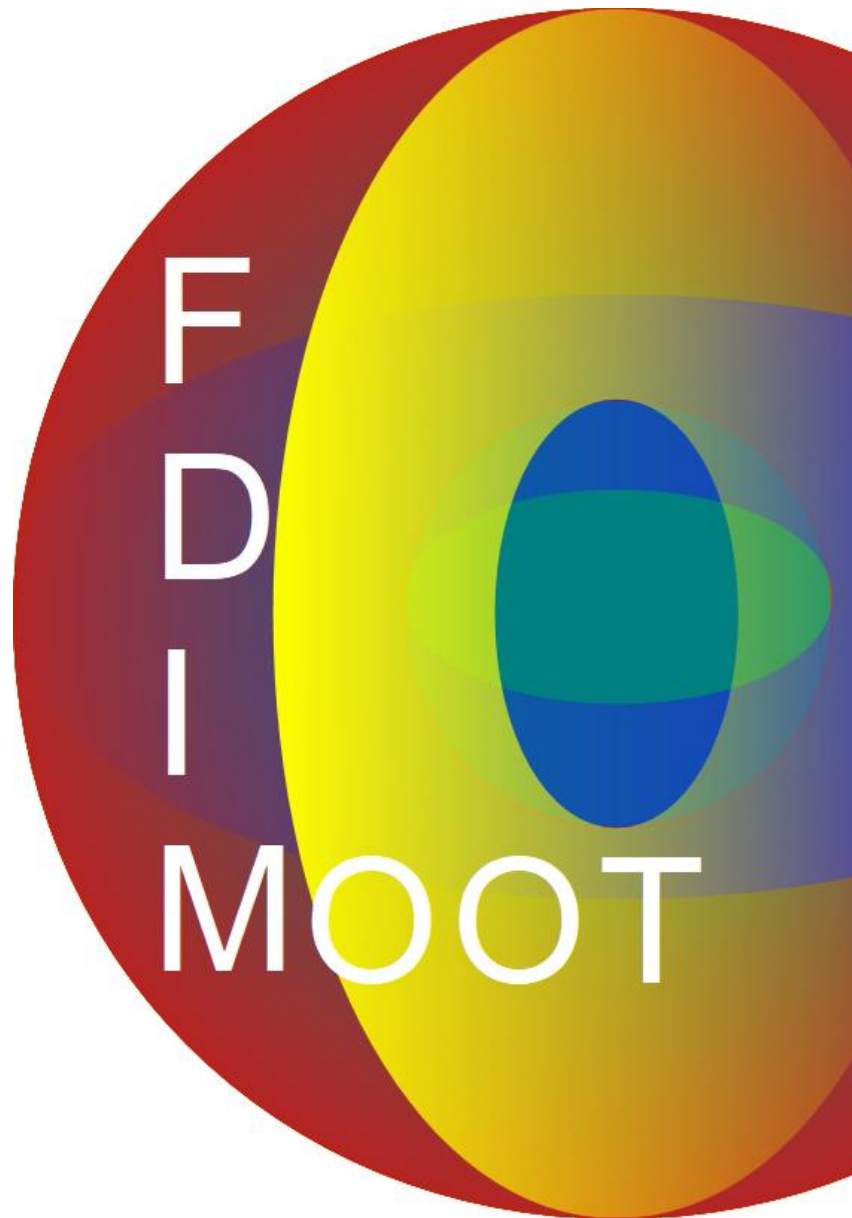


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Note: The 2019 revision are mostly cosmetic. The only substantive change is relected in the 5<sup>th</sup> and 6<sup>th</sup> paragraphs of Rule 3.1.

## **1. DEFINITIONS**

"Registration Fee": An official fee transferred by each Team to cover administrative expenses for the competition (moot). The 2019 fee is EUR750 (EUR450 and EUR 250 respectively for teams from institutions in countries with a "Medium" HDI or "Low" HDI - see <http://hdr.undp.org/en/statistics/>).

## **2. GENERAL PROVISIONS**

### **2.1. Organization**

FDI Moot Rules last revised 1 January 2019

The Foreign Direct Investment International Arbitration Moot ("the FDI Moot", "The Skadden, Arps FDI Moot", or "the Moot") is an annual competition organized by the Center for International Legal Studies ("the Organizer") in cooperation with the following founding institutions:

[Suffolk University Law School](#), Boston, Massachusetts (Prof. Christopher Gibson)

[Pepperdine University Law School](#), Malibu, California (Prof. Jack Coe)

[Centre of European Law](#), King's College London (Dr Federico Ortino)

[German Institution of Arbitration](#) (DIS), Frankfurt/Cologne, Germany (Dr Francesca Mazza)

Together, these Founders have signed the Memorandum of Understanding on the Establishment of Foreign Direct Investment International Moot Competition.

