

**Eighteenth Annual
WILLEM C. VIS EAST
INTERNATIONAL COMMERCIAL ARBITRATION MOOT
& SECOND VVE**

Hong Kong

September 2020 - March 2021

**Oral Arguments
14th – 21st March 2021**

THE RULES



Organized by:

The Vis East Moot Foundation Limited

INTRODUCTION

I. The Willem C. Vis East International Commercial Arbitration Moot

1. The Willem C. Vis East International Commercial Arbitration Moot is an annual competition of teams representing law schools throughout the world (the "Moot"). In the Sixteenth Annual Moot in 2018 - 2019 over 800 students from 138 law school teams from 36 different countries participated. The Vis East Moot was judged by 380 lawyers and professors from around the world.

2. **Goals.** The Moot is intended to stimulate the study of international commercial law, especially the legal texts prepared by the United Nations Commission on International Trade Law (UNCITRAL), and the use of international commercial arbitration to resolve international commercial disputes. The international nature of the Moot is intended to lead participants to interpret the texts of international commercial law in the light of different legal systems and to develop an expertise in advocating a position before an arbitral panel composed of arbitrators from different legal systems. An active social programme at the time of the oral hearings in Hong Kong promotes friendships that can last long after the Moot itself is over.

3. The Willem C. Vis East International Commercial Arbitration Moot is designed as a multi-faceted educational program in the form of a competition. It is not intended to be a competition with incidental educational benefits. The rules and procedures in the Moot should be interpreted in the light of that goal.

II. Organisation of the Willem C. Vis East International Commercial Arbitration Moot

4. **Organiser, Co-sponsors, Supporters.** The Moot is organised by the Vis East Moot Foundation Limited. The Moot was originally underwritten by the Chartered Institute of Arbitrators East Asia Branch which continues its support today.

Other supporting organizations include:

- ArbitralWomen
- Chartered Institute of Arbitrators (Head Office and East Asia Branch)
- CIETAC
- City University of Hong Kong
- ICC Court of Arbitration
- HKIAC
- International Chamber of Commerce
- Korean Commercial Arbitration Board
- MAA
- Swiss Chambers Association
- UNCITRAL

5. The Moot consists of the preparation of a memorandum for claimant, a memorandum for respondent and oral hearings.

6. **Venue.** The oral hearings will be held virtually from Hong Kong. The general rounds will take place from Monday through Thursday, 15th – 18th March 2021. The elimination rounds will take place on Friday 19th March and Saturday, 20th March 2021, with the final round on Sunday, 21st March 2021.

7. The first event during the oral hearings is the Official Welcome Ceremony and Orientation on Sunday afternoon, 14th March 2021.

8. **Language.** The Moot is conducted in English.

9. **Willem C. Vis East International Commercial Arbitration Moot.** The Vis East Moot in Hong Kong is a sister moot to the Willem C. Vis International Commercial Arbitration Moot. The Vis East uses the same Problem and the rules are essentially the same as the rules for the Vienna Vis Moot. Nevertheless, they are two separate moots with separate registration, including separate registration fees, and separate winners. The Hong Kong Moot is not a regional elimination moot for the Vienna Moot. A law school can register for the Hong Kong Moot, the Vienna Moot, or both. While students can be on both teams, certain rules govern eligibility to participate in the oral arguments and in the memoranda to be submitted. See paragraphs 30, 31, 35, 36 and 62, below. Those interested in the Vis Moot in Vienna should visit its web site: www.vismoot.org.

10. There are many Pre-Moots organised by Vis Moot sponsors and other organisations to help teams train for the oral hearings. These events are arranged separately by those organisations and are not officially associated with the Vis Moot or the Vis East Moot Foundation. While participation is encouraged in such Pre-Moots, it is not a requirement or condition that any team have participated in a Pre-Moot. Furthermore, teams that do participate in Pre-Moots must ensure that they are fully aware of these Rules and do not contravene them in any way. It is the responsibility of each school team to ensure it does not contravene the Rule against Scouting (paragraph 81 of these Rules) by practicing with or watching a team which it is to meet at the Vis East Moot or the Vis Moot in Vienna.

PRIVACY AND DATA REGULATION

11. There are strict rules which now govern data privacy in Hong Kong, and which impact the Vis East Moot. The Vis East Moot is an educational event and it is necessary to collect some personal data for the operation of the event. The Vis East Moot Foundation Ltd will not disclose any personal data to third parties unless your specific permission has been obtained. If you have concerns or queries about the way your data is being used please contact the Vis East Moot via email at info@cisgmoot.org.

