



# FDI MEDIATION MOOT



Problem 4 | 2022 Competition



## Problem Four

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Vemma and Mekar settle their dispute in mediation, and Mekar voluntarily complies with the terms of the resulting settlement agreement. In the wake of the dispute and facing changed economic conditions, Mekar invokes Article 9.22 of the CEPTA to review the content of Chapter 9. Mekar and Bonooru (State Parties) agree to meet for this purpose and have tabled the following issues for discussion:

1. Mekar seeks agreement that Article 9.8 of the CEPTA is distinct from the police powers doctrine. Bonooru objects to any interpretation of the provision that would broaden the right of the State Parties to regulate under the treaty beyond that recognized by international law.
2. Bonooru seeks agreement that “[a] Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or measures constitute...” in Article 9.9(2) of the CEPTA means that State acts taken together can constitute a violation of the provision. Mekar objects to this interpretation.
3. Mekar seeks agreement that “has not been resolved through mutual agreement” in Article 9.16(1) of the CEPTA requires an attempt to mediate investment claims as a precondition to arbitration under the provision. Bonooru objects to making compulsory any feature of amicable resolution of investor claims.
4. Bonooru seeks agreement that “shall duly consider the application of the UNCITRAL rules on transparency in treaty-based investor-State arbitration” in Article 9.20(6) of the CEPTA creates a presumption that those rules apply to any international arbitration proceedings initiated against Mekar. Mekar objects to this interpretation.

The State Parties have agreed that the Narnian International Investment Advisory Center (NIIAC) will appoint two mediators to facilitate their discussions. NIIAC has established itself as a trusted resource among States of all levels of human development in the Narnian region since its creation in 2015. The UNCITRAL Mediation Rules (2021) will serve as a guide as relevant for the conduct of the negotiations. Any agreement between the State Parties may form the basis of an interpretive declaration.



Mekar will be represented by Lead Investment Treaty Negotiator and Senior Legal Advisor of the Ministry of Justice. Bonooru will be represented Chief Treaty Officer and Attorney-Adviser of the Ministry of Foreign Affairs.

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