## **2.2. Administration**

1. The Organizer is responsible for the organization and execution of the Moot.
2. All requests regarding the administration of the Moot, implementation and interpretation of its Rules will be directed to the Organizer.
3. The Organizer is located at Matzenkopfgasse 19, A-5020 Salzburg, Austria; Tel. +43 (662) 835399; Fax +43 (662) 835399-09, or the Moot Website at [www.fdimoot.org](http://www.fdimoot.org). All communications with the Organizer must be via e-mail using <http://www.fdimoot.org/fdimootcontact.php> or the administrative email address disclosed to registered teams.
4. The Organizer may designate one or more Directors of the FDI Moot.

## **2.3. Subject Matter**

1. The Moot involves a hypothetical dispute in connection with an investment by a foreign investor in a host state.
2. Relevant institutional (e.g., the Rules of Procedure for Arbitration Proceedings or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, Arbitration Rules of the London Court of International Arbitration) or ad hoc rules (e.g., UNCITRAL Arbitration Rules) will apply to the proceedings.

## **2.4. Structure**

The Moot consists of two stages: preparation and submission of written Memorials for each of Claimant and Respondent, and presentation of oral arguments at the Oral Hearings.

The Organizer may authorize Regional and National Rounds for the purposes of qualifying and/or financing for the Global Rounds.

## **2.5. Venue of Oral Hearing**

Each year the Oral Hearings are held at venues determined by the Organizer and founders two years in advance.

## 2.6. Language

The Moot will be conducted in English.

## 2.7. Copyright

1. All materials prepared by or for the Organizer for the Moot, including without limitation, the case, any bench brief, the procedural orders, clarifications, the Rules, the Schedule etc. are the exclusive property of the Organizer and may not be used for any purpose other than administration of the Moot and/or participation therein, without prior express written consent by the Organizer.
2. All Memorials submitted in the Moot become the sole property of the Organizer and may be copyrighted as such, while respecting the authors' moral rights.
3. The Organizer reserves all the rights to the audio and videotaping of any Oral Round, or part thereof, subject to the privacy rights of the participants.

## 3. PARTICIPATION AND ELIGIBILITY

### 3.1. Team Composition

Each team should have two "student-members" to plead in each hearing; they need not be the same student members in each match.

A student-member (i) is currently or (ii) has been within six months of the deadline for memorial submission enrolled in a course of study leading to a law qualification (e.g., LLB, LLM, M.iur, JD, diploma in professional practice or equivalent). Students enrolled in non-law programs may participate on prior written consent of the Organiser.

The Organiser may exceptionally permit a person with more than six months' PQE to participate as a student-member of a team.

Previous participation in the FDI Moot does not exclude a student-member.

The number of each team's student members is unlimited, provided they all are (or have been recently) enrolled at the same institution (even if in different courses or degree programs).

A team with student-members from more than one institution is limited to 5 team members, whether students or coaches.

A team may have non-student-members, i.e. coaches and academic supervisors.

All research, writing and pleading must be exclusively the work product of student-members. Non-student-members must limit themselves to giving the team organisational (and financial) support, general guidance and feedback.

The registration fee covers the participation at the Oral Rounds of 5 team members, whether students or coaches. The Organisers and Hosts of the Globals, Regionals and Nationals may impose a surcharge for additional team members *attending*.

A list of each team's member must be finalised and submitted online by the deadline for the submission of the Claimant memorial (or sooner as maybe required for a national or regional round).

A visiting student, a student enrolled as an extern or apprentice may also become a team member.

### **3.2. Participation**

1. In each match of the Oral Rounds, each Team is represented by exactly two student-member advocates. The same or different student members may participate in different matches.

Where a Team becomes unable to field two advocates for the oral hearings, the Organizer may in its discretion permit the Team to participate with its sole remaining student member pleading (i) only half the issues/allotted time or (ii) all the issues/allotted time. In the case of (i), the Team will not be able to win matches or advance to the elimination rounds, but the sole advocate will remain individually eligible for ranking; in the case of (ii), the Team may also win matches and advance to the elimination rounds, though in its discretion the Organizer may impose a penalty for the Team only having one advocate.