RULES

12. These Rules are the rules for the Eighteenth Willem C. Vis East International Commercial Arbitration Moot & Second VVE. The rules of the Vis East Moot are reviewed annually and are subject to change from Moot to Moot. These Rules supersede all previous versions. Reliance on any past rules or practice will not in itself be an acceptable excuse for the failure to comply with the rules of the current Moot.

I. Registration

13. **Registration for the Vis East opens at 12:00 Noon Hong Kong time on Friday 25th September 2020.** Registration in the Moot is a three-step process consisting of:

1. Submission of the provisional Team Registration Form (“**TRF**”) via the Vis East website, and payment of a *non-refundable* US\$200 (or HK\$1500) deposit;
2. Once a team receives a confirmed place (see para 14 below), **payment** of the registration fee; and
3. **Submission** of the memorandum for claimant.

Although provisional TRFs may be accepted until 27th November 2020, submission of the TRF and deposit prior to distribution of the Problem on 9th October 2020 is important because of the *limited number of teams* which can participate in Vis East. Schools who wish to participate should submit their Team Registration Form at the *earliest possible date*. In the 16th Moot, all places had been allocated by the end of the first week in October. Nevertheless, a school should not register unless it is certain it will participate. A school that registers for the Vis East Moot and receives a confirmed place, and then drops out before paying the fee will be barred from competing in future Vis East Moots except with dispensation from the Moot Director.

14. Receipt of the provisional Team Registration Form will be acknowledged to the team Contact Person(s) named in the TRF. Teams who are granted a place will receive an Official Confirmation email, with details of their team page and payment instructions. Teams who are not granted a place will be invited to join the Wait List and will receive a place if a confirmed team drops out before the date for submission of the memorandum for the Claimant.

15. **Registration fee and Payment.** The standard registration fee for the Eighteenth Moot & 2nd VVE is **HK\$4,500**.

The registration fee must be paid by 10th *December 2020* in order to compete in the Moot, unless the Director of the Vis East Moot has agreed in writing to a later date. Payment of the registration fee may be made by local Hong Kong Dollar cheque, by PayPal, on-line transfer, or by bank transfer to:

Account Number: HSBC 817 365901 001
Name: Vis East Moot Foundation Ltd
Bank: HSBC, 1 Queen’s Road Central, Hong Kong
Swift Code: HSBC-HK-HHH-KH

A small additional charge is payable for bank transfers to cover the inevitable expense of Hong Kong-end bank charges. All transfer fees must be paid by the transferor.

Teams are responsible for all bank transfer fees, so that the net amount transferred is the full amount mentioned above. Avoid reduplicate bank charges by specifying that the Payor pays charges of both Payor and Payee.

Payment can also be made via the PayPal facility in the team account. Paypal charge transactions fees, and these vary from country to country. If paying via Paypal, the payment amount sought has been adjusted to reflect the average transaction fees. Irrespective of the payment method chosen, all transfer fees must be paid by the transferor.

All payments **must** indicate the **name of the university** for which the registration fee has been paid in order for the account of the participating university to be credited.

16. The registration fee of a team whose registration is withdrawn **prior to 10th December 2020** will be refunded in full except for deduction of an administration fee of HK\$500 and any applicable bank charges. After 10th December 2020 no refund is possible.

17. The registration fee includes on-line access to all the competition events and to many social events organized by supporting entities.

18. A team that submits its memorandum for claimant will be paired with two other teams for the exchange of memoranda, as described in Part IV below, and will be scheduled to meet those two teams in the first two oral arguments, as described in Part V below. Withdrawal after submission of the memorandum for claimant affects adversely at least the two teams paired for the exchange of memoranda and the first two oral arguments. Therefore, teams that have submitted the memorandum for claimant are expected to participate in the entire Moot, including the oral arguments. The registration fee will not be refunded nor will any unpaid fees be waived for teams withdrawing after submission of the memorandum for claimant.

19. The Team Registration Form (TRF) includes space for the name and address of the *Contact Person*. All communications concerning the Moot will be posted to the team account and sent by e-mail to the nominated contact person. It is that person's responsibility to distribute all relevant material to the team. Teams are responsible for ensuring that the contact person information contained in the team account is kept up to date. The Contact Person's **postal address must remain valid until July 2021**, as certificates and other material may be sent to the team after the Moot. Any changes in the data on the registration form may be made through the website, any queries on this should be sent by e-mail to the Moot Administration at info@cisgmoot.org.

By completing the registration form the nominated contact person is also confirming that they have the authority of the university or other higher educational institution to register a team on behalf of the university or institution.

20. Communications between the team and the Moot administration through anyone other than the designated Contact Person are at the risk of the team.

