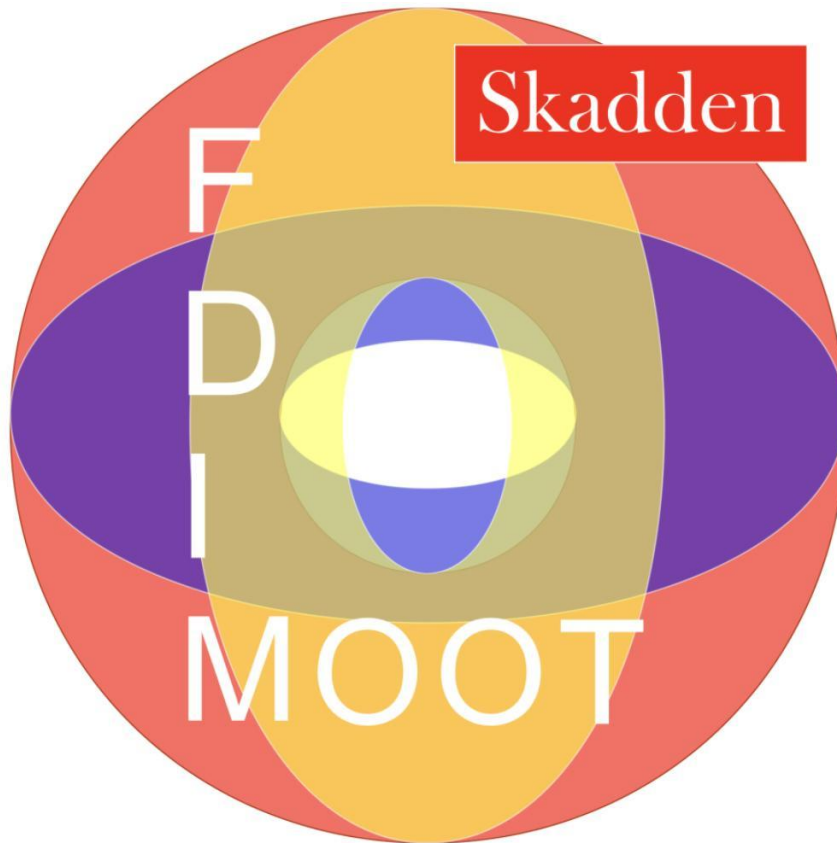


## Written Test for FDI MOOT 2025

---



## FOREIGN DIRECT INVESTMENT INTERNATIONAL ARBITRATION MOOT

*Note: Before you proceed with the facts and questions, we would like to offer some friendly advice. You may not be familiar with international investment law and international arbitration, which is completely understandable. Please note that this written examination is designed to assess your ability to comprehend English legal texts, conduct legal research, and construct logical legal arguments. There is no need to worry—embrace this opportunity to explore a new and exciting area of international law. Good luck!*

## TABLE OF CONTENTS

<b>STATEMENT OF FACTS</b> .....	3
<b>ISSUE TO BE ADDRESSED</b> .....	14
<b>ANSWER REQUIREMENT</b> .....	14
<b>Exhibit 1: Xenera-Arrakis BIT</b> .....	16
<b>Exhibit 2: Valdris’ Official Note to Xenera regarding Continuation of Treaties</b>	21
<b>Exhibit 3: Xenera’s Official Note to Valdris regarding Continuation of Treaties</b> .....	22
<b>Exhibit 4: Excerpt from the Xenera’s official website – list of treaties in force</b> ..	23
<b>Exhibit 5: Resolution of the Valdris’ Parliament on Succession of Bilateral Investment Treaties</b> .....	24
<b>Exhibit 6: Excerpt from the Valdris’ Governmental Website</b> .....	25
<b>Exhibit 7: Valdris’ Official Note to Xenera regarding Non-Continuation of the BIT</b> .....	26

## **STATEMENT OF FACTS**

The Empire of Gatania (“Gatania”) was a vast monarchy formed by conquering smaller states in the Galvatan Region (the “Region”). In 1919, in the aftermath of World War I, eight of those smaller states separated from it. Their populations share a common culture and language, with minor dialect differences.

World War II exposed that the fragmentation of the Region made it vulnerable to conquest. Therefore, in 1946, five small states in the Region united to form the Federal Republic of Arrakis (“Arrakis”), while Smirion, Reka, and Tupiras refrained from joining. The union was approved in referenda by the populations of all the states involved, and Arrakis was formally established. Arrakis joined the UN and was internationally recognized. Afterwards, Arrakis, Smirion, Reka, and Tupiras formed a Galvatan Organization of Development (“GOD”).

Arrakis, Smirion, Reka, and Tupiras are considered least developed countries. For example, Arrakis has a GDP of US\$150 billion, with over 70% of its population living below the international poverty line of \$2.15 a day. The four States had low socio-economic development, characterized by weak development capacity, low- and unequal-income distribution and scarcity of domestic financial resources. They also struggle with underdeveloped healthcare systems.

