



# FDI MEDIATION MOOT



**Problem 3 | 2022 Competition**



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### Problem Three

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The Award is rendered in ICSID Case No. ARB(AF)/20/78. The Tribunal decides that Mekar treated Vemma's investment unfairly and inequitably in breach of Article 9.9 of the CEPTA with the consequence that Mekar must pay to Vemma USD 700 million plus interest as of the date of the violation. The Tribunal further orders Mekar to reimburse Vemma for all costs and expenses associated with the arbitration in the amount of USD 4.5 million.

Mekar plans to challenge the Award in Szeto, Bonooru, the place of arbitration, and to resist its enforcement in Mekar and in any other jurisdiction where enforcement is sought. Mekar's stated opposition to the Award is that the Tribunal did not explain its decision to accept the application by the CBF1 to file an *amicus* submission. Mekar argued in the arbitration that the CBF1's submission should be rejected because a conflict of interest exists between the CBF1 and Vemma, because the submission would serve no public interest, and because the submission would not offer a perspective different from that of Vemma. The Award, unusually short at 15 pages, purports to incorporate by reference the parties' positions from their submissions, including Mekar's objections to the CBF1's submission, but contains no reasoning to support its decision to accept the CBF1's submission. The Award goes on to cite the CBF1's submission in support of the Tribunal's decision to accept jurisdiction over Vemma's claims.

Faced with the potential of protracted legal battles over the enforcement of the Award, Vemma has agreed to Mekar's proposal to mediate issues related to the Award under the ICSID Mediation Rules using co-mediators selected with the assistance of the ICSID Secretary General. In the mediation, Mekar seeks the settlement of Vemma's claims independent of decisions taken in the Award. Vemma, for its part, has asked Mekar to agree to apply the United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention") to any settlement agreement that results from the mediation. Mekar has made the reservation in Article 8.1(b) of the Singapore Convention but not the reservation in Article 8.1(a). Mekar has agreed to discuss the application of the Singapore Convention during the mediation.

**Unless otherwise indicated, abbreviations and defined terms in this problem have the meanings given to them in the 2021 FDI Moot case.**