

## LL.M. International Commercial Arbitration Moot Competition

April 09-11, 2020

### 2020 Competition Rules

#### Definitions

**Analysis of the Problem:** The author(s) of the problem shall provide a memorandum on the legal issues addressed in the competition's problem for the purposes of briefing the arbitrators.

**Competition Administration:** means the Competition Coordinator, the Center's Assistant Director and other people designated by the Center's Director to be in charge of all the administrative aspects of the competition.

**Case:** means the hypothetical controversy submitted to the arbitration procedure, as written under the direction of the Competition Committee.

**Competition:** means the LL.M. International Commercial Arbitration Moot Competition **2020**.

**Competition Committee:** comprises one person from the International Legal Studies Program and three persons from the Center on International Commercial Arbitration and the authors of the arbitration problem.

**Competition Schedule:** The official Competition schedule provides deadlines for submissions as well as the order of each round. The official Competition schedule is published at <https://www.wcl.american.edu/impact/initiatives-programs/arbitration/competitions/> In case of any disagreement between the dates published in these Rules or any other documents, the dates published in the above mentioned webpage shall prevail.

**Competitor:** means an individual member of a team, who meets all the eligibility requirements.

**Coach:** means an official team member who plays an advisory role to the competitors.

**Hearing:** means the single match between two participating teams.

**Participant team:** means the team that has officially registered to attend and compete in the competition, and which all the members meet all the requirements to participate in the Moot Competition.

**Argument Outline:** means a basic outline, which sets out the legal arguments that the team is going to use during their oral argument in the hearings.

**Role:** means either the Claimant or the Respondent.

**Team member:** refers to the students and the coach that constitute a participant team.

**Team number:** means the number assigned to each participating team for identification purposes.

## 1. Registration

### *1.1 Registration Form*

Participants must register by submitting the registration form to the Washington College of Law Center on International Commercial Arbitration. The registration form may be submitted by e-mail. Registrations will be accepted **until 5:00 p.m. EST, February 24, 2020**. On this date, the Team Contact Person should submit a list of any students who wish to be acknowledged for their participation in the preparation for the competition who will not be competing in the oral rounds. A later date for registration may be negotiated with the Competition Committee if there is sufficient time for a team to adequately prepare for the moot.

### *1.2 Registration Fee*

The registration fee of **\$600 per team or \$1,075 for two teams** must be paid by **February 24, 2020**. Payment can be made by credit card or check. Participants must complete the registration form available online at <https://www.wcl.american.edu/arbitration/competition/english/>. The registration fee will cover the welcome reception (**April 9, 2020**), award ceremony (**April 11, 2020**) reception and light lunches on **April 10 and 11**. Teams will be responsible for the arrangement and funding of their own flights, accommodations and travel expenses.

### *1.3 Team Contact Person*

The registration form includes space for the name and e-mail address of the Team Contact Person. The Team Contact Person can either be the Team Coach or a member of the team. The Team Contact Person will be sent:

- The team's individual Team Number;
- The argument outlines from your opposing teams;
- Any other relevant organizational material; and
- Results of the moot.

The Team Contact Person is expected to:

- Have email and Internet access;
- Check the e-mail and moot website frequently, particularly as the oral rounds approach; and
- Be responsible for efficiently distributing all moot materials to the team members.

Communication between the team and the organizers that is initiated by any person other than the Team Contact Person will be done at the team's own risk. If, for any reason, the Team Contact Person is unable to fulfill their required duties, it is the team's responsibility to select a new Team Contact Person and notify the Competition Committee immediately.

#### *1.4 Withdrawal of Registration*

A team may withdraw from the competition at any time before **5:00 p.m. EST, February 24, 2020**. After that point, the Registration Fee is non-refundable.

If a team is unable to participate for any reason, it must notify the Competition Committee as soon as possible.

## **2. The Problem**

The LL.M. International Commercial Arbitration Moot Competition will alternate every year between a problem involving an International Commercial Dispute and a problem arising out of an investment protection law or BIT provision.

### *2.1 Subject Matter*

The LL.M. Moot Competition in 2020 will involve an International Investment Dispute.