Considering the independence traditions of all the states involved, the founders of Arrakis opted for federalism with extensive autonomy for the respective components, which were called provinces. Each province had its own constitution, parliament, government, and judicial system. The Federal Constitution adopted in 1949 was the highest source of law in Arrakis (“Constitution”), and the federal law enjoyed supremacy over the provincial laws.

Under the Constitution, both federal and the provincial governments are allowed to enact legislation only within their respective competences. The Constitution divides the

competences of the federal and the provincial governments into three categories: (i) exclusive competences of the provincial authorities (such as maintenance of order, education or control of local administration), (ii) exclusive competences of the federal authorities (such as issuing currency, financing the army or regulating international trade), and concurrent competences (imposing and collecting taxes, enacting and enforcing laws, establishing and maintaining a judiciary or maintaining the healthcare system).

As the healthcare system is regulated by concurrent competences, the federal government sets common standards for all the provinces. Each province must maintain its own healthcare system, which is administered by the Provincial Health Office (the “PHO”). All the PHOs are formally subject to the Federal Ministry of Health (“FMH”) and should inform and coordinate their activities with the Ministry, which can issue binding orders and recommendations.

To attract foreign investors, Arrakis signed the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of Xenera and the Federal Republic of Arrakis (“BIT”)<sup>1</sup> on 26 October 2005. Xenera is a developed country located 5,000 kilometres away from the Region.

Shortly after Arrakis’ establishment, the country faced several separatist movements across different provinces. These movements gained momentum during periods of crisis, with the most significant occurring in 1983. That year, a referendum on Valdris independence, the Arrakis’ wealthiest province, was held, but the proposal was ultimately voted down. However, the separatist movements, although weakened, have survived until modern times.

Historically, 75-85% the Region’s medicines were imports. In 2015, the outbreak of a regional epidemic called Nagini revealed the vulnerability of the Region due to limited access to medicines. In turn, this increased the cost of multiple pharmaceutical products

---

<sup>1</sup> Exhibit 1: Xenera-Arrakis BIT

and left citizens vulnerable to supply chain disruptions.

Arrakis was particularly affected by Nagini, suffering the highest mortality rate in the Region. Its few local pharmaceutical companies were unable to develop a proper vaccine or treatment for the fast-spreading disease. At the same time, Arrakis could not afford to purchase the necessary quantity of medicines from developed states, which had already developed effective treatments.

In 2016, the WHO declared Nagini to be no longer Public Health Emergency of International Concern, but it was still spreading across the Region. The FMH reported to the Government indicating the need to improve the healthcare system and develop more advanced production and greater access to medicines. The government directed the Federal Ministry of Investment, Industry and Trade to develop a plan to achieve these objectives. Meanwhile, the crisis attracted investors who saw the imbalance between supply and demand in the GOD.

Therefore, the Federal Ministry of Investment, Industry and Trade prepared the National Plan of Promotion and Facilitation of Pharmaceutical Production, aimed at reducing the gap between local demand and production by attracting foreign investment in Arrakis' pharmaceutical sector. Following approval of the plan in July 2017, Arrakis adopted the package of measures envisaged in the plan and urged provinces to attract foreign investors.

BionPro Inc. is a major pharmaceutical company, incorporated in Xenera in 1973. It produces a wide range of medicines and publicly asserts that one of its core values is a humanitarian approach to healthcare.

In September 2017, Province of Valdris applied the newly adopted action plan for pharmaceutical investments and started its negotiations with BionPro Inc. to establish a local pharmaceutical production facility. As BionPro Inc. was interested in expanding its business and contributing to the Region's healthcare system, specifically in Arrakis,

it accepted the invitation.

The investment was structured around two agreements. On 2 November 2017, BionPro Inc. and the PHO of Valdris entered into the Agreement No. 2432430, under which BionPro Inc. purchased a laboratory for production of medicines in the Province of Valdris. Separately, on 4 November 2017, BionPro Inc., on the one side, and Arrakis (FMH) and PHO of Valdris, on the other side, concluded the Technology Transfer Contract.

Under the Contract, BionPro Inc. agreed to develop a laboratory and a production facility for medicines in Province of Valdris providing time, expertise, and financial support for twenty years, while retaining all profits. In addition, the Contract provided for the transfer of technology to Arrakis to produce a brand-new medicine called “ProTego”, which BionPro Inc. had developed against Nagini.

In December 2017, BionPro Inc. incorporated a company in Arrakis called “BionPro SA”, a special purpose vehicle to purchase a local laboratory and build a production facility. BionPro SA quickly modernized the laboratory, built the provisional production site, and brought its expertise to Arrakis.

