



Luthra and Luthra
LAW OFFICES INDIA



RAJIV GANDHI NATIONAL UNIVERSITY OF LAW
2nd RGNUL– LUTHRA and LUTHRA LAW OFFICES, INDIA
ENERGY LAW AGREEMENT DRAFTING COMPETITION, 2022

PATRON-IN-CHIEF



Professor (Dr.) G.S. Bajpai
Vice-Chancellor, RGNUL

PATRON



Professor (Dr.) Anand Pawar
Registrar, RGNUL

Organised by:

Centre for Advanced Studies in Energy Law (CASEL)
in collaboration with
Luthra and Luthra Law Offices, India

ABOUT THE UNIVERSITY

The Rajiv Gandhi National University of Law (RGNUL), Punjab was established as a National Law University by a legislative act of the state of Punjab in 2006 in order to fulfil the need for a center of excellence in legal education.

Its endeavor is to serve the society through reforms in legal services by way of preparing professionally competent lawyers, inquisitive researchers, able administrators, conscientious judicial officers, and above all, socially responsible citizens, who shall be whole- heartedly and continuously engaged in the process of nation building. In line with its objectives, the University does not only offer various courses but also fosters various research centers which aim to promote legal excellence through research.

ABOUT THE CENTRE FOR ADVANCED STUDIES IN ENERGY LAWS

The Centre for Advanced Studies in Energy Laws (CASEL) was established in 2016 with the objective to cater to the need for research in Energy Law, an area of law which is becoming increasingly important and pivotal in the conversations about sustainability and the future. The Centre, since its inception, has evolved constructively with a special focus on organizing various workshops and sensitization Programmes.

Apart from a focus on renewable energy resources, CASEL also aims to undertake research on and critically analyze various energy related legislations in India, annual reports of the Bureau of Energy Efficiency and other such organizations etc. and suggest amendments to the same.

ABOUT LUTHRA and LUTHRA LAW OFFICES, INDIA

Luthra & Luthra Law Offices is a leading full-service law firm. Since its inception in 1990 which coincides with India's economic liberalization, L&L has assisted numerous multinational corporations to set up their presence in India, and navigate the complex Indian legal system.

Offering kosher solutions to the complex legal issues, the Firm advises on transactions and matters involving Banking & Finance; Capital Markets; Competition & Anti-trust; Corporate Commercial and Acquisitions; Dispute Resolution Arbitration); Anti- Corruption & Compliance; International Trade (WTO) Laws and Policy & Advisory; Project, Infrastructure & Energy; Tax (Direct & Indirect); Real Estate & Construction; Aerospace & Defense (Procurement & Production); Insurance & Re-Insurance; Intellectual Property - Patent & Trademark; Oil & Gas; Health & Pharmaceuticals; Private Equity & Venture Capital Investments.

ABOUT THE COMPETITION

The growth of Energy Sector around the world is unprecedented, more specifically in India. The country with its existing resources and clear goals in place, is making great strides towards its aspiration of transforming the energy sector. With growth of renewables, the energy efficiency in the country is said to break records. From dedicated policies to private participation to the expanded horizons of Power Purchase Agreements between energy providers and users have led to

The Power Purchase Agreements (PPAs), at the outset, have significant potential as an energy source. The Agreements are said to enhance power from renewable sources and overcome the paucity faced due to the use of traditional funding sources. Over the period of time, PPA funding has expanded the solar capacity of various companies by ten times. Hence, the progress of such agreements has proven to be a framework of financial stability.

The Competition on the basis of the information seeks to engage with the community of law students in India to promote the art of modern legal drafting, in the less talked areas of Energy Law. This aims at providing opportunities to the students to initiate research about legal certainties and further the skills of drafting.

ELIGIBILITY

The Competition is open to all undergraduate law students enrolled in any recognized educational institution within or outside India.

SUBMISSION GUIDELINES

1. Participants may register individually or in a team of two (2).
2. The agreement shall be drafted on the basis of the Problem Statement.
3. The agreement shall be drafted in English language only.
4. The agreement shall not exceed more than five (5) A4-sized typewritten pages, excluding the cover page and the signature page. Five (5) marks shall be deducted as penalty for each page exceeding the page limit.
5. The document containing the agreement shall not reveal the identity of the participants, in any manner whatsoever.
6. Soliciting assistance from industry professionals with or without consideration is strictly prohibited.
7. Formatting: Font style – Times New Roman, font size – 12, line spacing – 1.5, justified alignment, paragraph spacing - 0 pt. before and after, 1 inch margin on all sides.
8. Participants are encouraged to use modern agreement drafting techniques that focus on the use of plain English.
9. Submissions shall be made in .doc or .docx format only.
10. Submissions shall be made by sending an email to casel@rgnul.ac.in with the subject "Submission for Agreement Drafting Competition: [Team Code]".
11. Clarifications on the Problem Statement shall be sent to casel@rgnul.ac.in with the subject

MARKING CRITERIA

PARAMETER	MAXIMUM MARKS
Comprehensive understanding of the Problem Statement, responsiveness to client's needs and interests, and identification of issues	30
Understanding of applicable law	20
Creativity	20
Plain language and cogent usage of words	10
Structure and coherence between clauses of the agreement	10
Formatting	10
TOTAL	100

REGISTRATION

- Participants shall register themselves for the Competition by submitting the following form:
<https://forms.gle/Ssfd3SapabBEynQ39>
(payment receipt and ID card to be uploaded)
- Registration Fee: Rs. 500/- (Individual Participation); Rs. 1000/- (Team Participation)
- Payment shall be made by accessing the following link:
<https://www.rgnulerp.org/Isa/eventPortal/loginFrom.jsp>
- A Team Code shall be assigned to each individual participant / participant team, as the case may be, after the successful completion of registration.