### *2.2 Dispute Settlement*

The problem has been referred to an Arbitral Tribunal pursuant to the rules stipulated in the problem. All States involved are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

### *2.3 The Competition*

By the time the moot begins, the claimant will have filed its request for arbitration and preliminary submissions, the respondent will have filed its preliminary submissions, and the Arbitral Tribunal, which consists of three arbitrators, will have been appointed. The Problem will consist of the preliminary submissions with their exhibits, plus any orders of the Arbitral Tribunal issued prior to the date on which the problem is distributed.

The moot involves the submission of an argument outline for **BOTH** the claimant **AND** the respondent and the presentation of oral arguments in support of both positions in different hearings over the course of the competition.

### *2.4 Distribution*

The problem will be distributed **September 30, 2019** on the WCL Moot Web Site:

<https://www.wcl.american.edu/impact/initiatives-programs/arbitration/competitions/>

### *2.5 Facts*

The facts of the dispute will be released with the problem. Teams are not allowed to introduce any additional facts or evidence into the moot unless they are necessary and logical extensions of the given facts.

### *2.6 Clarifications*

Any requests for clarification of the problem may be sent to the Competition Committee before **midday EST, February 3, 2020**. Requests for clarification should be sent by e-mail to [arbitration@wcl.american.edu](mailto:arbitration@wcl.american.edu).

Requests for clarifications should:

Cite the page number of the problem to which their request relates;

Be limited to matters that would appear to have legal significance in the context of the problem (not simple typographical errors, for example).

Include a short explanation of the expected significance of the clarification.

Clarifications issued will be distributed to all teams by **February 17, 2020** by posting on the Arbitration Moot website. Clarifications issued will become part of the problem. Teams must ensure that it receives and adequately notes the problem clarifications and corrections in preparation of the competition.

### 3. Teams

#### *3.1 Composition*

Each participating law school may enter up to two teams. A team may be composed of two to four members. While only four students may be registered to compete and participate in the oral rounds, additional students may contribute or help teams prepare in advance of the competition. In this way, more people will benefit from the experience. For example, such students may conduct research for a team's oral or written arguments or write any part of the team's outline.

If a law school enters two teams, the teams can share the same coach. However, each team must work independently on their research, outlines and argument preparation. The coach can discuss the problem as part of the class or in meetings. However, the coach must make sure that each team works independently in their argument preparation and are ready to compete against each other.

One team member must argue both the claimant and respondent during the general round to help prevent claimant/respondent specialization. Aside from this requirement, each registered team may serve any team member role, such as researcher, writer, oralist, or desk counsel and may serve multiple or all team member roles at any time during the competition. During each oral round, one additional team member to the two oralists may sit at the table with the two oralists as desk counsel. The person acting as counsel must be one of the registered team members. The person acting as counsel need not be the same person in each oral round.

#### *3.2 Team Eligibility*

Team members must be enrolled in a Master of Laws (LL.M.) program. J.S.D. and S.J.D. students are also eligible to participate. However, a team can be composed of no more than one S.J.D. candidate.

Students from foreign law schools are eligible to participate as long as they have a law degree and are enrolled in postgraduate law studies.

Students who have completed their studies (through the completion of the required units necessary for the awarding of the LL.M. degree) by **December 2019** are unable to be part of a team. Students must be enrolled in an LL.M. or postgraduate law studies at the moment of the competition.

Any team which utilizes improper assistance of the Analysis of the Problem, or another Team's outline without authorization under these Rules may be disqualified from the Competition.

### *3.2 Participation*

In each of the oral hearings, two members of the team must present the arguments. The arguments should be divided by jurisdiction and the merits. If only one team member or more than 2 members present arguments during a hearing, the team will be subject to point deductions. There may be one additional team member to serve as desk counsel by keeping notes and time during the presentation. We encourage teams to use desk counsels since volunteers assisting the tribunal (Secretary of the Tribunal) will not be available at all times. Participants shall have no communication with the members of the public while they are arguing.

Participants are further prohibited from the use of laptops, cellphones, PDAs or other electronic communication devices to support their oral argument. However, participants may use a watch for the purposes of keeping time. All such devices, including cellphones must be turned off and removed from sight as soon as the arbitrators enter the room, and must thereafter remain off and out of sight until the conclusion of the oral round. If a team violates this rule, the competition committee shall determine a penalty that corresponds to the severity of the violation. Participation certificates will be issued to team members who attend the oral hearings of the competition.