21. The Foundation reserves the right to refuse or cancel the registration of any team, and such refusal or cancellation is in the absolute discretion of the Director. In exercising discretion, the Director shall have regard to, among other considerations, the geographical base of the team and past conduct of teams from that institution, for example, the spirit in which it has participated, past violations of any Moot rules, and prompt or otherwise payment of the registration fee.

II. The Problem

22. **Subject Matter.** The Problem in the Eighteenth (2020-2021) Vis East Moot & 2nd VVE involves a controversy arising out of an international sale of goods subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

23. **Dispute Settlement.** The controversy is before an arbitral tribunal pursuant to The Swiss Rules of International Arbitration. The parties have agreed that the arbitration will be held in Vindobona, Danubia. Danubia has enacted The Swiss Rules of International Arbitration. Danubia, Equatoriana, Mediterraneo and Oceania, the four states that are, or may be, involved are all parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

24. **The Arbitration.** By the time the Eighteenth Vis East Moot & 2nd VVE begins, the claimant has filed its request for arbitration, the respondent has filed its statement of defense and the arbitral tribunal has been appointed. The Problem will consist of the statements of claim and defense with their exhibits, any orders of the arbitral tribunal issued prior to the date on which the Problem is distributed, and the clarifications described below. The Moot involves writing memoranda and oral argument in support of the positions of the claimant and respondent.

25. **Distribution.** The Problem will be distributed on Friday, 9th October 2021, by posting on the Vienna Vis Moot's Web site: www.vismoot.org and will be available on the Vis East Moot website: www.cisgmoot.org within a day or two thereafter.

26. **Facts.** The facts in the dispute are given in the Problem. Facts alleged in the statement of claim and statement of defense including the exhibits to those statements, as well as in the clarifications, are taken to be correct unless there is a contradiction between them. No additional facts may be introduced into the Moot unless they are a logical and necessary extension of the given facts or are publicly available true facts. By way of example:

(a) The subject matter of the dispute in the Fourth Vis Moot was men's suits. It was legitimate to assume that the suits were made of cloth. It was not legitimate to assume that they were, or should have been, made of pure wool. If a team intended to base an argument on the material out of which the suits were made, the team should have requested a clarification of the Problem. By way of an additional example, a team may wish to base an argument on the apparent intention or state of mind of a person who sent a communication of some sort. It would rarely be possible on the basis of that which is given in the Problem to state as a fact that the person had a particular intention or state of mind. However, it would be legitimate to suggest that on the basis of the facts given the Arbitral Tribunal could (or even should) conclude that the desired intention or state of mind was present;

(b) The subject matter of the dispute in the Twelfth Vis Moot was cocoa beans. The real, and extreme, price movements of cocoa beans during the period in question were given and were relevant to the dispute. Since the price movements in the Moot Problem were real, the reasons for those price movements were also real and were publicly available. It was permissible to refer to those reasons in the memoranda, if they were considered to be relevant. It would also have been permissible to refer to any such facts in oral argument, but only if they had been referred to in the memorandum of either party to that argument or if they were so well known that they should have been known to the other party as a result of reasonable research.

27. Statements of fact alleged by a team that do not qualify under paragraph 26 are not true. Therefore, basing an argument on any such alleged facts will be considered to be in breach of the rules of the Moot and to be professionally unethical. Arbitrators will enforce this rule strictly in both the memorandum and oral arguments and will evaluate the team's efforts accordingly.

28. **Clarifications.** Requests for clarification of the Problem, for those teams who are **only** participating in the Vis East Moot should be sent by email to info@cisgmoot.org prior to midnight **(23:30 Vienna time) Friday, 30th October 2020**. The request for Clarification will be transmitted to Vienna for response by the responsible person. Teams who are competing in Vienna as well as Hong Kong should submit their request for clarifications to their team page on the Vienna website. Requests for clarification should be limited to matters that appear to have legal significance in the context of the Problem and no more than 10 questions are permitted from each team. A request for clarification must include a short explanation of the expected significance of the clarification. Any request that does not contain such an explanation may be ignored.

29. Clarifications issued by the Vis Moot Directors in the form of a Procedural Order from the Arbitral Tribunal will be distributed to all registered teams through the team accounts and will be posted on the Vis East Moot website. Every team is responsible for making sure that its members have read the clarifications even if the team was not registered at the date of their distribution. Clarifications issued in the name of the Arbitral Tribunal become part of the Problem.

