

**UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW**

BACHELOR OF LAWS EXAMINATION, YEAR III – 2017

International Investment Law

(Three Hours)

Total Number of Questions: 07

Answer **FOUR (04)** questions and **no more**, selecting **TWO (02)** from each part.
(Candidates will be penalized for illegible handwriting.)

PART A

Cleanup is a company registered in the State of Anora, engaged in the business of recycling garbage. Having found out that there is a tremendous potential for garbage recycling in the state of Insomnia, Cleanup enters into a Joint-Venture (JV) Agreement with the Municipal Council of Germia, the capital of Insomnia. Germia comes under the direct control of the State. Under this JV Agreement, the Municipal Council of Germia undertakes to collect the garbage and sort it out, and deliver it to the recycling plant operated by Cleanup, which is situated in Vermia, which is a city not far from Germia. Cleanup chooses this location because it is geographically suited to the operation of the recycling plant.

Even though the Bi-Lateral Investment Treaty (BIT) that exists between Anora and Insomnia guarantees full protection for the investment, Insomnia includes into the contract between the two parties, a clause to the effect that Insomnia will not be liable for any damage caused to the investment by civil strife or riots.

About one month after the investment comes into operation, the residents of Vermia stage a massive protest against Cleanup, alleging that the plant is an environmental hazard, and that they do not want Germia's garbage brought into Vermia. The Municipal Council of Germia takes over the investment, pays the workers their salaries, and

thereafter shuts down the plant. It is later revealed that the Municipal Council failed to obtain an Environmental Protection Licence from the Central Environmental Authority of Insomnia, even though it undertook to do so. In the absence of an EPL, Cleanup had been using outdated technology, resulting in air and water pollution.

Cleanup initiates arbitration proceedings against Insomnia in the International Centre for the Settlement of Investment Disputes (ICSID) and the tribunal awards compensation in the amount of US\$ 20 million to Cleanup on the basis of the BIT.

01. Assume that you are a member of the ICSID arbitral panel. How would you argue that there has been an expropriation of the investment?
02. The Tribunal awarded compensation to Cleanup on the basis of the full protection clause in the BIT. How would you, as a lawyer for Insomnia, challenge this finding?
03. Cleanup intends to enforce the award in Insomnia. Assuming that the legal system of Insomnia is similar to that of Sri Lanka, outline the procedure that would have to be followed, and the measures that could be taken by Insomnia to prevent the enforcement of the award.

PART B

04. Petroca, a small third world nation that is rich in energy resources is seeking to accelerate its development industrially. Aaland is a capital - exporting country that wishes to enter into very large energy projects in Petroca. However, Aaland is worried that the political climate and stability of Petroca will be short-lived. Aaland wishes to negotiate a BIT with Petroca. You are the representative of Aaland. Draft the Bi-Lateral Investment Treaty (BIT) between Aaland and Petroca. Identify any three key Articles that you would wish to include in the BIT, with reasons.

05. “[T]here is now an evolution of the notion that the home state has duties as well as rights in matters relating to foreign investment which require the home state to intervene to ensure that its multinational corporations act in accordance with emerging standards that require their accountability.”

M. Sornarajah, The International Law of Foreign Investment, 3rd ed., (2010), p. 144

Discuss, with reference to suitable examples, what these emerging standards are, and how Home States have responded to them.

06. “While a foreign investment may maximize its contribution to accelerate the development process in host countries offering the host state significant opportunities, it may also present serious risks and challenges in the host state.”

With reference to the major competing theories on International Investment Law, critically assess the opportunities and risks that a foreign investment may present to the host state.

07. “Host states have a role to play in the determination of the rights of the foreign investor. They attach conditions to the entry of a foreign investor into a host state and to the manner in which the foreign investor operates the business. Thus a foreign investor faces various barriers and a number of restrictions in host countries.”

Critically discuss the above statement in the light of the right of the host state to regulate foreign investments in order to ensure its economic and social development. You are expected to support your answer with relevant case law.
