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THE MOOT COURT BENCH

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RULES OF THE PLAYOFFS: VIENNA

September 2021

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## 1. PLAYOFFS: VIENNA

- 1.1 PlayOffs: Vienna is an annual competition of teams representing law schools throughout Sri Lanka. PlayOffs: Vienna in 2021 will be the fourth selection round organized by the Moot Court Bench, where the team/s, eligible to take part in the Willem C. Vis International Commercial Arbitration Moot (the “Vis Moot”) held in Vienna, Austria and/or the Willem C. Vis (East) International Commercial Arbitration Moot (the “Vis (East) Moot”) held in Hong Kong (jointly referred to as “the Moots”), will be selected.
- 1.2 Objectives: PlayOffs: Vienna aims to select a team/s from Sri Lanka for the Vis Moot held in Vienna, Austria and/or the Vis (East) Moot held in Hong Kong. The Vis (East) Moot is a sister moot to the Vis Moot held in Vienna. The Vis (East) Moot uses the same Problem and rules as the Vis Moot. The decision to sponsor more than one team to participate in either the Vis (East) Moot or the Vis Moot lies with the Commercial Law Development Program (“CLDP”) of the United States Department of Commerce and the Moot Court Bench, based on the teams’ performance.

## 2. THE VIS MOOT AND THE VIS (EAST) MOOT

- 2.1 The Vis Moot is an annual competition of teams representing law schools throughout the world. The Twenty-Eighth Annual Vis Moot in 2020 - 2021 was held virtually for the second time due to the COVID-19 pandemic. The Vis Moot saw the participation of over 2000 students from 389 law school teams from 80 different jurisdictions. The participating teams and their memoranda were judged by over 800 lawyers and professors from around the world.
- 2.2 The Vis (East) Moot is an annual competition of teams representing law schools throughout the world. The Eighteenth Annual Moot in 2020-2021 was held virtually for the second time due to the COVID-19 pandemic. The Vis saw the participation of over 800 students from 150 law school teams from 34 different jurisdictions. The participating teams and their memoranda were judged by over 380 lawyers and professors from around the world.
- 2.3 Goals: The Moots aim 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 Moots is intended to lead participants to interpret international commercial law texts from the perspective of different legal systems and to develop an expertise in advocating a position before an arbitral panel composed of arbitrators from different legal systems.

## 3. ORGANIZATION OF PLAYOFFS: VIENNA

- 3.1 Organizer and Sponsor: PlayOffs: Vienna is organized by the Moot Court Bench and is sponsored by the CLDP.
- 3.2 PlayOffs: Vienna will consist of three general rounds of oral hearings where each participating team will be required to plead as Claimant and as Respondent. The teams

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with the highest overall scores from the general rounds will proceed to the Final Round of PlayOffs: Vienna.

3.3 Time, Date and Venue: The oral hearings will be held in Colombo, Sri Lanka. The general and elimination rounds will take place at a date time and venue decided by the Moot Court Bench and communicated to all participating teams via email. Due to the prevailing situation of COVID-19, in the interest of safety of the participants PlayOffs: Vienna will be conducted online. (See paragraph 8 below for more information).

3.4 Language: PlayOffs: Vienna and the Moots are conducted in English.

#### 4. SELECTION AND ELIGIBILITY

4.1 The students with the highest performance scores after Phase One of the International Commercial Arbitration Capacity Building Program by the Moot Court Bench (the "ICA Program") would be selected from each university. The performance would be evaluated based on assessments and engagement throughout the duration of the course. These students will form the team for their respective university to participate in PlayOffs: Vienna.

4.2 The Moot Court Bench will not be acting in the capacity of facilitator/coach for any team participating in PlayOffs: Vienna, with the exception of the training given as part of the ICA Program. The university may therefore use any method of coaching they see fit. However, the teams selected to be sponsored by the CLDP will be coached exclusively by coaches of the Moot Court Bench.

4.3 The Organizers reserve the right to refuse or cancel the selection of any team, and such refusal or cancellation is in the absolute discretion of the Organizers. In exercising discretion, the Organizers 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, and past violations of any PlayOffs: Vienna rules.

