicus curiae* brief from the Gondwandan Government. And even if the Tribunal could allow the *amicus curiae* brief, **CLAIMANT** insists that the Arbitral Tribunal not take into account the *amicus curiae* brief for the abovementioned reasons.

III. RESPONDENT'S OBLIGATIONS UNDER THE AGREEMENT WERE NOT VITIATED BY BILL 275 AND OTHER REGULATIONS.

26. **CLAIMANT** submits that, **RESPONDENT** shall pay the liquidated damage pursuant to Clause 60.2 of the Agreement for the following two reasons: **[A] RESPONDENT** is contractually obligated to pay the liquidated damages for exercising its right to terminate the Agreement, **[B]** There are no grounds for **RESPONDENT** to vitiate the said obligations.

A. RESPONDENT IS CONTRACTUALLY OBLIGED TO PAY THE LIQUIDATED DAMAGES.

27. **RESPONDENT** has the right to terminate the Agreement any time pursuant to Clause 60.2, and the exercise of termination right lead to the duty to pay liquidated damage [*p.11, Cl. Ex. No.1 (Clause 60.2)*]. **RESPONDENT** had terminated the Agreement on 1 June 2013 [*p.20, Cl. Ex. No.8¶ 1*], therefore are liable for liquidated damage of USD $75,000,000 pursuant to Clause 60.2 of the

Agreement.

B. THERE ARE NO GROUNDS RESPONDENT TO VITIATE THE OBLIGATIONS UNDER THE AGREEMENT.

a. The Obligation to Display and Purchase Tobacco Products Could Still be Performed.

28. Only the Display and Purchase obligations of **Branded Merchandise** may be hindered by the prohibition on distribution of promotional materials containing trademarks or marks associated with tobacco products [*p.11, Cl. Ex. No.2 ¶4*]. **RESPONDENT** alleged that it was no longer possible to perform the purchase obligation of the minimum quantity and intervals of **Tobacco Products** [*p.30, Res. Ex. No.3, ¶3*], which was not true. Bill 275 did not ban the sales of Tobacco products *per se*. **RESPONDENT** only experienced difficulties in terms of marketing. These difficulties could not serve as an exemption provided in *Art.* 79 *CISG* [*Schlechtriem, p.617*].

29. At most, only the damages arose from the non-performance of **Branded Merchandise** may be exempted, the selling of which is prohibited by Bill 275.

Other obligations, in fact, were still possible to perform despite the launch of Bill 275, which should neither be exempted nor vitiated.

b. Even if Tribunal Holds that the Fulfillment of the Obligation of Purchasing Tobacco Products Impossible, Bill 275 Meets no Requirements of Exemption Provided in *Art.* 79 CISG.

30. *Art*. 79(1) *CISG* stipulates that, "A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences." There are three requirements for the application of this provision, namely the impediment is uncontrollable, unforeseeable and unavoidable to the obligator.

31. **CLAIMANT** agreed that "acts of public authority" is an impediment contained in *Art*. 79 *CISG* [*BRUNNER, p.265; Kroll et.al, p.1072; Malaysia v. Dairex*], and do not argue the uncontrollability and unavoidability. **CLAIMANT** submits **RESPONDENT** is expected to foresee the application of Bill 275.

32. Foreseeability will be determined by virtue of an objective standard pursuant to *Art*. 8(2) *CISG*, which refers to reasonable person standard. Anything that falls within the ordinary range of commercial probability is foreseeable [*Macromex v. Globex ; Kroll et.al., p.1076*]. The Gondwandan government adopted series of actions from 2001 onwards, which revealed the trend of stricter regulations on tobacco products. Although the conclusion of the Agreement was on 2010, **RESPONDENT**, as the largest and most important distributor for **CLAIMANT** since 2000 [*p.3, AfA ¶5*], should have been aware of Gondwandan Government's anti-tobacco policy before the conclusion of the Agreement. The prohibition on the sales of **Branded Merchandise** was in fact foreseeable to **RESPONDENT** at the time of the conclusion of the contract, thus **RESPONDENT** is still liable for the failure to perform its obligations.

c. Even if the Application of Bill 275 did Constitute an Exemption Provided in Article 79, the Duty to pay the Liquidated Damages Still Exists.

***a) Art.* 79 (5) CISG refers to compensational damages**

only and does not include penalty damages.