2. Teams may not reveal their institutional affiliation(s) or country of origin to the Arbitrators or Memorial Judges at any time during the Competition. Every Team will be referred to by its competition alias assigned by the Organizer.

3. Team members are responsible for their own travel to, visas for, and accommodations at the venue of the Oral Hearings.

### **3.3. Outside Assistance**

1. All research, writing and editing, especially of memorials, must be the exclusive product of student Team members.

Teams may seek and receive outside assistance, which must be limited to a general discussion of the issues, suggestions as to research sources, general comments on arguments, organization and structure, and practice for the Oral Hearings. Teams may also receive financial and logistical support.

2. Teams must indicate any person attending the oral rounds who has assisted the Team, either by registering such persons as a coach member of the Teams, or making the Organizer aware that such person, having been invited by the Organizer to act as an Arbitrator at the orals, could give rise to an appearance of partiality if assigned to one of the Team's hearings.

Arbitrators and memorial judges should independently indicate a "conflict" with any Team they have assisted within the meaning of this rule.

3. Pre-mooting among participating teams is permitted so long as pre-moot organizers notify the Organizer. Pre-mooting may not involve exchange of memorials or other materials. Pre-moot teams must accept that the Organizer cannot take account of the pre-moot in its conduct of the Global FDI Moot orals rounds.

## **4. REGISTRATION**

### **4.1. Registration Form**

Every team must submit to the Organizer before 1 June the Registration Form available on-line at [www.fdimoot.org](http://www.fdimoot.org), designating a Team contact, communication with whom constitutes communication with the Team. Communication by any other team-member is at the risk of the Team.

### **4.2. Registration Fee**

The Registration Fee must be paid by 1 June.

If a Team withdraws from the Moot before the first deadline for submitting requests for clarification, its Registration Fee may be refunded in full, less bank charges or any other related expenses.

### **4.3. Official Registration**

Only upon the receipt of both the Registration Form and the Registration Fee, will the Organizer officially confirm the registration of each Team, assigning an alias for use in the Moot (on memorials and during the oral hearings) and enabling the team to manage its profile, clarification requests, etc.

## **5. CASE**

### **5.1. Dispute**

A dispute arises between a foreign investor and a host State. An (arguably) applicable investment agreement, treaty, or national legislation provides for dispute resolution before an arbitral tribunal consisting of three arbitrators in accordance with the chosen arbitration rules.

The dispute involves a set of theoretical and practical procedural and substantive legal issues both in the sphere of arbitration adjudication and foreign investment regulation and protection. Any existing or fictitious legal provisions may be used.

The dispute itself and the names of all the parties mentioned therein are fictitious. Any resemblance to an actual dispute or persons living or dead is purely coincidental.

### **5.2. Drafting the Case**

The Case is drafted each year by a Case Committee selected by the Organizer. See [Drafting Guidance](#).

### **5.3. Case Delivery**

The Organizer posts the Case on [www.fdimoot.org](http://www.fdimoot.org) as stipulated in the Schedule.

### **5.4. Requests for Clarifications**

1. The Organizer may provide all teams an equal, limited (timing and volume) opportunity to request clarifications of the case. Details on requesting clarifications will be disclosed to each Team when its registration is complete.
2. Any clarification responses are prepared by the Organizer and Case Committee and posted on [www.fdimoot.org](http://www.fdimoot.org) in accordance with the Schedule.
3. The Organizer and Case Committee may in their absolute discretion clarify only legally significant matters or those matters that may affect the understanding of facts of the dispute.

### **5.5. Bench Brief**

1. The Organizer may distribute a Bench Brief outlining the major issues and indicating some possible arguments on the issues raised in the Case only to the Memorial Judges and the Arbitrators in accordance with the Schedule.
2. The Bench Brief is strictly confidential. Authorized readers of the Bench Brief may not disclose its contents to Teams or their coaches. The Organizer may disqualify any arbitrator or memorial judge sharing and any Team receiving the Bench Brief.

## **6. WRITTEN MEMORIALS**

### **6.1. Submission of Memorials**

1. Each Team must submit a Memorial for Claimant and a Memorial for Respondent according to the Organizer's instructions no later than the date specified in the Schedule.
2. A Memorial must be contained in a single file and submitted in PDF format.
3. Equipment or software failure is not considered as an excuse for improper formatting or late submission of Memorials.
4. No Team may revise, substitute, add, delete, or in any other manner alter its Memorials once submitted.