4.4 The Organizers reserve the right to choose the number of students to represent each university. This decision is solely up to the discretion of the Organizers.

#### 5. THE PROBLEM

5.1 The Problem for the PlayOffs: Vienna will be the Problem of the Twenty-Eighth Vis Moot.

5.2 Subject Matter: The Problem 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).

5.3 Dispute Settlement: The controversy is before an arbitral tribunal pursuant to the 2012 Swiss Rules of International Arbitration. 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, the three states that are, or maybe, involved are

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party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

- 5.4 The Arbitration: By the time PlayOffs: Vienna begins, the Claimant has filed its Notice of Arbitration, the Respondent has filed its Answer to the Notice of Arbitration and the arbitral tribunal has been appointed. The Problem will consist of the statements of claim and defense and the additional requests 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 Moots involve oral argumentation in support of the positions of the Claimant and Respondent.
- 5.5 Facts: The facts in the dispute are given in the Problem. Facts alleged in the Notice of Arbitration and the Answer to the Notice of Arbitration 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.
- 5.6 Statements of fact alleged by a team that do not fall under paragraph 5.5 are not valid. Basing an argument on any such alleged facts will be considered to be a breach of the Moot rules and to be professionally unethical. Arbitrators will enforce this rule strictly in the PlayOffs: Vienna moots and will evaluate the team's efforts accordingly.

## 6. TEAMS

- 6.1 Composition: Teams will comprise of the participants from each university who are chosen pursuant to paragraph 4. The selection and assessment will be done by the Moot Court Bench.
- 6.2 List of team members and certificates of participation: Certificates for participating team members will be prepared from the team lists submitted at the end of Phase One of the ICA Program 2021. The certificates of participation will show the names of the team members exactly as they have been submitted.
- 6.3 Participation: All members of the team (other than coaches) may participate in the oral pleadings on behalf of the Claimant and Respondent.
- 6.4 In each of the oral hearings, two members of the team will present the argument. During the argument, other members of the team may not aid them in any way. Different members of the team may participate in the different hearings.

## 7. ORAL HEARINGS

- 7.1 Venue: The oral hearings will be held at a venue decided by the Organizers and will be communicated to participating teams in due time.
- 7.2 General Rounds: Each team will argue in the three general rounds as Claimant and as Respondent.
- 7.3 Final Round: The teams with the highest overall scores from the general rounds will proceed to the Final Round of PlayOffs: Vienna. The victorious team will be titled the Winners of PlayOffs: Vienna 2021.

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- 7.4 Panel of Judges: Every round will be judged by a panel of three arbitrators. Each participant will be given a score from 50 to 100 points. A sample scoring sheet will be prepared and made available on the Moot Court Bench website two weeks before the PlayOffs: Vienna.
- 7.5 Duration of Oral Presentation: The oral presentation of each team is, in principle, thirty (30) minutes. The team should allocate the time available equitably between the two individual advocates. However, the arbitral tribunal may exceed the time limits stated so 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.
- 7.6 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. Teams should be prepared for both styles of oral presentation.
- 7.7 Order of presentation: Some panels of arbitrators will ask one team to present its argument on all 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 a second issue. Normally, the party who has raised the issue will argue first. Thus, generally the Claimant will argue first if it is to present its arguments on all 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.
- 7.8 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.
- 7.9 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.
- 7.10 Scoring: Each arbitrator will score each of the orators on a scale of 50 to 100. The scores of the two orators will be added together to constitute the team score for that argument. Thus, each team can score a maximum of 200 points per arbitrator per round, or a theoretical maximum of 800 points for the four rounds. Arbitrators will score the oral arguments without knowledge of the results of earlier arguments.
- 7.11 The individual score given to an orator by an arbitrator is entirely within the discretion of that arbitrator. There is no requirement that the arbitral panel agree on scores. However, the arbitral panel may, and is encouraged to, discuss scoring at the end of a hearing and prior to submitting the scores to the organizers.
- 7.12 The winning team of the oral hearings is the team that wins the PlayOffs: Vienna.

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## 8. VIRTUAL ORAL HEARINGS

8.1 The final decision regarding how the PlayOffs: Vienna will be carried out, be it either in-person or online will be communicated to the teams with sufficient time prior to its commencement.

