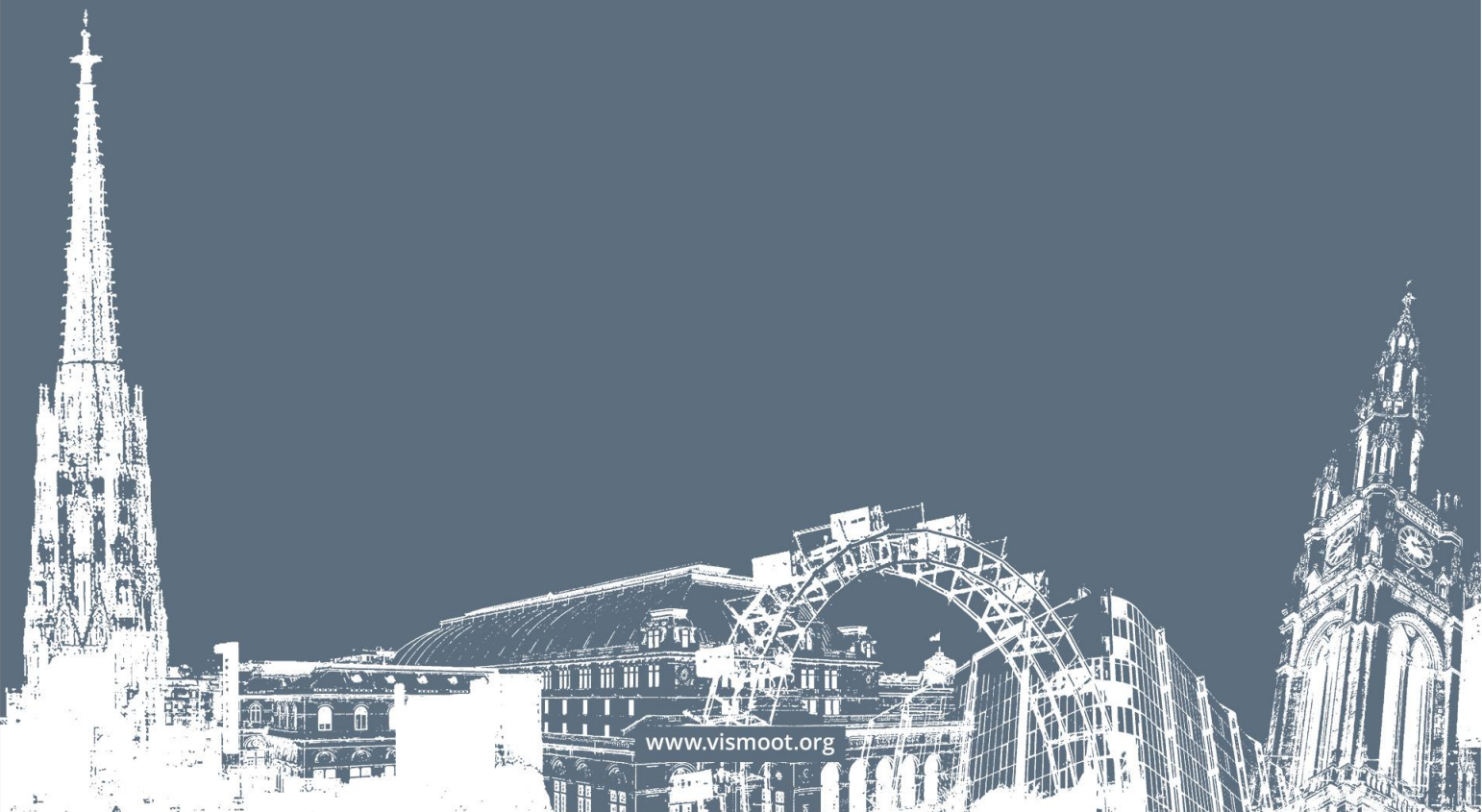




31<sup>st</sup> ANNUAL WILLEM C. VIS  
INTERNATIONAL COMMERCIAL  
ARBITRATION MOOT  
22-28 MARCH 2024, VIENNA

PRESIDING ARBITRATOR  
INSTRUCTIONS



These instructions are additional to and supplement the General Arbitrator Instructions. The Vis Moot Administration will send out the daily hearing schedule each morning before the start of the hearings. The positions of the arbitrators in the panel are clarified in this document. The hearing schedule can also be found at the Administration Desk of each venue. If the Presiding Arbitrator does not wish to serve in that capacity or for other reasons a different Presiding Arbitrator is appropriate, each panel is free to choose its own presiding arbitrator.

For the success of the Vis Moot it is essential, that each session is conducted fairly and marked fairly. The Presiding Arbitrator is primarily responsible for ensuring that each Moot is conducted fairly and appropriately.

