

**NATIONAL LAW UNIVERSITY JODHPUR**

End Term Examination November- 2024  
Semester – UG Semester - VII (Business Laws)  
Subject: Investment Law

**Time: 3 hours**

**Mark: 100 marks**

*Instructions:*

- i. All the questions carry equal marks.
- ii. The students are required to attempt only Five questions.
- iii. Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.

Q.1) Shire is a country situated in the tropical continent of Westercs. It is an erstwhile colony of the Targaryen Empire, however, it achieved its independence in the year 1996. Upon achieving independence and pursuant to the General Elections of 1999, elected Mr. Robert Baratheon as its Prime Minister. Mr. Baratheon, upon his election initiated a slew of economic reforms. One such reforms resulted in the enactment of the Shirian Companies Act, 2002 [*hereinafter* 'Companies Act, 2002'], which acted as the principal legislation for regulating all the Corporations within the territory of Shire. The government was keen on enhancing its prowess in the field of sustainable green practices.

In 2003, it entered into an Economic Co-operation and Partnership Agreement (*hereinafter* **BIT**) with Nidavellir (a neighbouring country of Shire, situated 21 Nautical Miles from Nidavellir).<sup>1</sup> Under the BIT the Companies of Shire were allowed to invest in the companies incorporated in Nidavellir and vice-versa. Pursuant to the signing of the BIT, on 24<sup>th</sup> February, 2003 Lannister Power Co. Ltd. (*hereinafter* '**Lannister Power**') entered into a Share Subscription Agreement with Hydra Deep Earth Explorations Ltd. (*hereinafter* '**Hydra**') for 9% equity shares. Furthermore, a debenture deed was concluded between both the companies on the same date, under which Lannister Power was issued CCDs worth N\$ 200 million (amounting to 21.3% equity upon conversion) and the maturity period of the CCDs were decided as 18 years.

Shire is well endowed with natural resources; however, it is most famous for the natural resource '*Obsidian*' (colloquially known as '*Dragon Glass*') a metallic element, which is a key ingredient in the production ultra-light weight airframes, having both commercial and military as well as important in the development for cloaking technology. Hence, mining of the said resource is highly regulated. Recently, a significant deposit (an estimated 225 million MT) of Dragon Glass has been discovered in Storm Islands province of Shire. The Baratheon Govt. with an intent of maximising the economic value had made a public announcement seeking bids for issuing mining license for the same on 27<sup>th</sup> November 2018.

Lannister Group of Industries Ltd. (*hereinafter* '**Lannister Group**') is a conglomerate incorporated in under the erstwhile colonial legislation of Commercial Establishment Act, 1956 and has a wide range of businesses through its various subsidiaries. In 2010, Lannister Group entered into a Multi-Party Joint Venture Agreement (*hereinafter* the '**Agreement**') with Spartacus Heavy Engineering Enterprises (Nidavellir) Plc. (*hereinafter* '**Spartacus**')

<sup>1</sup> The Maritime Boundaries of a Country is divided into 3 specific categories: a) Territorial Waters: Extending up to 12 Nautical Miles (where the State can exercise all its Sovereign Powers); Contiguous Zone: Extending up to 24 Nautical Miles (where the States can determine laws concerning the areas of Custom Duties, Immigration and Fiscal Duties) and Exclusive Economic Zone: Extending up to 200 Nautical Miles (wherein the State can only exercise its legitimate economic interests over the Marine resources).

(incorporated in Nidavellir), (incorporated in Shire), Hydra Aeromechanics and Exploratory Technologies Ltd. (incorporated in Nidavellir) and Blackwater Heavy Earth Minerals Ltd. (hereinafter 'Blackwater') (incorporated in Nidavellir) and Aether Aerospace Pvt. Ltd. (hereinafter 'Aether') (incorporated in Shire) The agreement led to the incorporation of Casterly Rock Deep Earth Explorations Pvt. Ltd. (hereinafter 'Casterly Rock') in accordance with the laws of Nidavellir.

