



## **MOOT PROPOSITION**

1. Foreverland NV (“F Co.”) is a global technology conglomerate headquartered in King Land. F Co. has several subsidiaries in various countries around the world which provide technology solutions and IT services. Matrix LLC (“M Co.”) is a wholly owned subsidiary of F Co, and is incorporated in Pentos. M Co. is set up for the purpose of holding investments, and also performs some back office operations for the other companies in the Foreverland Group. M Co. holds investments in companies in Westeros, High Garden and Essos.
2. Tidus Pvt. Ltd. (“TPL”), a company in Westeros which is a captive BPO of F Co. F Co. outsources some of its work to TPL, for which it remunerates TPL at arm’s length. Since 2013, M Co. holds 63% of the equity share capital of TPL and along with some compulsorily convertible preference shares (“CCPS”) which are convertible into equity on June 2017. The shares in TPL constitute 63% of the global assets of M Co. in terms of fair market value. TPL does not pay any dividends to M Co.
3. With a view to reduce complexity of the group structure and increase efficiency, the Foreverland Group decides to liquidate M Co. along with some other Group companies in different jurisdictions. As a result of the liquidation, all assets held by M Co., including its shares in TPL are distributed to F Co., which is the only shareholder of M Co. The liquidation is undertaken in December 2017. On the date of liquidation, TPL has some accumulated profits, and the fair market value of the equity shares and the converted CCPS is more than the accumulated profits.
4. F Co. files a nil return of income in Westeros for the Assessment Year 2018-19. The Assessing officer issues a notice under Section 143(2) Income Tax Act, 1961 (**ITA**) requesting for some further information in relation to certain points in its return of income. In order to obtain tax



certainty, F Co. also files an application before the Authority for Advance Rulings (“AAR”) under Section 245 Q (1) of the ITA . The questions in the Application are broadly as follows:

- a) Whether F Co. is liable to tax in Westeros under the ITA in respect of liquidation of M Co.?
  - b) Whether F Co. is eligible to avail of relief under any Double Taxation Avoidance Agreement?
  - c) Whether the Liquidation can be construed as an impermissible avoidance arrangement under Section 96 of the ITA?
5. Before the AAR, the Revenue raises a preliminary objection on maintainability of the application under proviso (i) and (iii) of Section 245R (2).
6. Further, during the pendency of the AAR proceedings, the Revenue issues another notice in furtherance of the earlier 143(2) notice questioning the nil tax in relation to the liquidation. F Co. raises this before the AAR questioning the validity of such move on the ground that an AAR application is already pending. The Revenue’s defense for this notice is that the bar against initiating further proceedings only applies in cases where the applicant is a resident. Further, this question is argued before the AAR, and the AAR’s jurisdiction to decide this ground should not be challenged.
7. The laws of Kingland are in *pari materia* with Netherland, the laws in Pentos are in *pari materia* with Mauritius and the laws of Highgarden, Westeros, Essos are in *pari materia* with Hongkong, India and Singapore respectively.