The laboratory commenced operations in March 2021. BionPro SA’s business activities encompassed the production of medicines, including ProTego, at its production site, as well as their distribution within Arrakis and throughout the entire Galvatan Region. All of BionPro SA’s facilities were located in the Province of Valdris.

Shortly before the start of its operation, BionPro SA transferred the first package of technological know-how to the FMH, including the laboratory and production site plans, equipment documentation, and, crucially, the technology for producing ProTego.

The transfer of technology was made digitally. BionPro SA provided the PHO and the FMH hard drives containing all the necessary documentation, including formula and packaging of ProTego. Since the IT systems of PHO and the Ministry of Health were

fully integrated, the data was uploaded to the Ministry's servers in Tronjheim, the capital of Arrakis, and was accessible to both the PHO and the Ministry.

Throughout 2016-2021, the tensions within the Region escalated, and the GOD member states were also subject to numerous cyberattacks. The GOD member states put their armed forces on high alert, while disinformation campaigns intensified, particularly targeting Arrakis. The disinformation focused on those favouring the secession of the Province of Valdris. The proponents claimed that Valdris, being the most progressive and economically developed, bore a disproportionate share of Arrakis state budget.

The “Valdrian Front”, a political party advocating for Valdris' secession gained impressive public support. Its firm political position was further reinforced by the online disinformation.

In December 2021, another series of cyberattacks, this time much more intense targeted Arrakis and attacked many public institutions such as courts, hospitals, and governmental agencies. FMH systems, as well as PHO systems, were also infiltrated by the hackers. Much confidential data stored on the server of the FMH was stolen, such as confidential information and the commercial secrets of BionPro Inc., as well as the internal documentation on production concerning ProTego.

After the cyberattack, the Federal Ministry of Technology, working together with Valdris' PHO, conducted an extensive internal audit to assess the extent of the breach and shared it with the Ministries and the PHOs. The report determined with a very high level of probability that the hackers broke into the FMH's IT systems through the systems of the PHO of the Province of Valdris, which were not adequately protected.

The PHO of Valdris was unsatisfied with the internal audit report, issued by the Federal Ministry of Technology which attempted to shift all the responsibility for the leak on Valdris. The audit report prepared by PHO of Valdris denied that the leak occurred through its systems.

Continuous cyberattacks on Arrakis have heated up public sentiment to a fever pitch over the state's helplessness in the face of hackers. This became a turning point in the debates in Province of Valdris concerning secession from Arrakis. The vast majority in Province of Valdris understood that the federal government was to blame. The online disinformation further heightened distrust towards the federal government.

On 3 August 2022, Valdrian Front won the provincial elections. On 4 September 2022, the newly constituted government organized a referendum on secession, in which over 70% of population voted in favor.

Attempts of the federal government undertaken in the first half of 2022 to calm the situation were futile. After months of heated discussion and in the light of the results of the referendum, Arrakis and Valdris decided that any further cooperation was pointless and, on 20 November 2022, agreed on secession of Province of Valdris from Arrakis. Valdris became an independent republic on 1 January 2023.

During the secession negotiations Arrakis and Valdris agreed to resolve matters of state succession of responsibility according to the Resolution of the Institute of International Law on Succession of States in Matters of State Responsibility of 2015. Following secession, numerous public provincial institutions became state institutions. Among others, the PHO was renamed into the Ministry of Health of Valdris. Moreover, based on the agreement between Arrakis and Valdris, all the nationals of Arrakis who on the day of secession had their place of incorporation or place of residence in the territory of Province of Valdris, *ipso jure* became the nationals of the Republic of Valdris, including BionPro SA.

Due to secession, contracts involving public entities from the Federal Republic of Arrakis and the Province of Valdris were handled differently. The approach varied depending on the type of contract and the specific public entities involved. Since the Contract was tripartite, Arrakis' FMH and Ministry of Health of Valdris met with BionPro Inc. to discuss the amendments to the Contract. As all medicines, including



ProTego, were manufactured within Valdris' territory, the parties agreed to amend the Contract by making it binding only for the Ministry of Health of Valdris and BionPro Inc. Under the amended Contract, all relevant data was transferred to Ministry of Health of Valdris.

On 15 January 2023, Valdris lodged a request for the UN General Secretary to declare its acceptance of all the obligations of the UN Charter and become its party. The resolution was approved firstly with the 10/15 of the UN Security Council, and then by the UN General Assembly with more than  $\frac{2}{3}$  majority.

Moreover, on the same date, Valdris sent official notes to all the UN member states confirming its "readiness to respect the treaties [of the Federal Republic of Arrakis], unless the parties agree otherwise." Numerous states, including Xenera, responded positively to the official note of Valdris. Subsequently, Xenera and Valdris maintained cooperation based on the existing treaties between Xenera and Arrakis, including the bilateral trade agreement and the double taxation treaty. Neither of these treaties has been officially confirmed by Xenera or Valdris, however, they were applied on a regular basis. The Valdris' tax administration honored the double taxation treaty, and Valdris' custom authorities applied reduced tariffs on qualified products originating from Xenera under the Xenera-Arrakis bilateral trade agreement.