III. Teams

30. **Composition.** Teams may come either from a law school or from another higher education institution that includes law as part of its programme of study. Each participating law school or other institution may enter one team. A team is composed of two or more students registered at the institution. Students may be registered either for a first degree or for an advanced degree (including PhDs) and need not be from the country in which the institution is located. There is no maximum limit on the number of students who may be members of the team, subject to paragraph 15 above. However a maximum of eight students may compete in the oral arguments. No student who has been licensed to practice law is eligible to participate except with permission of the Director of the Moot. Students at bar preparation institutions who are simultaneously working in a law office must request a determination as to their eligibility to participate in the Moot. Eligibility is determined as of **10th December 2020**.

31. **Teams may include former participants.** Students who have participated as an oral advocate in an argument in any elimination round in a previous Moot, whether in Vienna or Hong Kong, may not participate in the oral arguments. If a team qualifies for a Round of 64 or later (32

or later in Hong Kong) and does not participate, all members of the team are **disqualified** from participation in any future Moot in Vienna or Hong Kong except with the written permission of the director. Although a student may be a member of both the team that participates in Hong Kong and the team that participates in Vienna, no student may argue orally in both Moots in the same year.

32. List of team members and Certificates of participation. Certificates for participating team members will be prepared from the team lists submitted. The certificates of participation will show the names of the team members **exactly** as they have been submitted. It is therefore incumbent on Teams to ensure that names are spelt and presented correctly. There will be a charge associated with the production of any certificate that needs to be subsequently revised due to the submission of an incorrect name. Amended certificates for participating team members will be available for collection at the Awards banquet. It is important that these are collected at that time, as the team will bear any costs of later sending those certificates if that cost could have been avoided by collection at the moot. The list of team members attending the Orals Week (“Team List”) must be submitted at the time the memorandum for claimant is submitted. The names must be submitted on the form on your team page. Certificates of participation for participating team members will be prepared from the lists submitted to the Vis East Moot administration. Therefore, the certificates of participation will show the names of the team members exactly as they have been submitted on the Team List. The Team List may also include team coaches (clearly identified as “Coach”) attending the Orals Week, who wish to receive a certificate of participation. Members of the team may be dropped or added at any time, but any **changes in the Team List must be specifically communicated to the Vis East Moot administration at info@cisgmoot.org.**

33. Participation. All members of the team, (other than coaches), may participate in preparation of the memoranda for claimant and respondent.

34. In each of the oral hearings two members of the team will present the argument. Other members of the team may not aid them during the argument in any way. Different members of the team may participate in the different hearings. Therefore, between two and eight members may participate in the oral hearings. However, to be eligible for the Neil Kaplan Award for best individual oral advocate, a participant must have argued at least once for the claimant and once for the respondent. The average score per argument will be calculated and the award will be determined on that basis.

IV. Written Memoranda

35. Memoranda. Each team must submit a memorandum in support of the claimant's position to the Vis East Moot administration through their team page by midnight, (24:00) Hong Kong time, on Thursday, **10th December 2020**. Each claimant memorandum will be sent to one of the other teams through their team page by 15th December 2020, or as soon as is possible. Submission of the memorandum for claimant is an integral part of the registration procedure. **Therefore, teams that fail to submit the memorandum by 10th December 2020 will be considered not to have completed registration for the Moot and will not be able to compete.**

36. Each team will prepare a memorandum in support of the respondent's position in response to the memorandum in support of the claimant's position that was sent to it. The Vis East Moot administration will determine to which team a memorandum in support of the claimant's position will be sent. The memorandum for respondent must be submitted through your team page by midnight (24:00 Hong Kong time) **Thursday, 28th January 2021**. Teams that fail to submit the memorandum for respondent by that time will be considered to have withdrawn from the Moot at that time.

37. It is absolutely essential that the memorandum for respondent be responsive to all the arguments made in the memorandum for claimant as the jury judging the memoranda will be evaluating it based to a large degree on how well it refutes the arguments raised by the Claimant. However, as the memorandum for claimant to which a memorandum for respondent is to be prepared may not have made all of the arguments that the team preparing the memorandum for respondent believes should have been made, it should also address such issues, indicating that the specific argument was not explicitly raised by the Claimant [e.g., "although not raised by this Claimant, a claimant might have argued/contended/asserted"]. In doing so, care should be taken to present a coherent argument for the respondent and not a series of possibly disjointed responses to the claimant's argument.

