

JUS5851 International Investment Law, exam spring 2022

Information

In the spring semester 2022, the exam will be a 24 hour home exam, maximum 3000 words.

Footnotes should be included in the word count of the main text. Not included in this count: front page, summary, table of contents and references (bibliography). (If relevant for the paper).

Assignments/papers with text exceeding the word limit will not be accepted.

JUS5851 Exam S22

The republic of Ruritania has invaded its neighboring country of Syldavia. A broad coalition of states has condemned the attack as a blatant violation of international law. You are employed as a legal advisor in the foreign ministry of Corinthia, which is contemplating sanctions against Ruritania.

The sanctions will be implemented by all the member countries of the coalition, and is intended to target the Ruritanian government. One of the sanctions contemplated is a freezing of all assets owned by companies of Ruritanian nationality where the Ruritanian government, or certain identified individuals known to have ties to the government, own more than 50 % of the shares. The freeze means that the companies will in practice be barred from any disposition over assets such as property, shares, bank accounts etc for an indefinite period of time.

Such partly state owned or affiliated Ruritanian companies have a substantial amount of investment in Corinthia, and Ruritania and Corinthia has entered into a bilateral investment treaty. Your government is concerned about the legal implications of the sanctions in view of the bilateral investment treaty, and especially the possibility that the Ruritanian companies might be able to challenge the sanctions through the standard provision for investor-state arbitration in the treaty.

As a legal advisor to your government, you are tasked to write a memo where you shall consider the possible application in the current situation, if the described sanctions are enacted, of the bilateral investment treaty between Ruritania and Corinthia and its provision for investor-state arbitration.

In this regard, you are specifically requested to account for the general meaning and content, and discuss the possible application in the current situation, of the substantive standards in the treaty relating to Treatment and Expropriation (wording included below).

Relevant excerpts from the bilateral investment treaty between Ruritania and Corinthia:

Article 7 Treatment

1. Each Contracting Party will accord in its territory for the investments made by investors of the other Contracting Party fair and equitable treatment.
2. The treatment referred to in paragraph 1 of this Article shall as a minimum not be less favourable than that which is granted with regard to investments by investors of any third state.

3. Subject to paragraphs 1 and 2 of this Article, each Contracting Party shall accord to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to investments by its own investors.

Article 6 Expropriation

Neither Contracting Party shall expropriate, directly or indirectly, an Investment of an Investor of the other Contracting Party, unless the following conditions are complied with:

- (a) the measure is taken in the public or national interest and under due process of law;
- (b) the measure is not discriminatory;
- (c) the measure is accompanied by provisions for the payment of prompt, adequate and effective compensation.

Article 8 Disputes between an investor of one contracting party and the other contracting party

1. Disputes between an investor of one Contracting Party and the other Contracting Party arising in connection with an Investment in its territory and concerning the consequences of the non-implementation, or of the incorrect implementation of the obligations under this Agreement shall, to the extent possible, be settled amicably.
2. If such a dispute has not been amicably settled within a period of six months from written notification of a claim, it may be submitted by either party to the dispute: - either to the competent tribunal of the Contracting party in whose territory the investment was made; or - an ad hoc arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).