Initially, there was no clear indication whether the Republic of Valdris intended to continue the BIT. The official governmental website listing the treaties binding upon the Republic of Valdris did not mention the Xenera-Arrakis BIT, while mentioning the bilateral trade agreement.<sup>2</sup> However, the website appeared incomplete, as it only referred to certain types of treaties. It did not include the double taxation treaty with Xenera or any bilateral treaty with other states. At the same time, the governmental website of Xenera mentioned the Xenera-Arrakis BIT as applicable with respect to Valdris. There are no other ISDS (Investor-state Dispute Settlement) case up to date of

---

<sup>2</sup> Exhibit 4: Excerpt from the Xenera's official website – list of treaties in force.

this arbitration between these states.

In April 2023, the Ministry of Foreign Affairs of Valdris proposed concluding bilateral investment treaties with some countries to strengthen the economic ties with them. However, the Parliament of Valdris decisively rejected the idea. The majority of deputies viewed BITs as a tool for capital exporting countries to exploit developing states, limiting their sovereign powers. The government was instructed to avoid BITs, as they were considered contrary to the envisaged policy of sustainable development of Valdris. The Parliament also adopted a resolution stating that it did not honor continuation of any BITs previously signed by Arrakis.

Meanwhile, in February 2023, BionPro SA noticed an unexpected competition on the Galvatian market from a Gatania-based newly created pharmaceutical company, Loki Ltd., producing a medicine against Nagini. Being suspicious, BionPro SA conducted internal analysis of chemical composition of the medicine released by Loki Ltd. The results conclusively revealed that the composition, as well as probably the production process, were nearly identical to ProTego. The medicine offered by Loki Ltd. was being sold for 10% less than ProTego. BionPro SA calculated that due to direct competition on the Galvatian market it lost approximately 60% of its projected revenues.

Shortly after having found out about suspiciously similar composition of the Loki's medicine against Nagini, BionPro requested information from the Ministry of Health of Valdris on cybersecurity of its know-how and trade secrets. On 21 February 2023, the authorities of Valdris replied to BionPro SA, informed it of a data leak and confirmed the BionPro's technology was also compromised. The authorities of Valdris blamed Arrakis for inadequate IT systems on which the BionPro's documentation was stored. BionPro SA contacted the FMH, which refused any responsibility for the leak of data and stated that the cyberattack occurred due to the insufficient cybersecurity protection of Valdris' PHO. FMH also provided BionPro with the internal audit report of December 2021.

The FMH of Arrakis immediately informed the Prime Minister of Arrakis about the scope and consequences of the data leak for BionPro SA. Soon after, Arrakis approached Xenera with a proposition to terminate the BIT.

Arrakis stated that, due to political unrest, it had decided to reorganize its economic policies, which involved, among other things, terminating the bilateral investment treaties currently in force. Ultimately, the parties agreed to amend the BIT by retaining the standards of substantive investor protection but eliminating the direct investor-state dispute settlement mechanism. Under the proposed amendment, Arrakis and Xenera agreed to delete Article 8 from the BIT and reaffirmed their commitment to resolving disputes concerning the BIT through diplomatic channels and, if necessary, inter-state arbitration under Article 9 of the BIT. The BIT was amended on 15 April 2023, with the changes taking effect immediately.

Arrakis and Xenera are parties, *inter alia*, to the UN Charter, the VCLT, the ICSID Convention. Valdris did not take any actions to adhere to the ICSID Convention after the secession, but it acceded to the UN Charter and the VCLT. None of the states is a party to the Vienna Convention on Succession of States in respect of Treaties.

BionPro Inc. initiated the present ICSID Additional Facility Rules arbitration on 15 August 2024, claiming that Valdris has violated the full protection and security standard under the Article 3 of the BIT. To establish the jurisdiction of the Tribunal, in the chapter “C. Jurisdiction of The Arbitral Tribunal” of the Request of Arbitration, it stated that:

*BionPro is a protected investor under the Xenera-Arrakis BIT 2005 since the Republic of Valdris expressly succeeded to the BIT on 15 January 2023.*

*Respondent emerged on 1 January 2023 through secession from the Federal Republic of Arrakis (“Arrakis”). On 15 January 2023, Respondent sent an official note to Xenera confirming its “readiness to observe the treaties and agreements that have been effective between the Kingdom of Xenera and the*

*Federal Republic of Arrakis, unless the Parties agree otherwise”.<sup>3</sup> On 6 February 2023, Xenera responded positively to the Respondent’s proposal.<sup>4</sup> Thus, the BIT is now binding upon Valdris by virtue of state succession.<sup>5</sup>*