The Shareholding Pattern of the Casterly Rock is as following:

- a. Lannister Group - 45%
- b. Spartacus Heavy Engineering Enterprises (Nidavellir) LLC - 7.27%
- c. Hydra Aeromechanics and Exploratory Technologies Ltd (Hydra) - 11%
- d. Blackwater Heavy Earth Minerals Ltd.- 20.5%
- e. Aether Pvt. Ltd. - 16.23%

In 2007 Lannister Group floated the Aether Precious Stones and Minerals Pvt. Ltd., (hereinafter 'Aether') where it owns 45% shares, with the remaining shares being divided equally between Lannister Power Ltd. (Lannister Power) (30%) and Lannister Automation and Manufacturing Ltd. (hereinafter 'Lannister Manufacturing') (25%).

In 2020, owing to various geopolitical constraints, Nidevellir, bought certain amendments in domestic regulatory framework concerning Foreign Investments, whereunder, all the countries sharing land boundaries, and maritime boundaries (upto the Contiguous Zone), had to seek mandatory government approval for carrying out any investment activity.

Lannister Group holds 15% shares in Lannister Power. The Shareholding Agreement between the two companies, also stated that Lannister Group would have an affirmative veto in relation to all the processes covered under the Articles of Association of Lannister Power, which requires an ordinary resolution, including the ones required for directorial appointments. Furthermore, it also grants them the right to appoint 1 Wholetime Director and the Chairman of the Board at the Board Meetings. Lannister Power holds majority shareholding in Lannister Engineering (50.01%), which in turns holds 20% shares in Hydra. Lannister Power, also holds 10% shares in Lannister Manufacturing along with the right to appoint 4 out of 9 directors on the board, including the Managing Director.

Pursuant to the public announcement made by Government of Shire on 27<sup>th</sup> November, 2018, Casterly Rock had placed the winning bid and had won the mining rights to the Obsidian mines in the Storm Islands province. Hydra have been trying to secure the contract for supplying ultra-light weight aircrafts for the Nidavellier Airlines, the largest commercial airliners in Nidavellir. However, it lacked adequate resources for the production of the same.

On 5<sup>th</sup> February, 2023, the CEOs of Hydra and Casterly Rock held a meeting, to discuss the viability of a proposed arrangement between the two Companies, pursuant to which Casterly Rock would be forming a Joint Venture with Hydra, with the shareholding ratio being 60:40 in favour of Hydra, jointly developing such airframes. However, they are unsure about the possible governmental regulatory implications, and have sought your legal opinion concerning the possible FDI related obligations. Please advise in accordance with the relevant legal and regulatory framework.

(Marks 20)

**N.B.: The laws of Nidavellir are pari materia to the laws of Republic of India**

Q.2) Write Short Notes on:

(Marks 10\*2)

- i. Principle of Minimum Standard of Protection Treatment as envisaged under the Indian Model BIT, 2016. (Maximum Word Limit: 500)

ii. Principle of Full Protection & Security as a ground for violation of the Standard of Protection clause within the Indian Model BIT. (Maximum Word Limit: 500)

Q.3) In order to put an end to its economic crisis of the early 2000s, in 2009 Konoha adopted an economic recovery plan that included a program to privatize certain government-owned industries and public utilities. It also enacted various new laws, including a 2001 Currency Convertibility Law, a 2001 Decree pegging the Konohan currency to the Mordor Dollar and a 2002 Gas Law establishing the legal framework for the privatization of the gas industry and regulation of the transport and distribution of natural gas.

Under the new Gas Law regime, the national state-owned gas monopoly was divided into a number of companies to be privatized, one of which was Transportadora de Gas del Norte (TGN). In December 2002, TGN was granted a licence to transport gas in Konoha. Nomaj's participation in TGN began in 2005 vide a 2005 Offering Memorandum leading to the purchase of the shares still held by the government. Nomaj's acquisition represented 25% of the company, later supplemented by the purchase of an additional 4.42% shares.

By 2009, Nomaj Gas Konoha Ltd., a wholly owned subsidiary of claimant Nomaj Gas Transmission Company (NGT), a company incorporated in Mordor, had purchased close to 30 per cent of TGN's shares. According to NGT, under the regime established by the above laws and decrees and by the licence granted to TGN to transport gas, its tariffs were to be calculated in dollars, converted to Konohan Rupee at the time of billing and adjusted every six months in accordance with the Mordor Producer Price Index (Mordor-PPI).