38. **Certificate of Choice.** A law school that participates in both the Vienna and the Hong Kong Moots is encouraged to submit separate memoranda to the two Moots. However, if the same memoranda are submitted to both Moots, they can be entered into the competition for best memorandum in **only one** of them. Therefore, when submitting the memorandum for the claimant, all law schools that participate in both the Vienna and Hong Kong must indicate to the administrators of both Moots in a Certificate of Choice attached to their Memorandum whether the same or separate memoranda have been submitted. If the same memorandum has been submitted to both Moots, the Certificate of Choice must indicate in which competition the memorandum is to be considered for the award for best memorandum. Since the memorandum for respondent must be responsive to the memorandum for claimant sent to the team, the memoranda for respondent in the two Moots are unlikely to be the same. However, if the same memorandum for claimant has been submitted to both Moots, unless the administrators of both Moots have been notified otherwise, it will be assumed that the respondent memoranda are so similar that they must be considered to be the same, and the respondent memorandum will be considered in the same Moot as that chosen for the claimant's memorandum of that team.

V. Formatting Requirements

39. The formatting provisions listed in paragraphs 40, 41, 42, 45 and 46 are mandatory. No memorandum that violates these provisions will be considered for award or honorable mention.

40. Paragraphs must be numbered. References to statements in either one's own memorandum or, in the case of the memorandum for respondent, to statements in the opponent's memorandum for claimant, must be to the paragraph number.

41. The memoranda are intended to be of practical use to the arbitrators in deciding the dispute. They are not intended to be scholarly dissertations on the relevant law. Therefore, citations in the memorandum should be limited to those that advance the argument being made. The List of

Authorities must reference *to each paragraph* in the memorandum where the case or doctrinal authority is cited. The use of *passim* in place of specific paragraph numbers is not sufficient.

42. Citations must be in the text of the memorandum and not in footnotes or endnotes. Citations in the text should be in a shortened form. The full citation should be given in a List of Authorities.

43. The List of Authorities should be in a form that is intelligible to all who will read the memorandum. That includes the members of the other teams, the arbitrators in the oral hearings and the members of the jury who will judge the written phase of the Moot. Most of the readers of the memorandum will be from other countries. The style of citation of judicial decisions or articles in legal journals that is common in one country may not be intelligible to participants in the Moot (or in an arbitration) from other countries. Therefore, deviation from the standard style of citation in your country may be appropriate and desirable.

44. Care should be taken in the use of legal doctrines and terminology (including Latin maxims) common in some legal systems that are not found in the CISG, Model Law, New York Convention or the relevant arbitration rules and that may not be known to teams or arbitrators from other legal systems. Similarly, care should be taken to write in a formal English style that would be appropriate for submission to a court or arbitral tribunal. In particular, slang or contractions (aren't, didn't) should not be used. This tends to be a mistake made by non-Anglophone teams that may have been taught not to be too formal when speaking English.

45. Memoranda may be no longer than thirty-five (35) 8½ x 11 inch or A4 typed pages, including any statement of facts, argument or discussion and any conclusion. Cover pages, tables of contents, indices, lists of authorities or other material that does not consist of facts, argument, discussion or conclusions may be in addition.

46. No type style smaller than 12 point may be used, including in quotations or other non-argument parts of the memorandum. The memorandum should be typed at 1½ line spacing. All margins must be at least one inch or 2.5 cm.

47. The name of the team and whether the memorandum is for the claimant or for the respondent must appear prominently on the outside cover page so that it can easily be read without opening the memorandum.

VI. Submission of Memoranda

48. The memorandum must be submitted in PDF as a single electronic file so that the memorandum can be printed complete with cover page. Care should be taken that the PDF file does not exceed one megabyte. Memoranda that exceed one megabyte may not be accepted by the upload facility in the team account. This is not an excuse for late submission. In addition, by the time the memorandum for claimant is sent, the names of the members of the team with e-mail addresses must be completed on each team's page.

49. **Place for Submission of Memoranda.** Memoranda must be submitted via the team account.

50. **Memoranda Due Dates.** The due dates for submission of memoranda are those of the time zone of the team sending the memoranda, and are due as follows:

Memorandum for claimant: Thursday, 10th December 2020

Memorandum for respondent: Thursday, 28th January 2021

51. Successful submission of the memoranda will be acknowledged.

52. **Memorandum Revision.** Memorandum Revision. The uploaded memorandum can be resubmitted as many times as a Team likes prior to the submission deadline. However, the version submitted at the time of the submission deadline will be the version officially submitted. The officially submitted version may not be revised, including for missing pages, typographical or grammatical errors or for problems caused by faulty computer software. Sufficient time should be left prior to the submission deadline to verify the text to be submitted.

53. A team will have access through the Team's account on the Vis East Moot website to the memorandum for claimant of another team, to which a memorandum for respondent must be prepared. The memorandum will be available within a week, or as soon after as is possible. All teams will be notified when the memorandum of their first opposing team is available.

54. As soon as possible after the memoranda for respondent have been submitted, the memorandum for respondent prepared in reply to the memorandum for claimant as well as the memoranda of the other teams against which a team will compete in the oral arguments will be made available.