### *3.3 Anonymity of Teams*

Teams must not reveal their school to the arbitrators at any time during the competition. Inadvertent disclosure does not apply; however, teams should do their best to refrain from revealing their school information or be subject to point deductions.

## **4. Argument Outline**

### *4.1 Argument Outline*

All members of the team (but no one outside the team) may participate in the preparation of the written Argument Outline.

Each team must submit an Argument Outline in support of the legal position of **both** the claimant **and** the respondent.

Each team must submit an electronic version of both of their Argument Outlines by email to the Competition Committee on or before **5:00 p.m. EST, March 1, 2020**.

All teams will receive the outlines of the teams they are scheduled to argue against in the general oral rounds by email at least two weeks prior to the competition. Teams will not receive the outlines of the teams they are scheduled to argue against in the elimination rounds. However, teams are welcome to exchange outlines.

#### *4.2 Form, length and style*

The Argument Outline must contain all arguments that the participants plan to use in their oral arguments.

Outlines may be **no longer** than 5 double-spaced, 8.5 x 11 inch or A4 typed pages.

The cover page and table of contents page are excluded from the 5 page limit.

No type style smaller than New Times Roman 12 point is to be used.

#### *4.3 Requirements for electronic version of the Outlines*

Each team must submit each electronic Argument Outline **as one document** in electronic form with a cover page that contains only the team moot number and whether the outline is for the claimant or the respondent.

All components of the outline, including cover page and contents pages, are to be part of the one document. The document should be titled with a filename that identifies the team number and the side argued without requiring the document to be opened. E.g., 'Team 1 Outline for Claimant'.

Names of participants or the school name of the teams may not appear on or within the Outlines.

The Competition Administration will strike all references to team members made in the outlines.

### **5. Oral Hearings**

#### *5.1 Venue*

The oral hearings will take place at American University Washington College of Law. The hearings will be held in university classrooms that have sufficient space to hold a table for each party and for the arbitrators to be seated at a table in U formation.

#### *5.2 General Rounds*

The general rounds will be held on **Friday, April 10, 2020**. Each team will argue twice, once as claimant and once as respondent, in the general rounds. In the event the number of teams is uneven, a drawing will be held to select the teams which will compete a third time. For these teams the scores obtained in the same role will be averaged.

The Competition Committee will publish the timetable for the general rounds on the moot website by **March 10, 2020**. Each team will receive the outline of the opposing teams for the general rounds by **March 4, 2020**. The Competition Committee reserves the right to make any last minute changes, which may be necessary due to circumstances beyond the Committee's control.

The Competition Administration will provide the tribunal with the rules of the competition, the problem, any clarifications, analysis of the problem, and an oral evaluation form. In the first round



only, the tribunal will be provided with the outlines of each team participating during the general rounds.

### *5.3 Duration of Presentation*

The oral presentation of each team is 30 minutes. The team must allocate the time equitably so that each team member speaks for the same amount of time (+/- 2 minutes). Prior to the beginning of the oral round, each team must indicate to the tribunal or Secretary of the Tribunal if available, how it wishes to allocate its 30 minutes among (a) its first oralist, (b) its second oralist, and (c) rebuttal or sur-rebuttal. Time allocated for but not used by one oralist may not be used by another oralist, or in the rebuttal or sur-rebuttal.

The tribunal may allow teams to exceed the overall time limit so long as neither team is allowed more than forty-five minutes to present its arguments. This limit includes the time required to answer questions posed by the tribunal.

### *5.4 Argument Outline*

In the first oral hearing, advocates are expected to only use the arguments they have already submitted in writing or to justify any noticeable deviations from them. After the first hearing, however, the speakers may modify their arguments.

### *5.5 Arbitrators*

In each oral round, the Competition Administration shall employ three (3) arbitrators whenever possible. In extenuating circumstances, the committee may authorize panels of two (2) arbitrators, but this should be done only as a last resort and the committee should minimize the number of times that a Team is evaluated by a two-arbitrator panel. In the general rounds, no member of an Arbitral Tribunal may judge a team arguing for the same side in a subsequent hearing. Arbitrators are also expected to simulate a real arbitration, including maintaining independence and impartiality. Though possible conflicts of interest between the arbitrators and participants may arise without the previous knowledge of the Competition Administration, the Administration assumes no risk, except that the arbitrators will act with impartiality if they cannot be reassigned.