In the late 2000s, a serious economic crisis began in Konoha. In January 2010 and again in July 2010, the representatives of the gas companies agreed, subject to certain conditions, to defer the adjustment of the gas tariffs in accordance with the Mordor-PPI. The resulting agreement provided that costs of the deferral would be recouped in the period July 1, 2010 – April 30, 2011, that resulting income losses would be indemnified and it was understood that this arrangement would not set a precedent or amend the legal framework governing the licenses. This agreement was approved by ENARGAS, the public regulatory agency of the gas industry, by Resolution No. 1471 on January 10, 2010.

Soon thereafter it became apparent that the agreement would not be implemented and requests by TGN for an adjustment of tariffs in accordance with the License were not acted upon; in fact, ENARGAS directed the company to refrain from introducing any such adjustment. On December 17, 2010, a further meeting was held with representatives of the gas companies, at which the companies were asked to agree on a new deferral of the tariff adjustment. Another agreement to this effect was entered into on that date, freezing US PPI adjustments of tariffs for a two-year period while allowing for some increases relating to the earlier deferral and lost income. Income lost as a result of the new deferral was to be gradually recovered and US PPI adjustments were to be reintroduced as from June 30, 2012. Decree No. 669/2010 embodied the new arrangements while recognizing that Mordor-PPI adjustment constituted "legitimately acquired right" and was a basic premise of the contractual agreements.

In late 2011 the crisis deepened as the corrective measures by Minister Domingo Cavallo failed and a new emergency law was passed in 2012. Under the new regime, Konohan Rupee was devalued. This had devastating effect on the value of the Nomaj's investments in Konoha. According to Nomaj, as no adjustment of tariffs had taken place since January 1, 2000 and because tariffs were no longer be calculated in US dollars, the TGN's domestic revenues have decreased by 75%. Only the export revenues been kept in US the Claimant's view the situation has been aggravated by the assertion by some provincial governments of right to pay gas and

other invoices through bonds. Further, the devaluation of the Konohan Rupee from 3.6:1, from the previous rate of 1:1 has also resulted in significant loss of profits.

Citing the above grounds, Nomaj has invoked Article VII of the Nomaj-Mordor Bilateral Agreement for Promotion of International Investment and Trade, 2007 (hereinafter referred as 'BIPA') r/w Article 25 of ICSID, to which both Konoha and Mordor are signatories. The primary claim of Nomaj is that, the actions of Mordor was in violation of the provisions of Konoha-Mordor BIPA as well as the good faith principle enshrined under Article 31 of VCLT, 1969.

Being the President of the international tribunal, please provide a reasoned order with respect to the claims being raised by Nomaj in the above stated facts. You may rely on the above mentioned facts as well as the earlier pronounced orders to determine the validity of the above claims. (Marks 20)

*Note: The Students may refer to 'Annexure - I' provided herewith for the relevant portions of the Nomaj-Mordor Bilateral Agreement for Promotion of International Investment and Trade, 2007 (aka BIPA)]*

Q.4) Discuss the following:

(Marks 5+15)

- a) Provide a brief discussion on the Position of Shareholders for raising Investment Disputes under the Indian Model BIT, 2016. (Maximum Word Limit: 500 Words)
- b) Between 2010 and 2015 company 'A' invested USD 650 million into the renewable infrastructure of country 'X'. It did so on the basis of a legal framework existing at the time of its investments in 2010. The legal framework included a system of favourable electricity tariffs so as to encourage and entice foreign investments into country 'X'. Without these tariffs no foreign investor would have made the high cost, up-front investments required in the renewable sector, since the tariffs were the only way for the investor to make a profitable return on the investment.

In 2016 the Government of 'X' radically changed the legal framework for investments in the renewable energy sector, affecting not only future; investments, but also existing investments in the sector. The tariffs under the new system were calculated in a completely different manner than under the old system, resulting in considerably lower income for company A.

The Government of X, explains that the changes are necessary because the favourable treatment of renewable energy is becoming too costly for the country. Government funds are needed for other socially important areas, such as education and health care. Also, the government states that it is not reasonable to treat renewable energy more favourably than other forms of energy.