55. Teams that enter the elimination rounds will not receive the memoranda of the teams against which they are to argue in those rounds.

56. **Copyright.** Memoranda once submitted (in physical or digital form) shall be the property of the Vis East Moot Foundation. By submitting the Memoranda, Team members grant the Foundation a non-exclusive license of the copyright in the Memoranda. The Authors acknowledge and consent to the Foundation using the Memoranda for, amongst other purposes, research and teaching relating to the substance and activities of the Moot. Where this is done, the Foundation confirms the Memoranda will be used in an anonymized fashion unless prior approval is obtained. The winning Memoranda and runners-up may be published, including the names of the School and winning team members, on the Vis East website after the Finals Argument has taken place.

57. **Exchange of memoranda.** Teams may exchange memoranda after the memorandum for respondent has been submitted, but not prior to that time.

VII. Scoring of Memoranda

58. A jury will score the memoranda on the basis of the quality of the analysis, persuasiveness of argument, thoroughness of research, clarity of the writing and adherence to the elements of style set out above. The jury will take into account whether arguments are based on facts not found in the Problem or clarifications and that are not logical and necessary extensions of the given facts.

When judging the memorandum for respondent, account will be taken whether it is responsive to the arguments raised by the claimant.

59. The memoranda for claimant and for respondent will be judged in two rounds. In the first round the members of the jury will each receive four or five memoranda. They will be asked to rank them in order of merit. In recent years each memorandum has been submitted to approximately four readers. On the basis of the results from the first round of judging, approximately one-fourth of the memoranda will be selected for submission to a separate jury for determination of the winners of the awards for best memorandum in each category.

60. **Plagiarism.** Any memorandum that includes exact or paraphrased text from any source, whether the source was in hard copy or on the web, must set out that text in quotation marks and give the citation to the source. Failure to give a proper citation constitutes plagiarism. Any memorandum that violates this rule will automatically not be considered for any award. **A team found to have seriously plagiarized any text may be disqualified** from the Moot.

VIII. Oral Hearings

61. **Venue.** Virtual oral hearings. The oral hearings will be held virtually, using a videoconferencing platform. Details of the platform and specific rules for the conduct of the virtual hearing will be communicated a few weeks prior to the hearings.

62. **General Rounds.** Each team will argue four times in the general rounds, twice as claimant and twice as respondent. In its first two oral hearings, each team will argue once as claimant and once as respondent. The respondent will be the team that prepared the memorandum for respondent in opposition to the memorandum for claimant that was sent to it. In its third and fourth oral hearings the teams will argue against teams with which they were not paired for the purpose of preparing written memoranda.

63. The general rounds will be scheduled so that, in principle, each team will argue once per day, Monday through Thursday. If it is not possible to schedule in this manner, a team may be scheduled to argue twice on the same day with no argument on one of the three other days of the general rounds.

64. **Duration of Oral Presentation.** The oral presentation of each team is, in principle, thirty (30) minutes. The team should allocate equitably the time available to the two individual advocates. However, the arbitral tribunal may exceed the time limits stated as long as neither team is allowed more than forty-five (45) minutes to present its argument, including the time necessary to answer the questions of the tribunal. It will be the responsibility of the tribunal to ensure that the teams are treated fairly.

65. **Arguments.** Claimants and respondents in their first hearing should expect to rely on the arguments given in their written memoranda or to be prepared to justify why that position has been abandoned. In subsequent hearings arbitrators may be less demanding on this score as it is expected that teams will improve their arguments during the Moot.

66. **Questions by Arbitrators.** The arbitrators are requested to act during the oral hearings the way they would in a real arbitration, taking into account that this is an educational exercise. There are significant differences in style dependent both on individual personalities and on perceptions of the role of an arbitrator (or judge) in oral argument. Some arbitrators, or arbitral tribunals, may interrupt a presentation with persistent or even aggressive questioning. Other arbitrators, or arbitral tribunals, may listen to an entire argument without asking any questions. Therefore, teams should be prepared for both styles of oral presentation.

67. **Order of presentation.** Some panels of arbitrators will ask one team to present its argument on all of the issues before the other team is permitted to present its argument. Other panels of arbitrators will ask both teams to argue one issue first before they both argue in respect of a second issue. Normally the party who has raised the issue will argue first. Therefore, normally the claimant would argue first, if it is to present its arguments on all of the issues before the respondent is permitted to argue. However, if the respondent has raised an objection to the jurisdiction of the Arbitral Tribunal or other such defense, the panel would normally ask it to present its arguments on that issue before the claimant responds to it.

