

## **The assignment**

The assignment revolves around the 25<sup>th</sup> Vismoot problem (including PO2) available along with other materials at the Vismoot website - <https://vismoot.pace.edu/site/previous-moots/25th-vis-moot>

The task is to review the relevant facts of the dispute and prepare a 7 minute oral argument on the issue described below for the **Respondent**.

As the goal of the task is to evaluate your potential for successfully present yourself before an arbitral tribunal, you are not expected to invest enormous amounts of time and prepare your own original arguments and this stage. You are allowed and encouraged to use all of the materials available at the Vismoot website, including, the arbitrator's brief (see link below), which summarizes the relevant facts and main arguments, as well as any of the best memoranda of **Respondent** (see the link below), which include line of argumentation on the issue below.

To make your life even easier, we have summarized the main facts and legal grounds relevant to your issue below with a brief background of the dispute.

## **The issue**

The problem includes 4 issues. However, your task is to address only one of them:

Whether CLAIMANT's behavior and the existing relationships between the arbitrator Mr. Prasad and the third party funder Findfunds LP, are sufficient to either by themselves or jointly with other connections to justify the conclusion that there are "reasonable doubts" as to Mr. Prasad's independence.

## **Background of the dispute**

CLAIMANT, Delicately Whole Foods Sp., is a medium sized manufacturer of fine bakery products registered in Equatoriana. Its philosophy is that only the best ingredients are just good enough for its products. It is a social enterprise and as a Member of the UN Global Compact initiative committed to produce sustainably and ethically. RESPONDENT, Comestibles Finos Ltd, is a gourmet supermarket chain in Mediterraneo.

On 7 April 2014 parties entered into a contract under which CLAIMANT was to sell chocolate cakes to RESPONDENT.

In accordance with the contract, the CLAIMANT made its first delivery on 1 May 2014. There were no problems concerning the deliveries in 2014, 2015 and 2016. In early 2017 a dispute broke out between the parties regarding an allegation by RESPONDENT that CLAIMANT has violated the contract by delivering cakes that do not conform with RESPONDENT's sustainable production requirements and therefore do not conform with the contract.

On 12 February 2017 RESPONDENT declared a termination of the contract. In order to offset alleged damages to its reputation, RESPONDENT withheld payments for cakes that had been already delivered in the amount of USD 1'200'000. CLAIMANT disputed the non-conformity and demanded RESPONDENT to pay for the delivered cakes. The Parties continued negotiation but could not reach a settlement.

### **Initiation of Arbitration**

On 30 June 2017 CLAIMANT initiated the present arbitration proceedings, asking inter alia for the payment of the still outstanding purchase price, a declaration as to the applicable rules for the contractual relationship and for damages for breach of contract. RESPONDENT requested the tribunal to reject all RESPONDENT's claims and order CLAIMANT to pay the costs for the arbitration.

Pursuant to the arbitration agreement, parties agreed to *ad hoc* arbitration under UNCITRAL arbitration rules. Seat of arbitration is Danubia. Danubia has adopted UNCITRAL model law as its arbitration law. The number of arbitrators is three, one appointed by each party and the presiding arbitrator appointed by the party-appointed arbitrators or by agreement of the Parties.

In its Notice for Arbitration CLAIMANT appointed Mr. Prasad of Prasad and Partners as its arbitrator.

### **Challenge of the arbitrator appointed by CLAIMANT**

During the course of the proceedings an issue concerning the proper constitution of Arbitral Tribunal arose.

When RESPONDENT subsequently examined the metadata of the electronic version of the CLAIMANT's Notice of Arbitration, it discovered a deleted comment by Mr. Fasttrack (Counsel for CLAIMANT) that gave some background information concerning the appointment of Mr. Prasad: *"Verify with Findfunds whether there exist any contacts between Mr. Prasad and Findfunds. If contacts exist we should definitely do our best to keep the funding secret and not disclose it to the Respondent, to avoid potential challenges of Mr. Prasad. Prasad, whom I know from two previous arbitrations, is the perfect arbitrator for our case given his view expressed in an article on the irrelevance of CSR on the question of the conformity of goods"*

The comment showed that CLAIMANT decided not to disclose the involvement of a third-party funder – Findfunds to avoid any challenge to Mr. Prasad. In RESPONDENT's view CLAIMANT's behavior and subsequently disclosed contacts between the third-party funder and Mr. Prasad, respectively his law firm, raise justifiable doubts as to Mr. Prasad's independence. As a consequence, RESPONDENT notified the Arbitral Tribunal on 14 September 2017 (pg.38) that it would challenge Mr. Prasad should the latter not voluntarily resign.

In their replies to this challenge Mr. Prasad (Letter of 21 September 2017) and CLAIMANT (29 September 2017) both contested that the existing contacts could raise justifiable doubts as to Mr. Prasad's independence.

**For the purposes of your assignment, here are the relevant sections of the PROBLEM and other materials that you may find useful:**

**Excerpts from the problem: - <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/25thVisMootFinalPO2.pdf>**

Claimant's Notice of Arbitration – pg.14, para.14.

Mr.Prasad's declaration, Exhibit C11 – pg.23

Respondent's Answer to the Notice of Arbitration – pg.26, para.22.

Respondent's letter – pg.33.

Decision by the Tribunal – pg.34.

Claimant's declaration – pg.35

Mr.Prasad's letter – pg. 36

Notice of Challenge of Mr.Prasad – pg.37-39

Respondent's exhibit R4 – pg.40

Mr.Prasad's response to the Challenge – pg.43-44

Claimant's response to the NoC – pg.45-46

PO2, paragraphs 1-18, pg.50-51

**Excerpts from the Arbitrator's brief - <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/brief.pdf>**

Grounds for challenge – pg. 9-12.

**Excerpts from the best Memoranda:**

Humboldt – pg.10-19 - <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/humboldt-respondent.pdf>

Lausanne -pg.10-17 - <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/lausanne-respondent.pdf>

**Video of the final argument in Vienna (for inspiration) -**

**<https://www.youtube.com/watch?v=IJRpuAoyHgk>**

How to introduce yourself (from 4:04-4:35) – <https://youtu.be/IJRpuAoyHgk?t=244>

How to begin your argument (introduction) (from 6:05-6:55) -

<https://youtu.be/IJRpuAoyHgk?t=365>

Argument on the challenge issue (from 16:26-24:09) - <https://youtu.be/IJRpuAoyHgk?t=986>

**UNCITRAL Rules – <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013-e.pdf>**

Articles 11, 12, 13(1), pg.12.

**UNCITRAL Model Law - [https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998\\_Ebook.pdf](https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf)**

Article 12, 13(2), pg.7.

**IBA Guidelines -**

**<https://www.ibanet.org/Document/Default.aspx?DocumentUid=e2fe5e72-eb14-4bba-b10d-d33dafee8918>**

General principle 3(a), pg.6.

General principle 4(a;c), pg.10.

General principle 7, pg.15.

Part II, Paragraph 2, 3, pg.17-18.

Waivable red list article 2.3.6, pg.21

Orange list article 3.1.3. pg.22.

Orange list article 3.3.8. pg.24.