8.2 The virtual PlayOffs: Vienna will be held through a platform communicated in due time. The teams will be sent instructions to join the online room 30 minutes prior to the commencement of the round. Teams are requested to join the room 15 minutes before the round is scheduled to begin to test the audio and video quality to ensure that the rounds progress smoothly without interruption.

**Technical Notes:** *No special equipment or software is necessary to participate.*

- A team can access the online room with a laptop or desktop computer paired with a web-camera, microphone, and stable internet connectivity. Teams are cautioned to ensure that all equipment being used has a power supply sufficient to last for at least two hours without interruption.
- The team's camera and microphone should be firmly positioned throughout the argument so as to show both oralists and to ensure their voices are clearly audible. External cameras and microphones may provide better quality audiovisual experience.
- Each team is responsible for finding a suitable venue from which to participate. The venue must be a quiet location which can be closed and private and which has adequate and reliable internet activity and have a desk and chairs for the oralists as well as space to seat coaches and other team members during the argument.
- Locations in open spaces or hallways or cybercafés or similar areas are NOT permitted.
- During the argument, the camera shall always remain turned on and trained at the oralists.
- Teams shall mute their microphones when not speaking and ensure there is no rustling of papers and extraneous noise throughout the arguments.

## 9. PROCEDURE FOR THE ONLINE PLAYOFFS: VIENNA:

9.1 The contact person of each team will receive an email from the Moot Court Bench setting out the names of the teams they will argue against.

The message(s) will also contain:

- The date and time of the general arguments scheduled for that team;
  - The email and phone number of the Contact Person for each opposing team; and
  - A link to enter the "room" for each argument.
- 9.2 Each virtual pleading room will consist of the two teams, three-member arbitral tribunal and a moderator. Each team will be responsible for keeping track of its time to ensure it does not exceed 15 minutes. The moderator will also keep track of time as a check on the teams' timekeeping and will inform the tribunal once it has been exceeded.

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9.3 If an arbitrator is not able to join a session for any reason whatsoever then the teams and other panel members should wait 15 minutes before the remaining two arbitrators shall proceed. If the third arbitrator does succeed to join the session, that arbitrator shall score only the oralists he/she has heard. For the other oralist(s), the missing score will be reached by finding the average of the two arbitrators who were in attendance throughout. If a second arbitrator loses the connection and cannot be reconnected within 15 minutes, the remaining arbitrator will complete the argument and a single score will be entered for each oralist for that argument.

9.4 At the end of the arguments the teams will be asked to leave the virtual room for a period of 10 minutes to allow the arbitrators to deliberate the scores in private. The teams will then rejoin the arbitrators in the room for feedback for a maximum of 10 minutes. The arbitrators do NOT at any point divulge the scores to the team but will submit their scoring sheet to the organizers.

## 10. ASSISTANCE

10.1 Assistance for Oral Hearings: teams may receive coaching in preparation for the oral hearings from their respective universities or any individual they see fit.

10.2 Scouting: One purpose of the Moots 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 they are scheduled to argue later in the general rounds.

## 11. AWARDS

11.1 The following achievements will be recognized in the form of awards at the PlayOffs: Vienna Closing Ceremony, for which all students who complete the ICA Program are eligible; 'Certificate of Participation', 'Best Individual Memorandum', 'Runner-up Best Individual Memorandum', 'The Most Promising Speaker', 'Runner-up Most Promising Speaker', 'Highest Marks - ICA and CISG Assessments', 'The Commitment to the Program' and 'Spirit of the Moot Court Bench'.

11.2 The teams that represent their university at the PlayOffs: Vienna are eligible to be recognized for the following awards; 'Winners of the PlayOffs: Vienna', 'Runners-up of the PlayOffs: Vienna', 'Best Oralist' and 'Honorary Mentions for Best Oralists'.

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## APPENDIX 01

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. As such, arbitrators are encouraged to confer in order to assign 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 ORALISTS

#### 01. Organization and Preparation

- Does counsel introduce himself or herself and his or her 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?

#### 02. 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 to make a strong case for his or her client?
- Does counsel present arguments which are legally tenable?

#### 03. 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?

#### 04. Handling Questions

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