

**Sixteenth Annual
WILLEM C. VIS EAST
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong SAR

September 2018 - March 2019

**Oral Arguments
31st March – 7th April 2019**

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 Fifteenth Annual Moot in 2017 - 2018, over 800 students from 128 law school teams from 35 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 program 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. Organization of the Willem C. Vis East International Commercial Arbitration Moot

4. **Organizer, Co-sponsors, Supporters.** The Moot is organized by the Vis East Moot Foundation Limited. The conduct of the moot is delegated to an appointed director or directors. The Moot is sponsored by the Chartered Institute of Arbitrators East Asia Branch.

Supporting organizations include:

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

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 in Hong Kong SAR, China. The general rounds will take place from Monday through Thursday, 1st – 4th April 2019. The elimination rounds will take place on Friday 5th April and Saturday, 6th April 2019, with the final round on Sunday, 7th April 2019.

7. The first event during the oral hearings is the Official Opening and Welcome Reception on Sunday afternoon, 31st March 2019. Registration will take place from 2:00 to 5:00 pm on Sunday 31st March 2018, at a location to be announced.

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 28, 35 and 77, below. Those interested in the Vis Moot in Vienna should visit its web site: www.vismoot.org.

RULES

I. Registration

10. **Registration for the Vis East opens at 12:00 Noon Hong Kong time on Friday 28th September 2018.** 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 11 below), **payment** of the registration fee; and
3. **Submission** of the memorandum for claimant.

Although provisional TRFs may be accepted until 29th November 2018, submission of the TRF and deposit prior to distribution of the Problem on 5th October 2018 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 15th 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.

11. 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 Number, with details of their team page and Invitation letter with 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.

12. **Registration fee and Payment.** The standard registration fee for the Sixteenth Moot is **HK\$9,400 or US\$1,200**. Teams with four members or less may pay a reduced amount of **HK\$8,600 or US\$1,100**. Teams with more than eight members pay the standard registration fee plus **HK\$1,200 or US\$150** for each additional member over eight.

The registration fee must be paid by 7th December 2018 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. Any difference between this amount and the amount actually received by the Vis East Moot Foundation will be collected in cash at the oral arguments.

The transfer **must** indicate the **Official Confirmation Number** and 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.

13. The registration fee of a team whose registration is withdrawn **prior to 7th December 2018** will be refunded in full except for deduction of an administration fee of HK\$500 and any applicable bank charges. After 7th December 2018 no refund is possible.

14. The registration fee includes an invitation to the Welcome reception on Sunday 31st March 2019 to all registered team members. It also includes tickets for the awards banquet on Sunday, 31st March 2019, following the Final Round of hearings. Tickets will be available for team members who register in Hong Kong, on the following basis:

Teams of 4 or less receive one gala ticket for each member. Team members include student competitors and their coaches. (eg. A team of two students plus one coach receives 3 tickets.) All other teams receive a maximum of five gala tickets, with optional extras available for purchase on a first-come, first-served basis at HK\$800 or US\$100 each.

The tickets **must** be presented for admission to the banquet. **No one may enter the gala lunch venue without a ticket.** Lost tickets will not be replaced.

15. 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.

16. The Team Registration Form (TRF) includes space for the name and address of the *Contact Person*. All communications concerning the Moot will automatically be sent by e-mail to that person. It is that person's responsibility to distribute all relevant material to the team. The names of additional recipients of messages concerning the Moot may be submitted for inclusion on the e-mail mailing list. The Contact Person's **postal address must remain valid until May 2019**, as any certificates or other material sent by post to the team after the Moot. Any changes in the data on the registration form should be sent by e-mail to the Moot Administration at info@cisgmoot.org.

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

18. 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

19. **Subject Matter.** The Problem in the Sixteenth (2018-2019) Vis East Moot 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).

20. **Dispute Settlement.** The controversy is before an arbitral tribunal pursuant to the Arbitration Rules of the Hong Kong International Arbitration Centre. The parties have agreed that the arbitration will be held in Vindobona, Danubia. Danubia has enacted the UNCITRAL Model Law on International Commercial Arbitration (Model Law) with the 2006 amendments. Danubia, Equatoriana, Mediterraneo and Oceania, the four states that are, or may be, involved are party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

21. **The Arbitration.** By the time the Sixteenth Vis East Moot 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.

22. **Distribution.** The Problem will be distributed on Friday, 5th October 2018, 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 shortly thereafter:

23. **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.

24. Statements of fact alleged by a team that do not qualify under paragraph 23 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.