CASH PRIZES

- Winner: **Rs. 15000/-**
- Runners up: **Rs. 10,000/-**
- Second Runners up: **Rs. 7000/-**

IMPORTANT DATES

- Release of Problem Statement: August 8, 2022
- Last date for registration: August 24, 2022
- Last date for seeking clarifications on the Problem Statement: August 28, 2022
- Release of clarifications: August 30, 2022
- Submission deadline: September 25, 2022
- Declaration of Results: October 15, 2022



FACULTY COORDINATORS

Dr. Shiva Satish Sharda

Dr. Jaswinder Kaur

ORGANISING COMMITTEE

Akanksha Goel

Prince Agrawal

Sneha Roy

Muskan Garg

Aryan Bajaj

Devesh Tripathi

Manvee Sharma

CONTACT DETAILS

Aryan Bajaj (+91-7901912662)

Prince Agrawal (+91-9460738697)

PROBLEM STATEMENT

Brief Background

1. Kirmani Wind Ltd. is a privately owned company in Hyderabad and is noted as India's leading companies to possess superior technical and technological know-how of land and offshore based wind energy. Wind energy, being one of the few sought after green energy options, is now slowly being expanded through more and more wind energy projects being set up across the country. Kirmani Wind Ltd. is famously known to have installed wind projects worth 8000Mw across coastal Tamil Nadu and Maharashtra. It is in process of expanding its business in other states as well. All its projects are Greenfield projects and are working at full installed capacity.
2. The state of Andhra Pradesh has floated a tender, inviting proposals for setting up of an EPC project, also known as a 'Turnkey Project', where Kirmani Wind Ltd. has been declared as L1 and has secured the EPC contract to set up the biggest wind energy farm in Koyana Village, Andhra Pradesh with an installed capacity of 5000Mwe.
3. After a few initial meetings, between the State of Andhra Pradesh and Kirmani Wind Ltd. the onus of drafting the EPC Contract has been given to the private player, who is your client.
4. Kirmani Wind Ltd. wishes to raise the funds for this project, by means of opening an IPO and securing investments through 'Green Bonds' (80 percent of the total amount) whereas the rest of the amount shall be given by the Government of Andhra Pradesh.
5. You are the associate at a Bengaluru based law firm who has been tasked to make the relevant contract for Kirmani Wind Ltd.

The Deal

1. The State Government needs the 5000Mwe power project to be constructed in two phases. Phase-I (installation of 2500Mwe) to be completed in 5 years and Phase-II (installation of remaining capacity) to be completed in 3 years. Complete capacity installation and working of the wind energy project must be completed in 10 years.
2. The duration of the EPC contract shall be 15 years and can be cancelled at the instance of any party by giving 8 months' notice.
3. The land for the project shall be given on a long lease to the private player by the State Government, for the duration of the contract.
4. Feasibility Report, R&R Plan and the EIA Report mandates shall be completed by the State Government within 1 year of entering into contract. The EIA report to contain recent migratory species data as proposed area falls near the natural migration route of rare bird species.
5. The cost of electricity shall be capped at INR 4 per Kilowatt hour and is subject to annual revision depending on existing market and economic conditions.

Client's Instruction:

Kirmani Wind Ltd. has agreed to the abovementioned deal, while it has expressed concerns regarding the following issues:

1. Client shall not assume responsibility if its movable assets and raw materials are damaged by locals in case of any protest against the plant. The same would have to be reimbursed by the State.
2. Client undertakes responsibility of timely execution of the contract and its duties thereunder provided that the State does not cause time overrun and delays due to non-submission of the said reports and studies due to inaction and omission of efficiency.
3. Client wants an inclusive clause for Force Majeure which incorporates COVID-19 like pandemics and delays caused thereof.
4. Client wants to incorporate a clause for damages, in case of dispute, after ascertaining the nature of tax and monetary benefits as applicable and as laid down by the Central Government for Wind Energy Projects and Undertakings in India.
5. Client wants to ensure dispute resolution is subject to an arbitration proceeding with 3 arbitrators to be appointed as per the Indian Arbitration Act, 1996 as amended in 2019. Seat and Venue of Arbitration to be Hyderabad.

Further Suggestions

1. Incorporate suitable terminology for the clause to raise finance through IPO and relevant guidelines of the SEBI.
2. Since the power plant is being constructed in PPP mode, a termination clause assumes relevance in the agreement, since the constructed plant and ancillary assets would be disposed of at the time of termination of the agreement. The partner suggests you to incorporate a clause for disposing of/ transferring the assets in the power plant after the completion of the agreement period and / or termination whichever is earlier.
3. Drafting of the 'quantum of damages' clause need be done keeping in mind the non-issuance of Central Government's tax and monetary benefits for any reason and / or the State Government fails to incorporate and / or recognize the same. The clause must reflect stellar negotiations with the State government, and ensuring that the contract talks do not break down in latter stages, on account of disagreements relating to the benefits receivable for the energy project.
4. Any unilateral change of electricity prices and / or renegotiation in a unilateral matter in the duration of the contract shall be reason for termination of contract attracting reasonable damages to the aggrieved party.
5. The position of raising finance through IPO in Green Bonds is disputed. The finance raised must be obtained after furnishing the requisite information, as mandated by the 'Green Bond Principles' regulations, giving a brief overview about: i. Usage of the proceeds; ii. Project Evaluation and Selection; iii. Management of Proceeds; iv. Reporting