For the final round, the organizers of the competition will select arbitration practitioners or academics, whose busy schedule requires them to be invited in advance. There is a chance they will be related in some way to one of the academic institutions that reach the final. The organizers will try to make changes. However, if changes are not possible, the arbitrators are assumed to act with impartiality.

### *5.6 Order of Presentation*



It shall be left to the discretion of the parties in each hearing to determine the order in which the teams will present the case. If there is no consensus, then the arbitrators will make the decision.

### *5.7 Scoring*

Each of the three arbitrators sitting on an arbitral panel must individually assess the oral advocate and each award a score between 0 and 30. This total score reflects the tally of points obtained by each advocate in the following categories: Overall Presentation, Structure of Argument, and Preparation and Familiarity with Material. An advocate can earn up to 10 points in each of these categories, with 0 as the lowest score.

To determine the score of teams, the arbitrators will add the points obtained by both speakers on each team. An Oral Argument Evaluation Form, prepared by the Competition Committee, will be supplied to each arbitrator to further explain each of these categories. The arbitrators will then indicate the winning team on the scoring sheets.

The team with the highest total score will be considered the winning team. In the event of a tie, the arbitrators will award one extra point to the best team to determine a winner.

In the event 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.

### *5.8 Absent team*

In case a team fails to appear for a scheduled oral round, the arbitral tribunal after notifying the Competition Administration and waiting for 15 minutes shall conduct the Oral Round ex parte. The attending team may present its arguments and shall be scored as if the absent team were present. The team that fails to appear at the scheduled oral round forfeits all points for the round.

### *5.9 Evaluation Criteria and Feedback*

The Arbitration Panel will score each oral advocate based on his or her ability to argue the legal position assigned. Each of the three arbitrators sitting on an arbitral panel must assess the oralists individually.

Each arbitrator shall award each oralist a score between 0 and 30. This total score reflects the addition of points obtained by each oralist in the following categories:

- Overall Presentation (\_\_\_/10)

Confidence; delivery; voice; clarity; word choice; eye contact; enthusiasm; poise; deference toward the tribunal; gestures; ability to engage the tribunal; time management; ability to respond directly and

clearly; logic of responses; composure under questioning. Since English is not the first language of many of the participants, when evaluating the oral performance of the participants, arbitrators shall focus on the strength of the arguments and the ability of the participants to communicate their ideas effectively.

- Structure of Argument (\_\_\_/10)

Clear, logical, and persuasive organization of argument; Focus on the most compelling arguments; transition between arguments; strong conclusion.

- Preparation and Familiarity with Material (\_\_\_/10)

Knowledge of the record, relevant law, and policy implications; use of authority; responsiveness to opposing counsel; application of law and policy to facts.

The arbitrators will add the points obtained by both team members to determine that team's total amount of points (that number will range from 0 to 60).

The team with the highest total score is considered the winning team. In the event of a tie, the arbitrators should award one extra point to the best team to determine a winner.

Following the deliberation, the arbitrators ask the teams to come back into the room and provide general comments and feedback making sure they do not directly or indirectly disclose the winner of the round. Feedback to the participants must focus on formal aspects to improve their presentation, not the law or the facts.

#### *5.10 Quarter-final Round*

The eight highest ranked teams at the conclusion of the general rounds will compete in the quarter-final round.

For the purposes of the quarter-final round, the highest ranked team in the general rounds will be paired with the lowest ranked team, the second with the second lowest, etc. That is the finalists will be paired as follows:

1 v. 8

2 v. 7

3 v. 6

4 v. 5

If teams drawn to meet one another in a quarter-final round have not previously met in the general rounds, then the decision as to which team will be claimant and which will be respondent will be determined by a coin flip (the team that was ranked highest in the general rounds will call the toss).

The winner of the toss will have 5 minutes to decide the party for which it wishes to argue in the quarter-final round. If two teams drawn to meet in a quarter-final round have met previously in the general rounds, they will argue for the opposite party in the quarter-final.

After each round finishes, a team representative for each party will have 30 minutes to go to the Moot Competition Office to inquire about the result of the round. If needed, the coin flip will occur shortly thereafter. If one team does not arrive at the Office on time, it will forfeit the ability to choose and the other team will decide which side to argue.

#### *5.11 Semi-Final Round*

The four winning teams at the end of the quarter-final round will meet in the semi-final round. The winner of 1 v. 8 will compete against the winner of 4 v. 5. The winner of 2 v. 7 will compete against the winner of 3 v. 6.

