

THREE CROWNS

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An aerial photograph of New York City, showing a dense urban landscape with numerous skyscrapers and buildings. The Hudson River is visible on the left, and the East River on the right. The Freedom Tower is prominent on the left side of the image. The image is used as a background for the document cover.

The David D. Caron Praelium 2021 – Case Study

Investor is a dual national of Alderaan and Bespin. Investor manufactures widgets for use in defense aircrafts, and has established a manufacturing plant in Corellia. All three countries have bilateral investment treaties with one another.

Alderaan and Corellia have a long history of economic cooperation, and highly value the economic relationship and the investment flows between their countries. While they recognized the value of providing protections for foreign investors as a way to incentivize investment, they wished to minimize investment disputes between their States to the extent possible. Accordingly, Article 1(3) of the Alderaan-Corellia BIT defines an investor as:

... with regard to either Contracting Party, any natural person or legal entity that has made an investment in the territory of another Contracting Party, provided that the natural person is not, on account of their nationality, able to avail themselves of investment protections under another international investment treaty.

In March 2020, Corellia introduced urgent measures to respond to the DARTH-19 pandemic, which was rapidly spreading across the galaxy. The DARTH-19 virus was poorly understood but it was known to cause serious (and potentially, fatal) health consequences. Corellian public health experts determined that the most prudent course was to indefinitely close Corellia's borders and refuse entry to all travellers other than Corellian citizens and permanent residents. The Corellian Government adopted this recommendation by executive order with immediate effect (the **Executive Order**).

In June 2020, Corellian police officers seized Investor's factory, claiming that the widgets were deliberately being manufactured with security flaws that could be exploited. Investor denied all allegations, and spent months remotely trying to secure the return of the factory. However, Investor experienced substantial difficulty in cooperating with the investigation and in liaising with Corellian police officials, because Corellian officials did not have remote conferencing technology. As a result, Investor could not participate in any interviews, meetings, or investigation procedures.

Article 3(1) of the Alderaan-Corellia BIT, titled "Entry and Sojourn of Personnel", provided:

Each Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons who are investors of the other Party and personnel employed by companies of that other Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

In January 2021, Investor brought a claim against Corellia under the Alderaan-Corellia BIT alleging:

- (i) that the Executive Order violated Article 3(1) and the non-discriminatory treatment provision of the Alderaan-Corellia BIT; and
- (ii) that the seizure of Investor's factory by Corellian police violated the expropriation and fair and equitable treatment (**FET**) provisions of the Alderaan-Corellia BIT.

As a matter of strategy, Investor chose to bring their claim under the Alderaan-Corellia BIT rather than the Bespian-Corellia BIT as the latter did not contain FET or most-favored-nation provisions.

Corellia raised a jurisdictional objection to Investor's claim based on Article 1(3) of the Alderaan-Corellia BIT.

In March 2021, Bespian experienced a change in government. There has since been growing international concern regarding the new government, which has been accused of trying to spy on other governments. Alderaan and Corellia are particularly concerned about Bespian's potential acts of espionage. They wish to limit the activities of Bespian investors in their countries, particularly in sensitive sectors such as defense. However, both Alderaan and Corellia are concerned about potential investment treaty claims from Bespian investors.

Accordingly, Alderaan and Corellia issued a joint declaration to amend Article 1(3) of their BIT. The amendment provides:

Article 1(3)(a)

Any person who holds Bespian citizenship is precluded from bringing a claim under this instrument.

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In closing submissions at the end of the hearing, the Tribunal in *Investor v Corellia* has asked the parties to focus on two issues:

1. Whether the Tribunal has jurisdiction over Investor's claim under Article 1(3) of the Alderaan-Corellian BIT, taking into account the joint declaration of March 2021.
2. Whether the Executive Order violated Article 3(1) of the Alderaan-Corellia BIT.