## **Pre-moot Meeting with Co-Arbitrators**

The Presiding Arbitrator should speak with the Co-Arbitrators before the commencement of the Moot, and ensure that all arbitrators are familiar with the General Arbitrator Instructions. In particular attention should be drawn to the instruction that arbitrators must appreciate that the hearing is not an oral exam or PhD viva. Questions whose sole purpose is to make the oral arguments “interesting” and which are not relevant for arguing the case are not appropriate.

A proper balance should be struck, on the one hand, in allowing the members of the Tribunal to question the students in ascertaining their argument on the facts and law (as in a real arbitration which every Tribunal should be seeking to simulate) and in preventing students being excessively questioned and harassed. When a member of the Tribunal is doing this the Presiding Arbitrator should intervene to prevent it continuing.

To that end, it would be advisable for the Presiding Arbitrator in the pre-moot discussion with the Co-Arbitrators to get an indication of the likely style the Co-Arbitrators plan to adopt. For example, if both Co-Arbitrators indicate they intend to ask frequent questions, the Presiding Arbitrator will need to manage the hearing in a way that ensures that oralists are not harassed by questions when considered in the totality of the Tribunal.

This is not to suggest that the asking of appropriate questions should in any way be restricted. Many teams expect (and want) questions from the arbitrators as they use these as a spring board for demonstrating their skills and knowledge. However, it is again, a matter of balance. The practice of some arbitrators is to refrain from asking any questions until the oralist has finished his or her submission. This practice is also entirely acceptable. It would be important for a Presiding Arbitrator to know of this style in advance so that the timing of the moot can be properly managed.

## **Conducting the Sessions**

Unless otherwise agreed between the members of the tribunal, the Presiding Arbitrator is responsible for keeping track of the time used by each team, and ensuring equity. As noted in the General Arbitrator Information arguments are scheduled to be one hour in length, with prolongation possible to a maximum of 1 to 1,5 hours. Hearings are scheduled every two hours, and Presiding Arbitrators are asked to ensure that the room is vacated in sufficient time to allow

the next hearing to commence as scheduled. This may mean that the feedback, discussed below, is conducted somewhere other than the hearing room – for example the Dachgeschoss.

## Post Hearing Feedback and Meeting with Co-Arbitrators

Immediately after the oralists have concluded their submissions, it is usual for the Tribunal to ask the teams and any audience to leave the room for a few minutes while the panel confers. During this time the Presiding Arbitrator should lead a discussion between the members of the panel regarding the performance of each oralist. As emphasised in the General Arbitrator Instructions it is up to each arbitrator to individually determine the scores he or she wishes to give each oralist. **However, wildly divergent scores between arbitrators would be a cause of concern, in particular if they go beyond 15 points.** Divergent scores have in the past been the cause of considerable upset in some teams. Accordingly, in line with the Presiding Arbitrator's duty to conduct a fair arbitration, the Presiding Arbitrator should in such case ensure that the divergent evaluation is not based on an unfamiliarity with the Moot rules or misunderstandings concerning the student's presentation or the underlying legal questions.

Following the brief discussion that will occur between the panel, the teams and audience should be invited back into the room to receive feedback. In the General Arbitrator Instructions this appears under the heading of Evaluation. Teams expect feedback, and there are various educational studies of analogous activities which would strongly suggest that the teams who receive feedback will see the greatest increase in their later performance.

### **It is important that the individual scores are kept confidential and not provided to the teams.**

The Moot Rules are quite generous regarding the level of assistance teams may receive during their preparation of the written memoranda Rule 85. The same approach applies *mutatis mutandis* to feedback by arbitrators during the oral hearings. Arbitrators are at liberty to make generic and abstract comments on the persuasiveness of particular arguments, in addition to specific suggestions regarding presentation style – eye contact, speed, etc.

## Presiding in Elimination/Final Rounds

The Final Rounds, unlike the General Rounds, are operated on an elimination basis. While the vast majority of aspects of the Presiding Arbitrator's role remains the same in the Final Rounds, there are some differences. After the oralists have concluded their submissions, the teams and audience should be instructed to go up to the Dachgeschoss to await the Tribunal's decision. The Tribunal should confer in private and arrive at a decision. Majority decisions are permitted.

As soon as the Panel has reached a decision, the Presiding Arbitrator, together with the Co-Arbitrators should then themselves go to the Dachgeschoss, and advise the Moot Administration that they are there. Panels should arrive at their decision as promptly as possible as announcements are made in pairs. At an appropriate time, one of the Moot Directors will invite the Presiding Arbitrator to announce the outcome of the hearing.