68. The arbitrators will decide whether rebuttal arguments will be permitted. Whether or not rebuttal will be allowed can be expected to change from one argument to the next. Rebuttal may be used solely to respond to a point raised by the other side after your oral advocate has spoken. No new points may be raised in a rebuttal.

69. **Exhibits.** No exhibits may be used during the oral arguments that do not come directly from the Problem. Exhibits that are designed to clarify time sequences or other such matters may be used, but only if the arbitrators and the opposing team agree. For technical reasons the exhibits may not consist of overhead or Power Point projections or require the use of a stand.

70. **Scoring.** Each arbitrator will score each of the oral advocates on a scale of **50 to 100**. The scores of the two oral advocates will be added to constitute the team score for that argument. Therefore, each team could score a maximum of 200 points per arbitrator per argument, or a theoretical maximum of **2400 points** for the four arguments. Arbitrators will score the oral arguments without knowledge of the results of earlier arguments. Some arbitrators will have participated in evaluating the memoranda of teams whose oral arguments they later hear. Although they will be aware of their own evaluation of the memoranda, they will be without knowledge of the evaluations given by other arbitrators.

The individual score given to an oral advocate by an arbitrator is entirely within the discretion of that arbitrator. There is no requirement that the arbitral panel agree scores. However, the arbitral panel may, and are encouraged to, discuss scoring at the end of a hearing and prior to submitting the scores to the Vis East Moot administration.

Where the Director of the Vis East Moot notices what appears to be a considerable discrepancy in scoring, an attempt will be made to seek confirmation regarding those scores. In the event that an arbitrator fails to submit a score, or where a moot has proceeded with only two arbitrators, the missing score will be the average of the scores provided by those arbitrators who have submitted scores.

71. **First Elimination (Sixteenth) Round or “Round of 32”**. After the general rounds, the scores of each team for its oral presentation in the four arguments will be totaled. Sixteen of the thirty-two teams that have obtained the highest composite scores will meet in the first round, at 9:00 am on Friday 19th March 2021 and the remaining sixteen will meet at 11:00am. If there is a tie for 32nd place, the decision as to which team will enter the elimination rounds will be determined by lot. The teams will be paired so that the first and thirty-second, second and thirty-first, etc. will argue against one another. Ranking of a team in the General Rounds will not be divulged until after the close of the Moot and then only to the team concerned. If the number of teams participating is less than 100, there will be no Round of 32. The first elimination round will be the Round of 16, with timing adjusted accordingly.

72. **Eighth Round**. The sixteen winners of the Rounds of 32 will meet in the Eighth-Final Round on Friday 19th March 2021.

73. **Quarter-Final Round**. The eight winners of the Round of 16 will meet in the Quarter-Final Round on Saturday 20th March 2021.

74. **Semi-Final Round**. The four winners of the Quarter-final Round will meet in the Semi-final Round on Saturday 20th March 2021.

75. **Final Round**. The two winners of the Semi-final Round will meet in the Final Round on Sunday 21st March 2021.

76. **Determination as to which team is claimant and which is respondent**. If the two teams in any elimination round, including the final round, argued against one another in the general rounds, they will argue for the opposite party in the elimination round. If they did not argue against one another in the general rounds, in the first elimination round the determination as to which team will be claimant and which will be respondent will be determined by lot. In the following rounds, when one of the two teams in the preceding round was claimant and the other was respondent, they will argue for the opposite party for which they argued in that preceding round. If both teams argued for the claimant or both argued for the respondent in the preceding round, the decision as to which team will be claimant and which will be respondent will be determined by lot.

77. **Winning Team**. The winning team of the oral phase of the Moot is the team that wins the final round.

IX. Assistance.

78. **Written Memoranda**. Although the students should do all the research and writing of the memoranda themselves - without assistance from anyone who is not a student member of the team. Faculty advisors, coaches and others may help identify the issues, comment on the persuasiveness of the arguments the students have made in drafts and, when necessary, suggest other arguments the students might consider. However, **the final product must be that of the students, not of their advisors**. A certificate by the contact person whose name appears on the registration form stating that no person other than a student team member has participated in the writing of the memorandum must be submitted via the team account at the time each memorandum is submitted.

79. **Oral Hearings.** There is no restriction on the amount of coaching that a team may receive in preparation for the oral hearings. It is expected and encouraged that teams will have practice arguments, whether against other members of the team or against other teams that will participate in the Moot. Many pre-Moot events are scheduled throughout the world. Teams are encouraged to participate in one or more of the pre-Moots, if they find it feasible to do so. The only restriction is that **no team should have a practice argument against a team it is scheduled to meet in either the Vienna or Hong Kong Moot.**

80. In each oral hearing two members of the team will present the argument. No communication with other members of the team who may be present at the hearing is permitted.