*BionPro SA, together with its non-tangible assets, such as trade secrets and know-how, is a covered investment of the Claimant under Article 1 of the BIT.*

*By submitting this Request, the Claimant accepts Valdris’ standing offer to consent to arbitration contained in Article 8 of the BIT.*

*Article 8 of the BIT further provides that where one of the Contracting Parties has not become a Contracting State to the ICSID Convention, “each Contracting Party consents that the dispute be submitted to arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes”. Since Valdris is not a Contracting State to the ICSID Convention, the present dispute is submitted under ICSID AF Rules.*

On 17 August 2024, the Republic of Valdris sent an official note to Xenera stating that it did not consider the BIT in force between Valdris and Xenera. On 20 August 2024, Xenera responded that it was surprised by Valdris’ position, since it had believed that the BIT had always been in force in the light of Valdris’ declaration of 1 January 2023. Xenera concluded that in the light of the states’ practice of continuation of other treaties “focused on economic and trade cooperation”, it considers that the Xenera-Arrakis BIT remains binding upon both states.

In the Response to the Request for Arbitration produced on 14 September 2024, the Respondent commented on the jurisdictional issue as follows:

*The Respondent respectfully submits that the Tribunal lacks jurisdiction over the present dispute.*

---

<sup>3</sup> Exhibit 2: Valdris’ Official Note to Xenera regarding Continuation of Treaties.

<sup>4</sup> Exhibit 3: Xenera’s Official Note to Valdris regarding Continuation of Treaties.

<sup>5</sup> Exhibit 4: Excerpt from the Xenera’s official website – list of treaties in force.

*BionPro mistakenly claims that its investment is protected under the Arrakis-Xenera BIT, entered into in 2005 (“BIT”) on the basis that Valdris allegedly succeeded to the BIT after its independence on 1 January 2023. However, Valdris is not and has never been bound by the BIT.*

*After Valdris became an independent state, it expressed its intention to remain bound by certain treaties concluded by Arrakis.<sup>6</sup> However, it did not automatically succeed in respect of all Arrakis’s treaties. The Valdris’ parliament expressly objected to continuation of any bilateral investment treaties of Arrakis in April 2023.<sup>7</sup> Valdris never considered to be bound by the BIT and transparently demonstrated it in its governmental websites.<sup>8</sup> Moreover, on 17 August 2024, Respondent explicitly informed Xenera that it did not recognize the BIT as a treaty in force.<sup>9</sup>*

*In any event, Xenera’s response to Valdris’ official note was not specific enough to result in succession of the BIT.*

---

<sup>6</sup> Exhibit 2: Valdris’ Official Note to Xenera regarding Continuation of Treaties.

<sup>7</sup> Exhibit 5: Resolution of the Valdris’ Parliament on Succession of Bilateral Investment Treaties.

<sup>8</sup> Exhibit 6: Excerpt from the Valdris’ Governmental Website.

<sup>9</sup> Exhibit 7: Valdris’ Official Note to Xenera regarding Non-Continuation of the BIT.

## ISSUE TO BE ADDRESSED

Whether the Tribunal has jurisdiction over the present dispute, in the light of rules of succession of states in respect of treaties regarding the BIT.

## ANSWER REQUIREMENT

1. Draft a memo in English as the representation of Claimant or Respondent. Please note that:

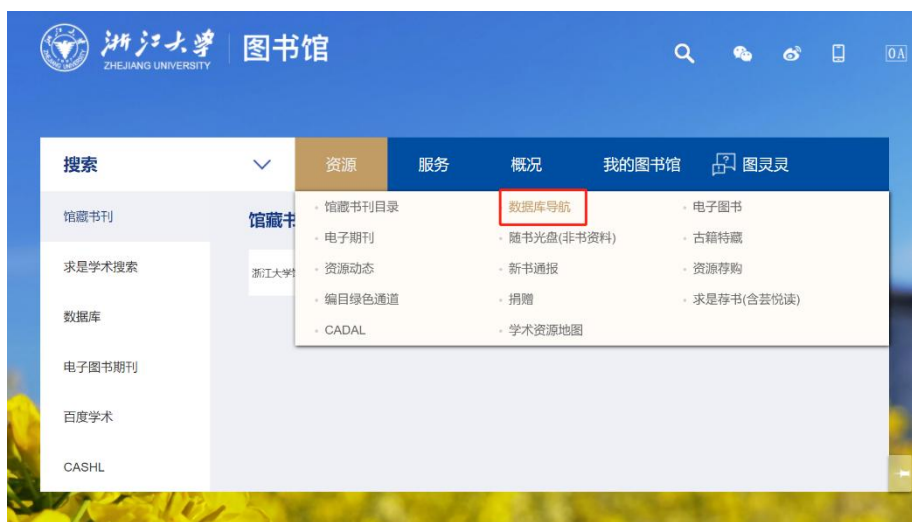
- a) Your argument should clearly articulate the position and legal basis of the Claimant or Respondent regarding the disputed issue, with a detailed reasoning to analyze the laws and accomplished facts.
- b) It is preferred (not mandatory) if you can provide supporting authority (including statutes, scholarly opinions and case decisions) as the basis of your argument;
- c) The word count and formatting of the memo will not be deemed as an important factor when evaluating the quality of the memo.

