

STATEMENT OF FACTS

1. Islander is a country located in an archipelago in the Pacific Ocean. Granicus is a land-locked nation in the Central Asia.

2. Islander was recognized as an independent State in 1961, and has been run as a dictatorship masked as an oligarchy. The former President of Islander, Mr. Tyereus Dark, who was at the helm of the political movement in 1961, passed away in 2011. Over the years, and under the rule of Mr. Dark, Islander was fashioned as a tax haven. Islander entered into Double Tax Avoidance Agreements with almost all nations of the world. It was marketed as a dream destination to set up corporations, with a 0.4 percent tax rate on corporations, and minimal regulatory compliance. Prior to 1961, Islander was a colony of Granicus, and the territory a major producer of sugar and sugar cane. After its development as an international financial nerve centre, the regime under Mr. Tyereus Dark in Islander nationalized/acquired the large sugar plantations and used the land for the development of specialized ‘financial zones’ housing world class financial institutions and related facilities.

3. Over a period of time, to support the burgeoning number of companies being incorporated in Islander, Mr. Dark set up an opaque banking system in Islander, guaranteeing secrecy and support to national and international investors seeking discreet banking services. Islander also offered citizenship for high net worth individuals who made large investments in Islander. From time to time, Islander authorities specified the minimum amount required for such citizenship. In 2011, the

The K.K. Luthra Memorial Moot Court, 2019

amount required was in excess of US\$10,000,000. These investments, which were made in foreign currencies, were a significant source of revenue for Islander.

4. Within a month of Mr. Dark's death in 2011, his daughter, Ms. Aria Dark took over the reigns of power in Islander, supported by a large number of heads of banks. She claimed to be a citizen of Islander and the political successor of her father.

5. Granicus is the second largest country in the world by population, and the fifth-largest in terms of area. Granicus identifies itself as a democratic federation and a secular republic. Granicus has the third largest economy measured by GDP and the second fastest growth rate amongst developed countries. The present Head of State of Granicus, Ms. Aisha Drenner, came to power in 2016, on the plank of spearheading the fight against corruption, terrorism, and money-laundering. Ms. Drenner's family is known to run the largest financial services company in Granicus. The Company, i.e. M/s Drenner Financials, is run by Ms. Drenner's son and daughter. It was previously controlled and managed by Ms. Drenner herself, prior to her having been elected as President of Granicus. Drenner Advisors, a company incorporated in Islander, is said to indirectly (through a complex network of companies) be the holding company of Drenner Financials.

6. Though geographically dislocated, the citizens of Islander and Granicus are similar not just in appearance, but also share common ancestry. Such common ancestry is traceable to the Harzinnian colonization of large parts of Asia, including Granicus. During their colonization, Granicians were regularly sent to islands in the South

The K.K. Luthra Memorial Moot Court, 2019

Pacific, including Islander, for agricultural work. As a result The people of Islander share similar names, physical characteristics, and religious beliefs with Granicus.

7. After her ascension to power, Ms. Dark presided over a huge disinvestment policy in 2014. She made public statements to the effect that it was not the business of the Islander government to be in business. The disinvestment formally commenced in 2016. A company by the name of Walhala Industries, headed by Ms. Dark's nephew, Mr. Andrew Dark, began taking over a large number of government companies that were targeted for disinvestment.
8. The businesses that were privatized and taken over by Walhala Industries included the airline, hotel, and banking industries. Consequently, the National Bank of Islander, and the National airlines carrier of Islander, were renamed Walhala Bank and Walhala Airlines. Whispers in the corridors of power emerged that Ms. Dark had orchestrated such privatization of Government companies to launder monies earned by Ms. Dark from corrupt practices. Ms. Dark, however, through government spokespersons and carefully orchestrated leaks maintained that Walhala Industries was a separate, distinct legal entity, having no association with Ms. Dark save the fact that her nephew Andrew was running its business.
9. In early 2018, a series of investigative news reports were published in newspapers and online news-portals in Islander indicating that Walhala Industries was actually associated with Drenner Advisors. It was also reported that Ms. Aria Dark and Ms. Aisha Drenner were in fact related by blood. The reports indicated that the ascension

The K.K. Luthra Memorial Moot Court, 2019

of power of Ms. Dark, backed by financial institutions in Islander, was pursuant to back-room discussions within the banking systems of Islander and Granicus. These news reports indicated that a large amount of monies obtained through dubious means inter alia by Ms. Aria Dark and her associates in the Islander Government, and other associates linked to even the Granician Government, were being routed through Drenner Advisors into Walhala Industries between 2012-2015, which was then being used to make investments in the Airlines and the Hotel Industries of Islander in 2016 (which by then had been privatized).

10. Furious with this investigative reporting, which is said to have originated out of Granicus, Ms. Aria Dark decided to make an official visit to Granicus in March 2018 to lodge a diplomatic protest in Granicus itself. Since disinvestment, Air Force One, which was the national aircraft to ferry the former Dictator of Islander, was renamed Walhala One, having been operated by Walhala Industries since 2016.
11. Granician media reports cited the upcoming visit by Ms. Aria Dark as an attempt to garner support from Ms. Aisha Drenner, and to prepare a charter of activity to clear all speculation on the association of Walhala Industries with Drenner Advisors.
12. Ms. Aria Dark landed in Granicus along with her nephew Mr. Andrew Dark on 28th March 2018. The proverbial red-carpet welcome was accorded to both Ms. Aria Dark, and to her nephew Mr. Andrew Dark, upon them having alighted from Walhala One. Ms. Aisha Drenner personally escorted Ms. Aria Dark to a limousine, and Mr. Andrew Dark was escorted by the General of the Granicus Police Force to a

