

## Question 1

### A) Answer shortly all of the following five questions. (2 points each)

1. The notion of “*investment*” was not defined in the ICSID Convention because the drafters thought that ...
2. Pursuant to the ICSID Convention’s nationality requirements, can a natural person with dual citizenship access ICSID arbitration?
3. Give two examples of investment categories a “*broad asset based*”-definition of investment typically covers!
4. In a “*narrow*” dispute settlement clause a foreign investor can only request an arbitral tribunal to assess ...
5. What have arbitral tribunals regularly held, if a BIT clause protects only investments “*made in accordance with host State law*”?

### B) Answer the following essay question! (10 points)

To what extent has the specific wording of MFN clauses influenced their interpretation by investment tribunals?

## Question 2

B is a football player of Argentine nationality. He has been employed as a skilled football player by the Mexican football club A for the season 2009/2010. The employment contract is printed on A's letter head, but bears only the signature of B. The employment contract provides a dispute resolution clause that reads as follows:

*“Any dispute arising out of this employment contract shall be resolved through arbitration either by the Commission for the Resolution of Disputes (“CRD”) of the Mexican Football Federation (“MFF”) or the Court of Arbitration for Sport (“CAS”) in Lausanne.”*

The CRD is a judicial organ of the MFF that is mandated to decide disputes between Mexican Football Clubs and their players and coaches in a final and binding manner. The “judges” of the CRD are chosen in equal numbers by representatives of the clubs and the players.

In April 2010, B filed a claim against A before the CRD for outstanding salaries. A contested B's claim and submitted that it had made all payments under the employment contract. In addition, A produced receipts allegedly signed by the player as evidence before the CRD. B claimed that these receipts were forged. In light of the above, the CRD issued the following order in January 2011:

*“The CRD being properly constituted according to the applicable provisions and taking account of the submissions of the parties as to the substance of the dispute orders that the proceedings will be suspended to allow the criminal authorities to investigate the matter. The proceedings before the CRD will be resumed once the criminal investigation has come to an end.”*

In light of the lengthy criminal investigation B loses his patience and files the identical claim (for outstanding salaries) against A with the CAS in January 2012. A does not oppose CAS jurisdiction, but submits that as long as the proceedings are pending in Mexico, CAS is prevented from deciding the case.

**a) What questions will the CAS Panel address and what course of action will it take? Please analyse all legal questions raised.\***

In May 2012 – while the proceedings before the CAS are pending – the CRD issues without prior notice to the parties the following award:

*“The CRD notes that the criminal investigations have ended without any results. The CRD further notes that none of the parties has made any request before this tribunal to resume the proceedings. Thus, the CRD deems that the claimant (B) has tacitly withdrawn his claim before this arbitral tribunal. Consequently, the CRD herewith decides that the arbitration proceedings have ended and strikes this matter from its roll.”*

In June 2012, A informs the CAS Panel of the CRD award. A submits that the CRD award “precludes the CAS proceedings from going forward”. B is of the view that the CRD award has no legal effects in Switzerland. In particular, B submits that the CRD has breached fundamental procedural principles.

**b) Please advise the CAS Panel what to do.\***

**\* In case the law of Mexico applies to any of the legal questions raised, please assume that the legal situation under Mexican law is identical to Swiss law.**