2. Several websites and databases are recommended for legal researches:

- 1) Kluwer Arbitration: <https://www.kluwerarbitration.com/>
- 2) Jus Mundi: <https://jusmundi.com/en/>
- 3) Heinonline: <https://heinonline.org/HOL/Welcome>
- 4) Investment Claims: <https://oxia.ouplaw.com/>

Note: Please browse the above websites via ZJU Internal WIFI.

You may also use the website of ZJU Library to access these websites:



3. For the convenience of this written test, the facts have been simplified. You may refer to the original case file for the full facts.

4. Please send the application form and written memo to [kexinjiang@zju.edu.cn](mailto:kexinjiang@zju.edu.cn) by the end of **April 6<sup>th</sup> 2025**.

**Exhibit 1: Xenera-Arrakis BIT**

**AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION  
OF INVESTMENTS BETWEEN THE KINGDOM OF XENERA AND THE  
FEDERAL REPUBLIC OF ARRAKIS**

**Preamble**

The Government of Kingdom of Xenera and the Government of the Federal Republic of Arrakis (hereinafter referred to as the “**Contracting Parties**”);

DESIRING to develop greater economic cooperation to the mutual benefit of both Contracting Parties;

INTENDING to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives, foster sustainable development, and increase prosperity in the territory of both Contracting Parties;

AGREEING that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

RECOGNIZING that the development of economic and business ties can contribute to the well-being of the peoples of each Party and promote respect for the internationally recognized rights of working people;

CONVICED that these objectives can be achieved without relaxing health, safety, environmental standards of general application, and prevention and combating of transnational organized crimes;

Have agreed as follows.

**Article 1**

**Definitions**

For the purpose of this Agreement:

(i) The term “investor” refers with regard to either Contracting Party to:

A) an individual who is a citizen of the State of the Contracting Party in accordance with his national law, but on condition that a natural person with dual nationality is considered to be exclusively a citizen of that State where his nationality is predominant and valid; or

B) a legal entity established in accordance with the national legislation of the State of the Contracting Party that carries out or has made investments in the territory of the state of the other Contracting Party.

(ii) The term “investment” means every kind of asset that has the characteristics of an investment, which includes a certain duration, the commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk. Forms that an investment may take include:

A) movable and immovable property as well as any other property rights in rem in respect of every kind of asset, such as mortgages, liens and pledges;



B) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

C) claims to money, to other assets or to any contractual performance having an economic value;

D) rights in the field of intellectual property, technical processes, goodwill and know-how;

E) rights granted under public law or under contract, including rights to prospect, explore, extract and exploit natural resources.

“Claims to money” within the meaning of C) does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or legal in the territory of a Contracting Party to a natural or legal person in the territory of the other Contracting Party, the domestic financing of such contracts, or any related order, judgment, or arbitral award.

## **Article 2**

### **Scope of application**

The present Agreement shall apply to investments in the territory of one Contracting Party made in

accordance with its legislation by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement. It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force.

## **Article 3**

### **Promotion and Protection of Investments**

Investments and returns of investors of Each Contracting Party shall at all times enjoy full protection

and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of investments in its territory of investor of the other Contracting Party.

## **Article 4**

### **Transfers**

Each Contracting Party shall, in respect of investments, guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns, particularly of:

(i) Returns;

(ii) Repayment of loans;

(iii) Amounts assigned to cover expenses relating to the management of the investment;

(iv) Additional contributions of capital necessary for the maintenance or development of the investment;

(v) The proceeds of the sale or the partial or total liquidation of the investment, including possible increment values.

## **Article 5**

### **Non-Discriminatory Treatment**

1. Each Party shall accord to investors of the other Party and to their covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments, with respect to operation in its territory.
2. Each Party shall accord to investors of the other Party and to covered investments treatment no less favourable than that it accords, in like circumstances, to investors of a third country and to their investments, with respect to operation in its territory.

## **Article 6**

### **General Exceptions Clause**

Nothing in this Treaty shall prevent any of the Contracting Parties from adopting or enforcing measures relating to the protection of human, animal or plant life or health, or to the maintenance of international peace and security, or to the protection of its essential security interests, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors in like circumstances or a disguised restriction on investment flows.