81. **Scouting.** One purpose of the Moot is to develop the art of advocacy in international commercial arbitration proceedings. Observance of the performance of other participants is one way to develop that art. Therefore, attendance of team members at the arguments of other teams is permitted, except that **no team, coach, friend or relative of a team member is permitted to attend arguments of other teams against which it is scheduled to argue at a later time in the general rounds.** This rule extends to the viewing of arguments in practice arguments (**including pre-Moots**), but it does *not* apply to arguments between the same teams in both Hong Kong and Vienna Moots, since the conflict arises out of scheduling by the two Moots and thus is not within the control of the teams. This rule will be applied even if attendance at an argument was inadvertent. **Violation of this rule will disqualify a team** from participation in the elimination rounds. See also paragraph 57 on exchange of memoranda.

82. **Filming or recording of arguments.** Filming or recording of arguments is permitted only with the prior agreement of the other team and the arbitrators. Videographers must conduct themselves so as not to disturb the argument, and the Tribunal may at any time require that filming cease.

X. Awards

83. The awards given in the Vis East Moot are:

- **Eric Bergsten Award** for the Law School Team Prevailing in Oral Arguments. This award will be made to the winning team in the final round of the oral hearings
- **David Hunter Award** for Best Written Memorandum for Claimant
- **Fali Nariman Award** for Best Written Memorandum for Respondent
- **Neil Kaplan Award** for Best Individual Oral advocate in the general rounds, for the individual advocate with the highest average score during these rounds. To be eligible for this award a participant must have argued at least once for the claimant and once for the respondent.
- **The Colin J Wall Spirit of the Moot Award**, for the team which has had to overcome the most obstacles in order to participate.

84. Certificates will be prepared for all members of teams that win an award or honorable mention in one of the team categories as well as for those who receive an award or honorable mention for best individual oral advocate. Certificates will only be sent electronically.

XI. Interpretation of the Rules

85. Requests. For interpretation of these rules, requests may be addressed to Vis East Moot Director Louise Barrington. All interpretations, as well as any waivers, consents, or other decisions are at the discretion of the Vis East Moot Foundation in its administration of the Moot.

XII. Contact Details

86. All communications in regard to the Vis East Moot should be addressed to:
Ms Louise Barrington, at: info@cisgmoot.org.

The following modifications have been made to the Eighteenth Vis East Moot Rules and participants should be aware of these changes and make themselves familiar with them as published this year:

Paragraphs 11 & 12 – privacy law compliance

Paragraph 15 – Registration fee amount

Paragraph 19 - registration method

Paragraphs 28 & 29 – submission method & time of request for clarifications

Paragraph 35, 48, 49, 52, 53, 54, 78 – submission method and time of memoranda

The only other significant modifications that have been made to the Rules this year are to the dates and venues.

An additional set of Rules, specific to the Virtual Vis East, will provide additional guidance regarding on-line participation in the oral arguments.

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Appendix 1

Arriving at a score in the Oral hearings

Each arbitrator is expected to make an individual decision as to the score to be awarded. Nevertheless, a widely divergent score, whether higher or lower than the others, raises questions as to the criteria used by the arbitrator in question. Arbitrators therefore are encouraged to confer with a view to having scores that are within the same band, or are otherwise within 10 marks.

Bands are as follow:

(50 – 59 = needed improvement);

(60 -74 = good);

(75 - 90 = very good);

(91 - 100 = excellent)

Criteria to be regarded in the evaluation of the oral advocates are:

1) Organization and Preparation

➤ Does counsel introduce himself or herself and co-counsel, state whom he or she is representing, introduce the issues and relevant facts clearly, have a strong opening, present the arguments in an effective sequence, and present a persuasive and generalized conclusion?

➤ Is counsel clearly prepared and familiar with the authorities on which his or her arguments rely? If rebuttal is used, is it used effectively?

2) Knowledge of the facts and the law

➤ Does counsel know the facts and the relevant law thoroughly? Is counsel able to relate the facts to the law so as to make a strong case for his or her client?

➤ Does counsel present arguments which are legally tenable?

3) Handling Questions

➤ Does counsel answer questions directly and use the opportunity to turn the question to his or her client's advantage?

4) Presentation

➤ Is counsel's presentation appropriately paced, free of mannerisms and loud enough?

➤ Does counsel use inflection to avoid monotone delivery, make eye contact with the arbitrators and balance due deference with a forceful and professional argument? Is counsel poised and tactful under pressure? Most importantly, is counsel's presentation convincing and persuasive, regardless of the merits of the case?