

# JUR5850

## Spring 2009

You work as legal advisor to the Ministry of Foreign Affairs in the developing country Elbonia. You are currently negotiating a bilateral investment treaty with an economically powerful country, Majoria. One essential interest of Majoria is to ensure future food security, since the availability of agricultural land in Majoria is limited. Majoria has proposed to include the following provisions in the investment treaty:

### Article 2

#### Fair and equitable treatment

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting. More particularly, each Contracting Party shall accord to such investments full security and protection.
- 2) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.

### Article 7

#### Expropriation

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- (a) the measures are taken in the public interest and under due process of law;
- (b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- (c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

### Article 11

#### Investor – State dispute settlement

Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.

Majoria's state run enterprise, Majagri Corporation, wants to hire agricultural land for a 99 years period. Majagri Corporation wants an irrevocable contract and they want the contract to state that no new and excessive taxes shall be imposed on agricultural activities carried out on the land to be hired.

You are asked by the Minister to prepare a note answering the following questions:

- 1) Which elements of the provisions in the bilateral investment agreement proposed by Majoria would potentially constitute a problem for a future contract between Elbonia and Majagri Corporation?
- 2) Can you present proposals for how the provisions can be reformulated in order to take care of Elbonia's concerns?

3) How should Elbonia respond to the position of Majagri Corporation when negotiating the contract concerning rental of agricultural land?