## **Article 7**

### **Prudential Carve-Out**

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial services supplier;
  - (b) ensuring the integrity and stability of a Party's financial system.
2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

## **Article 8**

### **Disputes between a Contracting Party and an investor of the other Contracting Party**

1. Any dispute concerning an investment which may arise between an investor of one Contracting Party and the other Contracting Party with respect to matters governed by this Agreement shall be subject to negotiations between the parties to the dispute.
2. If any dispute between an investor of one Contracting Party cannot be thus settled, the dispute may be submitted to international arbitration. To this end, and in accordance with the terms of this agreement, each Contracting Party hereby gives its advance and irrevocable consent to submission of a dispute to arbitration.
3. In the event of recourse to international arbitration, the dispute shall be submitted to the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and National of Other States,

opened for signature at Washington on 18 March 1965, when each State Party to this Agreement has acceded to it. If this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the Additional Facility Rules by the International Centre for Settlement of Investment Disputes.

4. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national legislation and according to the relevant international conventions in force for both Contracting Parties.

## **Article 9**

### **Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the arbitral tribunal shall determine its procedure. It shall reach its decision by a majority of votes. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties, unless the tribunal decides otherwise.

7. The decisions of the tribunal are final and binding for each Contracting Party.

## **Article 10**

### **Changes and amendments**

Changes and amendments to this Agreement may at any time be made by mutual consent of the Contracting Parties. Such modifications shall enter into force in accordance with paragraph (1) of Article 14 of this Agreement.

**Article 11**  
**Final provisions**

1. Both Contracting Parties shall notify each other through diplomatic channels that they have complied with the legal requirements for the entry into force of this Agreement.
2. This Agreement shall enter into force on the date of receipt of the last written notification pursuant to paragraph (1), and shall remain in force for a period of ten years. Thereafter, it shall automatically remain in force for successive periods of two years, unless either Contracting Party gives the other Contracting Party written notice of termination six months before the expiration of the initial or any subsequent period.
3. In case of official notice as to the termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before the date of termination.

Done in duplicate, at Sokovia on 26 October 2005 in English.

For Kingdom of Xenera

*E. Woods*

For the Government of the  
Federal Republic of Arrakis

*R.B. Ginsburg*

**Exhibit 2: Valdris' Official Note to Xenera regarding Continuation of Treaties**



**GOVERNMENT OF THE  
REPUBLIC OF VALDRIS**

**MINISTRY OF FOREIGN AFFAIRS  
Note No: 87/XEN/2023**

The Ministry of Foreign Affairs of the Republic of Valdris presents its compliments to the Ministry of Foreign Affairs of the Kingdom of Xenera and has the honour to inform that in accordance with the Agreement between the Government of the Federal Republic of Arrakis and the Government of the Republic of Valdris on secession of the Republic of Valdris from the Federal Republic of Arrakis dated 20 November 2022, the Republic of Valdris is a state-successor to the Federal Republic of Arrakis with regard to international treaties and agreements which were concluded by the Federal Republic of Arrakis and to which it acceded. In this regard, the Republic of Valdris confirms its readiness to observe the treaties and agreements that have been effective between the Kingdom of Xenera and the Federal Republic of Arrakis, unless the Parties agree otherwise.

Kirrapa, 15 January 2023

A handwritten signature in black ink, reading 'V. Leister'. The signature is written in a cursive style with a horizontal line underneath.

Minister of Foreign Affairs  
of the Republic of Valdris



**Exhibit 3: Xenera's Official Note to Valdris regarding Continuation of Treaties**

**GOVERNMENT OF THE KINGDOM OF XENERA**



**MINISTRY OF FOREIGN AFFAIRS**



The Ministry of Foreign Affairs of the Kingdom of Xenera presents its complements to the Ministry of Foreign Affairs of the Republic of Valdris and in connection with the note of the Ministry No87/XEN/2023 of 15 January 2023 respectfully informs that the Xenerian Kingdom takes into consideration the readiness of the Republic of Valdris as a successor of the Federal Republic of Arrakis to exercise powers and discharge obligations arising out of the international treaties that were effective between the Kingdom of Xenera and the Federal Republic of Arrakis and is content to continue relations on the already established conditions, especially with respect to the treaties focused on economic and trade cooperation between the two states.



