

# **Timbex Corp.**

**vs.**

## **The Government of Brabania**

**President of Brabania Roberto Clifford has imposed a nationwide moratorium on logging, following floods that have affected much of the country. Logging companies protest.**

**10 February 2009**

More than 70 Brabonians died in the past month, in flooding caused by unusually heavy rainfall. Experts have long warned that cutting down too many trees leads to soil erosion, heightening the risk of flooding and landslides.

President Clifford believes that logging was indirectly responsible for many of the recent deaths. He said excessive logging was making the affected areas more prone to landslides and flooding.

According to the newly imposed moratorium, no new timber contracts will be granted for cutting natural forests anywhere in Brabania. The Presidential Decree imposing moratorium also provides for the reduction of the harvesting areas under the existing contracts by 60 per cent each.

Timbex Corp., a company registered in Kariland with extensive logging operations in Brabania, has protested against the reduction by 60% of its duly allocated harvesting area. The company claims that its contract with the Ministry of Natural Resources is validly concluded under Brabonian law and provides that it may be changed only by written agreement of both parties, and that in fact logging has nothing to do with flooding and landslides. In the company's view, the actions of the President had been motivated simply by his desire to be seen by the population as doing something to respond to the situation, particularly because the presidential elections are coming in three months.

Timbex further alleged that even though the Presidential Decree, on its face, applied to both domestic and foreign companies, in actual fact it was the only foreign logging company operating in Brabania. According to its information, most Brabonian companies have used their connections in the local authorities and have been able to escape the reductions fully or partially. Timbex has notified the Government that it will sue it before an international arbitral tribunal under the Kariland -Brabania BIT to recover the profits lost as a result of the decree. The company stated that its business model is based on having a large-scale operation in Brabania, and after the loss of 60% of its business, the return on its investment will not exceed 0.5% (with current world prices for timber).

The Government has refused to make any concessions. It said that the Presidential Decree applied to all economic operators and had no exceptions and reiterated that the

reduction of the harvesting areas is an extraordinary measure that aims to reduce the number of accidents and victims in the future.

The Government also pointed out that Timbex is in fact 100% owned by a Somarian national, whose wife is from Kariland. Since Somaria does not have a BIT with Brabania, there is no legal basis for a claim.

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Timbex initiates an ICSID arbitration against Brabania pursuant to the provisions of the Brabania-Kariland BIT. Consider possible claims of the investor and counter-arguments of the Government. In doing so, use the two real BITs provided – Bahrain-Turkmenistan BIT (2011) and Colombia-Japan BIT (2011) (imagine that each of these BITs is a BIT between Brabania and Kariland).

Some specific questions to consider:

- Is the “investor” covered by the BIT?
- What were the investor’s expectations when making an investment decision?
- Did the Government’s action deviate from these expectations?
- What could be the investor’s claims – what BIT provisions could the Government’s actions allegedly violate and why?
- Are the Government’s justifications for its actions plausible?
- What was the intent and purpose of the Government’s measure? Was the measure “necessary” to achieve the policy objective?
- Was anything done to accommodate investors’ concerns and to minimize the negative effects of the measure?
- What is “investment risk”? Does it come into play in this situation?
- What damage has the company suffered due to the Government’s actions? Should this damage be compensated?

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