The K.K. Luthra Memorial Moot Court, 2019

separate limousine. The hotel where Ms. Dark was housed by the Granician government was a short drive away from the airport. As Ms. Dark entered her hotel, media personnel waiting at the gates requested Ms. Dark for an impromptu question-hour session with the media. Agreeing to the suggestion, with a view to come clear on the reason for her visit, Ms. Dark commenced the media session. The first question asked of Ms. Dark was “How do you feel about the seizure of Walhala one, and the arrest of Mr. Andrew Dark?” Laughing away such an ostensibly ridiculous question, Ms. Dark moved to the next querist, who asked her if “she thought the action taken by the Directorate of Investigation, under the Granician Ministry of Finance, to seize Walhala One and arrest Mr. Andrew Dark, were mala fide, and were taken with a view to Drenner Advisors taking control of Walhala Industries....”

13. Realizing that the questions may have some material connection with what had transpired over the past half hour, Ms. Aria Dark rushed to her hotel, where she immediately was made aware by her escort of the following events:

- a. Upon Mr. Andrew Dark having been escorted to his limousine at the airport, Mr. Dark was arrested and taken into custody by an officer of the Directorate of Investigation, which is the state agency responsible for investigating offences of money laundering and proceeds of crime;
- b. Walhala One was seized, and sealed by officers of the Directorate of Investigation, and could not be utilized for any further onward air-travel;
- c. The Directorate of Enforcement had passed a quia timet order directing immediate seizure of any bank account transaction/ withdrawals of money

The K.K. Luthra Memorial Moot Court, 2019

initiated by Ms. Aria Dark, to get access to any money, as such money had originated from Islander, where it was alleged that such monies were proceeds of crime.

14. Angered by this action on the part of the Granician State machinery, and incensed by the fact that Ms. Aisha Drenner had suppressed such proposed action at the time of the red-carpet welcome, Ms. Aria Dark, sought legal advice from the Islandic Embassy, who have, through prominent local lawyers Harvie and Hudson, filed a Petition before the Supreme Court of Granicus, challenging the following:

- A. Jurisdiction of the State Authorities of Granicus to act in terms of “13. a, b, and c” above;
- B. Diplomatic Immunity of Ms. Aria Dark, and separately Mr. Andrew Dark, who was, immediately after his arrest (for the very first time), named as an “Official Advisor to Ms. Aria Dark”, as also of the aircraft Walhala One;
- C. The power of the Directorate of Investigation to investigate into what appeared to be (on a demurrer) money-laundering outside the territory of Granicus;
- D. Mala fides by the Granician Government Authorities and of Ms. Aisha Drenner, to take over the activities of Walhala Industries, through Drenner Advisors, on the pretext that the laundering activities alleged by the Directorate of Industries on the part of Walhala Industries, are said to have originated from monies belonging to Drenner Advisors. There being a common conspiracy, and no action was permissible by the Directorate against Walhala without prior action against Drenner.

The K.K. Luthra Memorial Moot Court, 2019

NOTE TO COUNSEL:

1. Both Islander and Granicus are signatories to the Vienna Convention on Diplomatic Relations, 1961, the Optional Protocol concerning the Compulsory Settlement of Disputes to the Vienna Convention on Diplomatic Relations of 18 April 1961 (18.04.1961) and the United Nations Convention [against Transnational Organized Crime] (15.11.2000).
2. Both Islander and Granicus follow the common law system.
3. Parties may raise any other issue on the given facts to advance arguments upon

APPENDIX – RELEVANT PROVISIONS

A. Proceeds of Crime Act, 2017

a. SECTION 1:

i. This Act shall extend to the

1. the territory of Granicus, and
2. to any activity relating to proceeds of crime outside the Granicus, which relates to proceeds of crime arising from within the territory of Granicus.

ii. The term “Proceeds of Crime” is defined as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

iii. The term “scheduled offence” includes any offence mentioned in the schedule to the present Act, including abetment, conspiracy, and attempt to commit such offence.

iv. The offence of “money laundering” is said to be committed when any person directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting such proceeds of crime as untainted property.

- v. “Directorate of Investigation” is the agency created under the present statute headed by the Director of Investigation, who shall report to the Minister of Finance of Granicus, and has the power to investigate into and to prosecute offences under the present Act, and to exercise such further powers as provided under the Act.
 - b. SECTION 2: **Punishment** Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years
 - c. SECTION 3: **Power to attach** – Any officer of the Directorate of Investigation may seize/ attach any property, which he has reason to believe on the basis of material in his possession, that is, or emanates from, proceeds of crime.
 - d. SECTION 4: The Directorate of Investigation shall have the power to investigate into any activity relating to proceeds of crime and the offence of money laundering
 - e. **SCHEDULE (EXTRACT)**
 - All offences relating to bribery or corruption of a public official in Granicus
- B. Constitution of Granicus (**EXTRACTS**)
- a. **Article 10 Remedies for enforcement of rights conferred by the Constitution**

The K.K. Luthra Memorial Moot Court, 2019

- i. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by the Constitution is guaranteed
- ii. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by the Constitution

...

b. Article 11 – Protection of life and personal liberty - No

person shall be deprived of his life or personal liberty except according to procedure established by law

c. Article 12 –Protection in respect of conviction for offences

- i. No person shall be prosecuted and punished for the same offence more than once
- ii. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence
- iii. No person accused of any offence shall be compelled to be a witness against himself

The K.K. Luthra Memorial Moot Court, 2019

d. Article 13 – Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Granicus