Do the measures taken by the Government of 'X' violate FET, in particular with respect to the legitimate expectations of Company A? (Maximum Word Limit: 1000 words)

Q.5) Discuss India's stance on Standard of Protection Clauses under the BIT regime. In context of the same, please trace the development of the standard of protection clauses under Indian BIT regime under Model BIT, 2003 and Model BIT, 2015. (Maximum Word Limit 1000)

(Marks 20)

Q.6) Mr. Rajesh Sharma, a 42-year-old resident individual in Jaipur, India, is a successful entrepreneur who owns a chain of luxury hotels across India. He has recently been exploring international markets to diversify his business portfolio. After extensive research and

According to his intention to seeking opportunity to invest in a foreign entity, Star Properties Ltd. based in Singapore.

Star Properties Ltd. is a commercial real estate developer specializing in luxury residential and commercial projects. They have an ambitious expansion plan, which includes developing a series of high-end shopping complexes and residential communities in both Singapore and India. To finance this expansion, Star Properties Ltd. is seeking investment from international partners.

Mr. Sharma is particularly interested in this opportunity because Star Properties Ltd. has a robust track record of successful projects and is well-regarded in the real estate sector. His plan is to invest \$1 million, which will secure him a 25% stake in the company and a seat on its board of directors. This strategic move is expected to provide him with significant influence over the company's future projects.

The investment structure proposed by Star Properties Ltd. includes creating three layers of subsidiaries to optimize operational efficiency and tax benefits. The primary entity, Star Properties Ltd. will hold 100% ownership in the U.K., Star UK Holdings, which will oversee the Middle Eastern operations. Star UK Holdings will then establish a subsidiary in India, Star India Realty Pvt. Ltd., to manage the local development projects.

At the same time, Mr. Sharma is deeply involved in philanthropy through the Sharma Educational Trust, a registered charitable trust in India. The trust aims to enhance educational opportunities and promote cultural exchange. The trust is considering a \$1 million investment in Global Learning Inc., an educational institution based in the U.K. known for its innovative programs and strong emphasis on cultural education. This investment is intended to support the development of new courses that promote Indian heritage and education. Mr. Sharma is currently assessing the viability and regulatory requirements of these investments. He seeks detailed advice on the following:

(Marks 5\*4 = 20)

- i) Can Mr. Sharma proceed with his proposed investment in Star Properties Ltd given his objectives and the regulatory environment?
- ii) How would the regulatory landscape and required approvals change if the investment were made through the Sharma Educational Trust instead of directly by Mr. Sharma?
- iii) Are there any additional risks or considerations associated with the layered subsidiary structure proposed by Star Properties Ltd that Mr. Sharma should be aware of?
- iv) If Mr. Sharma and Star India Realty Pvt. Ltd. plan to repatriate profits to India, what are the potential tax implications and reporting obligations?

ANNEXURE - I: NOMAJ-MORDOR BILATERAL AGREEMENT FOR PROMOTION OF  
INTERNATIONAL INVESTMENT AND TRADE, 2007 (Relevant Portions Only)

ARTICLE I

1. Each Party shall permit and treat investment and activities associated therewith, on a basis no less favourable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favourable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in this Treaty.
2. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Protocol. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Protocol, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective.
3. The treatment accorded pursuant to any exceptions shall, unless specified otherwise in the Protocol, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

ARTICLE II

1. Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.
2. Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For the purposes of dispute resolution under Articles VII and VIII, a measure may be arbitrary or discriminatory notwithstanding the opportunity to review such measure in the courts or administrative tribunals of a Party.
3. Each Party shall observe any obligation it may have entered into with regard to investments.
4. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.
5. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations.
6. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

Article III

1. This Treaty shall not preclude either Party from prescribing laws and regulations in connection with the admission of investments made in its territory by nationals or companies of the other Party or with the conduct of associated activities, provided, however, that such laws and regulations shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE IV

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public

- purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.
2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefore, conforms to the provisions of this Treaty and the principles of international law.
  3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the more favorable treatment, as regards any measures it adopts in relation to such losses:

#### Article V

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article IV; (c) payments arising out of an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement directly related to an investment; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.
2. Except as provided in Article IV paragraph 1, transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. The free transfer shall take place in accordance with the procedures established by each Party; such procedures shall not impair the rights set forth in this Treaty.
3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, non-discriminatory and good faith application of its law.