The teams drawn to meet in any semi-final round will argue for the opposite party for which they argued in the preceding round.

If both teams drawn to meet in any semi-final round argued for the claimant or both for the respondent in the quarter-final rounds, the decision as to which team will be claimant and which will be respondent for that semi-final round will be determined by a coin flip (the team that was ranked highest in the general rounds will call the toss). The winner of the toss will have 5 minutes to decide the party for which it wishes to argue in the semi-final round, unless the two teams drawn to meet in the semi-final round have met previously in the general rounds or the quarter-final round. Instead, they will argue for the opposite party in the semi-final. After each round finishes, the team representative of each party will have thirty minutes to go to the Moot Competition Office to inquire about the result of the round. If needed, the coin flip will occur shortly thereafter. Again, if one team does not present itself to the office, it will forfeit its ability to choose which side to argue.

#### *5.12 Final Round*

The two winning teams in the semi-final round will meet in the final round.

After each semi-final round finishes, the team representative of each party will have thirty minutes to go to the Moot Competition Office to inquire about the result of the round. If needed, the coin flip will occur shortly thereafter, and the teams are bound to the same rule of arriving to the office for the coin toss. The coin flip will determine which team argues for which party (the team that was ranked highest in the general rounds will call the toss). The winner of the toss will have 10 minutes to decide the party for which it wishes to argue in the Final Round.

Teams shall exchange their written outlines (no longer than 5 pages) one hour before the hearing.

#### *5.13 Winning Team*

The winning team of the oral hearings of the moot is the team that wins the Final Round. The winning team will be announced at the awards ceremony.

## **6. Assistance**

### *6.1 Written Outline*

The written outline must be the team's work. Law school staff and coaches should restrict their advice to general matters and should not take over the production and writing of the Outline.

### *6.2 Oral Hearings*

There is no restriction to the amount of coaching a team may receive in preparation for the oral hearings. However, once the hearing has commenced, no assistance by the team members or any other person can be given, barring the specific responsibilities of the desk counsel.

Scouting is forbidden at all times during the general and quarter-final rounds of the competition. Team members or persons directly affiliated with any team may only attend hearings in which their team is competing. We expect that law schools represented by two teams compete with class and honor the spirit of this rule.

Videotaping of any moot is not permitted except for the final round.

The role of coaches is strictly educational. They are not allowed to act as advocates for the team.

In order to participate in the competition, observers must send an email to [arbitration@wcl.american.edu](mailto:arbitration@wcl.american.edu), indicating a legitimate reason for wanting to attend, as well as conveying how this competition will benefit their education or career path. The deadline to register as observer is Wednesday, March 11, 2020.

### *6.3 Confidentiality of the Analysis*

The Analysis of the Problem distributed for purposes of briefing the arbitrators on the legal issues addressed in the competition is strictly confidential. The Competition Committee will disqualify any Team which makes use of the Analysis of the Problem. Teams who obtain a copy of the Analysis of the Problem should immediately

return it to the Competition Coordinator without examining the contents.

## **7. Awards**

Best Team and Runner up

Best Oralist and Runner up

## Honorable Mentions

In order to be eligible for the prize for Best Oralist, a participant must have argued at least once for the claimant and once for the respondent in the general rounds specifically.

## 8. Interpretation of the Rules

Requests for interpretation of the rules may be addressed with the Competition Committee. All interpretations as well as any waivers, consents or other decisions concerning the moot competition are within the sole discretion of the Competition Committee. There is no right of appeal from the decisions of the Competition Committee. The Competition Committee shall serve as final arbiter of implementation and interpretation of these Rules. A team may not validly complain that it was not given proper notice of a rule change or update, when that rule change or update was made available on the competition's website.

### *8.1 Failure to comply with rules*

Failure to observe the rules of conduct may involve point deduction or disqualification of the team, some of its members, or disqualification from any awards.

### *8.2 Weather or Emergency Situations*

In such case of a weather or emergency situation, which disrupts the normal course of the competition schedule, the Competition Committee will take reasonable measures to guarantee the completion is carried out according to schedule and accommodate delays.

If cancellation is unavoidable, in spite of all the efforts of the organizers to ensure the competition proceeds as normal, the organizers reserve the right to reschedule the rounds.

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