*A. Dyakin*

Minister of Foreign Affairs  
of the Kingdom of Xenera

**Exhibit 4: Excerpt from the Xenera's official website – list of treaties in force**

gov.xe	Ministry of Trade and Investment	<input type="text"/>	
 > Bilateral relations > Economic relations > Valdris			
Valdris			
General information			+
Administrative system			+
Economy			+
Bilateral economic cooperation			—
<b>Economic bilateral treaties</b> <ul style="list-style-type: none"> <li>• Agreement between the Government of the Kingdom of Xenera and the Government of the Federal Republic of Arrakis on cultural and scientific cooperation, signed 17 June 1978 *</li> <li>• Agreement between the Government of the Kingdom of Xenera and the Government of the Federal Republic of Arrakis for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on the Sale of Property, signed on 12 March 1999 *</li> <li>• Bilateral Trade Agreement between the Kingdom of Xenera and the Federal Republic of Arrakis, signed on 12 March 1999*</li> <li>• Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of Xenera and the Federal Republic of Arrakis, signed on 26 October 2005*</li> </ul> <p><i>*subject to succession following the independence of the Republic of Valdris</i></p>			
<b>Bilateral trade</b> <i>[intentionally omitted]</i>			
<b>Foreign investments</b> Investors from Xenera are protected in Valdris under the bilateral investment treaty concluded previously between Xenera and Arrakis. The treaty was subject to succession following the independence of the Republic of Valdris on 1 January 2023 and subsequent exchange of notes between the governments of the Contracting States, confirming continuation of the economic treaties previously concluded between the Kingdom of Xenera and the Federal Republic of Arrakis. <i>[intentional omitted]</i>			
Access to market			+
Cultural differences in business relations			+
Useful links and contact information			+

*Exhibit 5: Resolution of the Valdris' Parliament on Succession of Bilateral Investment Treaties*

**REPUBLIC OF VALDRIS**



**THE PARLIAMENT**

**RESOLUTION BY THE PARLIAMENT OF THE REPUBLIC OF VALDRIS ON INSTRUCTIONS TO THE  
GOVERNMENT OF THE REPUBLIC REGARDING BILATERAL INVESTMENT TREATIES  
(2023/274/VAP)**

- A. *NOTING* that, on 1 January 2023, the Province of Valdris, formerly an administrative unit of the Federal Republic of Arrakis, gained independence from the Federal Republic of Arrakis and became a sovereign state succeeding Arrakis in terms of the treaties it had previously concluded;
- B. *RECOGNISING* the need to establish stable diplomatic and economic relations between the Republic of Valdris and other members of the international community, including through the conclusion of international treaties;
- C. *CONSIDERING* bilateral investment treaties as a tool of exploitation of developing countries by developed countries and limiting their sovereignty;

**THE PARLIAMENT OF THE REPUBLIC OF VALDRIS HEREBY,**

- 1. **RECOGNISES** the bilateral investment treaties as contrary to the best interests of the Republic of Valdris;
- 2. **INSTRUCTS** the Government of the Republic not to conclude any further bilateral investment treaties with any states or international organisations;
- 3. **CONSIDERS** the bilateral investment treaties concluded by the Federal Republic of Arrakis prior to gaining independence by the Republic of Valdris as non-binding upon the Republic of Valdris.

Kirappa, 23 April 2023

A stylized, handwritten signature in dark ink, consisting of a series of loops and flourishes, positioned above a horizontal line.

Chairman of the Parliament



**Exhibit 6: Excerpt from the Valdris' Governmental Website**

**TREATIES**

AGREEMENTS, MEMORANDA OF UNDERSTANDING AND TREATIES BETWEEN VALDRIS AND OTHER COUNTRIES

S/N	TYPE OF DOCUMENT (MOU, TREATY/AGREEMENT)	BETWEEN VALDRIS AND OTHERS	ON SUBJECT MATTER	DATE	REFERENCE MDA
1.	<i>[intentionally omitted]</i>				
...					
63.	Agreement	Xenera – Valdris	Bilateral Trade Agreement	Mar., 1999	Ministry of Investment, Industry and Trade
...	<i>[intentionally omitted]</i>				
126.	Agreement	Xenera – Valdris	Cultural and Scientific Cooperation	Jun., 1978	Ministry of Culture / Ministry of Technology
...	<i>[intentionally omitted]</i>				

**Exhibit 7: Valdris' Official Note to Xenera regarding Non-Continuation of the BIT**



**GOVERNMENT OF THE  
REPUBLIC OF VALDRIS**

**MINISTRY OF FOREIGN AFFAIRS**

**Note No: 23/XEN/2024**

Ministry of Foreign Affairs of the Republic of Valdris presents its compliments to the Ministry of Foreign Affairs of the Kingdom of Xenera and, referring to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of Xenera and the Federal Republic of Arrakis of 26 October 2005, and considering the necessity to clarify the status of the aforementioned treaty with regards to bilateral relations between Xenera and Valdris, it respectfully informs that the aforementioned treaty was not subject to succession from the Federal Republic of Arrakis to the Republic of Valdris and therefore the Republic of Valdris does not consider it binding and creating any kind of international obligations with respect to the Republic of Valdris.

Kirrapa, 17 August 2024

*V. Leister*

Minister of Foreign Affairs  
of the Republic of Valdris