25. **Clarifications.** Requests for clarification of the Problem, for those teams who are **only** participating in the Vis East Moot should be sent to the Vis Moot address: clarifications@vismoot.org, prior to midnight (24:00 **Vienna time**) **Thursday, 25th October 2018**. 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.

26. Clarifications issued by the Moot administration in the form of a Procedural Order from the Arbitral Tribunal will be distributed to all registered teams by e-mail within a week to ten days and will be posted on the Moot website. Teams are responsible for making sure that they have received the clarifications even if they were not registered at the date of their distribution. Clarifications issued in the name of the Arbitral Tribunal become part of the Problem.

III. Teams

27. **Composition.** Teams may come either from a law school or from another higher education institution that includes law as part of its program 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 12 above. 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 **6th December 2018**.

28. **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.

29. 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 Moot administration** at info@cisgmoot.org.

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

31. 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

32. Memoranda. Each team must submit a memorandum in support of the claimant's position to the Vis East Moot administration by e-mail to info@cisgmoot.org by midnight, (24:00), on Thursday, **6th December 2018**. The deadline time is measured at each team's location. Each claimant memorandum will be sent to one of the other teams by e-mail by 15th December 2018, 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 6th December 2018 will be considered not to have completed registration for the Moot and will not be able to compete.**

33. 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 by e-mail to info@cisgmoot.org by midnight (24:00 local time of the location of the team) **Thursday, 24th January 2019**. Teams that fail to submit the memorandum for respondent by that time will be considered to have withdrawn from the Moot at that time.

34. 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.

35. **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

36. The formatting provisions listed in paragraphs 37, 38, 39, 42 and 43 are mandatory. No memorandum that violates these provisions will be considered for award or honorable mention.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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

45. 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 will be returned with a request that they be reconverted to a smaller file. 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.

46. **Place for Submission of Memoranda.** Memoranda must be submitted by email to: info@cisgmoot.org.

47. **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, 6th December 2018
Memorandum for respondent: Thursday, 24th January 2019

48. Successful submission of the memoranda will be acknowledged.

49. **No Memorandum Revision.** A memorandum may not be revised once it has been submitted, whether for missing pages, typographical or grammatical errors or for other problems, including those caused by faulty computer software. Sufficient time should be left prior to submission to verify the text to be submitted.

50. The designated Contact Person(s) for each team will receive by e-mail the memorandum for claimant of another team, to which a memorandum for respondent must be prepared. The memorandum will be sent within a week, or as soon after as is possible. If the Contact Person(s) will not be available at the e-mail address given during that period, a substitute person or address must be notified to the Vis East Moot administration prior to **1st December 2018**.

51. On 28th January 2019, or as soon thereafter as possible, the designated Contact Person(s) will receive by e-mail the memorandum for respondent prepared in reply to its memorandum for claimant as well as the memoranda of the other teams against which it will argue in its third and fourth oral hearings.

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

53. **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.

54. **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

55. 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.

56. 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.

57. **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

58. **Venue.** The oral hearings will be held primarily at the Hong Kong Productivity Council, 78 Tat Chee Avenue, Kowloon Tong, or other Hong Kong venues to be announced.

59. **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.

60. 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.

61. **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.

62. **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.

63. **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.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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 5th April 2019 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.

69. **Eighth Round.** The sixteen winners of the Rounds of 32 will meet in the Eighth-Final Round on Friday 5th April 2019 at 3:00pm.

70. **Quarter-Final Round.** The eight winners of the Round of 16 will meet in the Quarter-Final Round on Saturday 6th April 2019 at 9:00am.

71. **Semi-Final Round.** The four winners of the Quarter-final Round will meet in the Semi-final Round on Saturday 6th April 2019 at 1:00pm.

72. **Final Round.** The two winners of the Semi-final Round will meet in the Final Round on Sunday morning 7th April 2019 at 10:00am.

73. **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.

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

IX. Assistance.

75. **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 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 attached to each of the claimant's and respondent's memoranda.

76. **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.**

77. 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.

78. **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. 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.

79. **Filming of arguments.** Filming 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

80. 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.

81. 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. The certificates should be collected at the Gala Lunch which follows the Final Round. Certificates not collected at the Gala Lunch will be sent by ordinary post approximately one month after the close of the Moot to the person whose postal address was given on the registration form.

XI. Interpretation of the Rules

83. 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

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

No significant modifications except for dates and venues have been made to this years' rules:

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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

(50 – 59 = needed improvement);

(60 -74 = good);

(75 - 90 = very good);

(91 - 100 = excellent) or are otherwise within 10 marks.

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) 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?

4. Handling Questions

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