

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
MASTER OF LAWS DEGREE PROGRAMME 2022/24
END SEMESTER EXAMINATION – TRIMESTER III (REPEAT)

LLM 2194 - International Investment Law
(Three Hours)

Total number of questions:04

Answer any **Three** questions.
(Candidates will be penalized for illegible handwriting.)

1. "The development of ICSID case law suggests that ... contribution, risk and duration, should be used as the benchmarks of investment, without a separate criterion of contribution to the economic development of the host State and without reference to a regularity of profit and return."

Deutsche Bank AG v Sri Lanka

Critically analyze the above statement, exploring the uncertainties relating to *Salini* criteria. Support your answer with relevant arbitral awards.

(20 marks)

2. Modern Systems (Serena) Ltd (MS) is a subsidiary company of Modern Systems (Global) Ltd, the latter of which is incorporated in Nevada. In January 2022, MS secured a contract with the government of Serena to operate an integrated immigration control and personal identification system in Serena. This contract was approved by the legislature of Serena and executed in May 2022. Under the contract, MS completed the initial stage of the project by designing integrated systems and obtaining the necessary equipment for their operation. In January 2023, the government requested MS to postpone the production of the new national identity cards due to the upcoming elections. It stated that it would be unnecessary for citizens to obtain new identity cards before the election. The government further informed MS that it would seek to renegotiate the price of the national identity

cards. Further, it halted the operation of the immigration control system, alleging an error in the system developed by MS.

In May 2023, the government appointed a Presidential Commission to review the contract. The Commission recommended renegotiating the contract, to which MS agreed, and revising some of its terms and conditions. During the severe economic crisis, Serena enacted Emergency Law No. 2 of 2023, granting the President the power to renegotiate public sector contracts. In November 2023, MS received a new draft proposal of the contract between the government and MS, which is not negotiable and differs from what the parties had agreed on during the renegotiation process. In December 2023, the initial contract between the government and MS was terminated under the Emergency Law. In January 2024, MS filed an administrative appeal, yet it was rejected. In March 2024, MS filed its request for arbitration at the International Center for Settlement of Investment Disputes (ICSID), invoking the Bilateral Investment Treaty (BIT) between Serena and Nevada.

Assume that Serena's government has appointed you as a legal adviser. Prepare a legal opinion discussing possible jurisdictional objections and/or defences available to Serena to deny the jurisdiction of the ICSID tribunal and/or its liability under international (investment) law to compensate the claimant investor. Support your answer with relevant authorities.

(20 marks)

3. "Internationalization refers to the conversion of contractual obligations to international obligations so that every breach of investment contract amounts to a violation of international law...internationalization is the equation of contractual obligations to international obligations..."

C.L. Lim, Jean Ho and Martins Paporinskis, *International Investment Arbitration: Commentary, Awards and Other Materials* at p. 37

In light of the above statement, examine the grounds on which a contract between a foreign investor and a host state can be elevated to international status and consider controversies surrounding the theory of internationalization of foreign investment contracts. Support your answer with relevant arbitral awards.

(20 marks)

4. Limoria is a developing country in the Blue Ocean that has been enduring a civil conflict in the northern and eastern parts of the country for over twenty years. Despite the conflict, it has managed to attract significant foreign investment projects. The newly elected government of Limoria in 2024 has successfully entered into a ceasefire with the local insurgent group, making a significant step towards resolving civil conflict in a unified nation. As peace negotiations continue, the Economic Development Ministry is responsible for reviewing the country's investment laws and policies and suggesting reforms to enhance Limoria's potential as a destination for foreign investors, notably in the services and financial sectors.

Assume that you have been retained as the legal consultant for the Economic Development Ministry of Limoria. Prepare a report identifying the measures that Limoria can take to strengthen its reputation as a safe and attractive destination for foreign investors while ensuring that these investors will contribute to the country's economic development.

(20 marks)