33. The excused "damages" under *Art*. 79 (5) *CISG* only refers to "compensate for the loss of the obligation" pursuant to *Art*. 74 *CISG*. The scope of the damages covered should be judged "according to the effect of the impediment" [*Kroll et.al*. *p.1060*].

b) **The PARTIES deem the liquidated damage as a penalty damages and should not be subjected to Art. 79 (5) CISG.**

34. Whether liquidated damage can be exempted by the application of *Art*. 79 (5) *CISG* depends on the common purpose of **PARTIES'S** intention to the clause [*Schlechtriem,p.607 ;Kroll et.al*. *p.1060*]. In the present case, **PARTIES** had deemed the "liquidated damages" as Termination Penalties [*p.21, Cl*. *Ex*. *No.9; p.25, SoD ¶21c*], and it reveals that the liquidated damage was of a penalty character. In conclusion, the liquidated damage was not a form of compensational damage, so the duty to pay liquidated damages cannot be excluded.

IV. THERE WILL BE NO RISK OF ENFORCEMENT, SHOULD

THE TRIBUNAL ISSUE AN AWARD IN FAVOR OF THE CLAIMANT.

35. Since Gondwana is party to *NY Convention* [*p*.6, *AfA*, ¶24], it is obliged under *Art*. III to recognize Convention awards as binding and to enforce them in accordance with rules of procedure. Recognition and enforcement may be refused only on the grounds provided in *Art*.V, which should be construed narrowly and exhaustively [*Jan van den Berg*, *p*.13]. The Convention sets maximum standards so that Contracting States cannot adopt legislations that add grounds for resisting recognition and enforcement. That is to say, if **[A]** an award falls within the scope of application, and **[B]** falls short of grounds to defense enforcement, national courts are obliged under the *NY Convention* to recognize and enforce foreign awards. **CLAIMANT** submits that the two requirements were fulfilled.

A. THE AWARD FALLS WITHIN THE SCOPE OF APPLICATION UNDER THE *NY CONVENTION*.

36. According to Art. I, "the Convention applies to arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought." In the present case, the award would have been made by

the Tribunal of CIETAC, situating Hong Kong, while seeking enforcement in the State of Gondwana. Therefore, it falls within the scope of application under the *NY Convention*.

B. THERE IS NO GROUND FOR THE REFUSAL OF ENFORCEMENT OF THE AWARD AT THE STATE OF GONDWANA UNDER ARTICLE V OF THE *NY CONVENTION*.

37. **RESPONDENT** has asserted that should the Arbitral Tribunal issue an award in favor of **CLAIMANT**, such award would be contrary to the Gonwandan public policy. The assertion is groundless, because **[a]** the enforcement of the award is not associated with the public policy of Gondwana; and **[b]** even if it is, the enforcement of the award does not constitute a violation to public policy.

a. The Enforcement of the Award does not Involve Public Policy.

38. The obligation for **RESPONDENT** to pay the liquidated damage lay in the Agreement, which stipulated that once the **RESPONDENT** exercise its right to terminate the Agreement, it shall be liable for the liquidated damages, in which the figures were negotiated between both **PARTIES** [*p*.11, *Cl. Ex. No.1 (Clause 60.2)*]. Should the Tribunal issue an award in favor for **CLAIMANT**, it simply

demonstrates the effectiveness of the Agreement, and by no way can be associated with harming public policy of Gondwana thereof.

b. The Enforcement of the Award does not Constitute a Violation to Public Policy, Hence is not a Valid Reason to Refuse Enforcement.

39. Even if the enforcement of the award is associated with public policy, it does not constitute a violation to it. The public policy exception set out on *Art*.V(2)(b) is an acknowledgment of the right of the State and its Courts to exercise ultimate control over a foreign award [*ILA Report*]. However, this defense is only available "where the enforcement would violate the forum State's most basic notions of morality and justice [*Parsons Case*]."

40. In fact, courts throughout the world have taken a strict attitude toward the defense. In this sense, the mere fact that the enforcement of an award violates mandatory provisions in the forum State does not necessarily constitute a valid reason to refuse enforcement [*Adviso Case*]. For example, a case decided in Germany [*German Case*], liquidated damage, though not in conformity with German law were not considered contrary to the public policy.

41. In the present case, should the enforcement of the award leads to the payment of liquidated damage, it shall not be held contrary to public policy since it is a contractual obligation rather than a serious breach to the public policy of Gondwana.

REQUEST FOR RELIEF

CLAIMANT hereby submits that the Tribunal render in favor of **CLAIMANT**:

1. **The Tribunal Has Full Jurisdiction over the Liquidated Damage Claim.**

2. **The Tribunal Should Not Accept the *Amicus Curiae* Brief from the Gondwandan Government.**

3. **RESPONDENT's Obligations under the Agreement were by No Way Vitiated.**

4. **There Will be No Risk for Future Enforcement of the Arbitration Award.**