### **6.2. Content**

1. Each Memorial must contain the following parts:
  - a. Cover page;
  - b. Table of Contents;
  - c. List of Authorities;
  - d. Statement of Facts;
  - e. Arguments.
2. A Memorial may contain additional parts or exhibits as necessary.
3. The institution(s) or place(s) represented by a Team must not appear in any way on the Memorial. A Team may be identified only by its alias assigned by the Organiser.

### 6.3. Length

Each Memorial must be 16,000 words or less, including the cover page, table of contents, index, list of authorities, footnotes or other material. If 16,000 words are exceeded according to <http://www.montereylanguages.com/pdf-word-count-online-free-tool.html> with "exclude numbers" ticked, the Organizer will deduct penalty points: 16001-16100 words: 0; 16101-16200: -1; 16201-16300: -2; 16301-16400: -3; 16401-16501: -4; 16501-16600: -5 ....

### 6.4. Style Requirements

1. A Memorial must be drafted in *formal* English. The use of Latin maxims and foreign terms (e.g. *Kompetenz-Kompetenz*) is allowed if they are widely accepted and known.
2. The text including quotations within the text must be between 12 and 14 point, in a standard, legible font and 1½ line-spacing; footnotes and tables of authorities may be 10 or 11 point and single-spaced. All margins must be at least one inch or 2.5 cm.
3. The text pages must be numbered consecutively in Arabic numerals (1, 2, ....). Tables pages must be numbered consecutively in small Roman numerals (i, ii, ...). Each page must be numbered bottom-centre.
4. The paragraphs of the statements of facts and arguments parts must be numbered consecutively in Arabic numerals.

### 6.5. List of Authorities and Citations

1. The List of Authorities may contain only those authorities actually cited in a form adequate to allow an educated reader to identify and locate the authority.
2. The footnotes must be used to cite the authorities in the arguments. Be wary of making arguments or including facts in footnotes. The footnotes may contain a short form of citation (if introduced in the Authorities).

### 6.6. Quotations

Use direct quotations judiciously. A quotation of more than two lines in length must be block quoted and single-spaced.

### 6.7. Cover Page

The cover page must contain the following and only the following information:

- a. The Team competition alias in the top right corner;
- b. The name of the administering arbitration centre;
- c. The names of the parties
- d. The title of the document, i.e. Memorial for Claimant, Respondent, Applicant, or the like, as the case may be.

It must not contain anything identifying the Team's origins (University name, logo, URL, city, country, etc.).



## 6.8. Review and Scoring of Memorials

1. All Memorials submitted will be reviewed by at least three Judges.
2. Each Judge will score the Memorials on the quality of analysis of the issues involved, persuasiveness of the arguments, logic and reasoning, writing, knowledge of the facts, use of authorities and extent of the research.
3. The Organizer may deduct points for non-adherence to specifications of Rule 6. Judges need not ascertain a memorial's technical compliance with the 16,000 word limit; this will be monitored by the Organizer. Judges may demote a memorial for being lengthy, pleonastic or inflated (*QED*) irrespective of the word count.

## 6.9. Receipt of Memorials of Other Teams

Three days before the Oral Hearings, each Team will receive access to the Memorials drafted by other Teams.

## 6.10. Regional Round Skeleton Briefs

A team taking part in a Regional must submit a "Skeleton Brief" before the Regional hearings (and not full memorials). The below adaptation of the preceding Rules of Article 6 applies to Skeleton Briefs:

- 6.2.1. - Skeleton Briefs only include items 6.2.a. and 6.2.e referred to above.
- 6.2.2. - Skeleton Briefs may NOT contain additional parts or exhibits.
- 6.3. - Each Skeleton Brief, including any footnotes, must be 1500 words or less.
- 6.4. - Skeleton Briefs may be drafted in topic outline style ([see example](#)).
- 6.5. - Not applicable (see 6.2.1. above).
- 6.8. - The review criteria will be adjusted according to the nature of Skeleton Briefs.
- 6.9. - One day before the Regional Hearings, each Team will receive access to the Skeleton Briefs drafted by other Teams.

Teams advancing from the Regionals to the Global must then submit full memorials; teams not advancing from the Regional may submit full memorials.

# 7. ORAL HEARING

## 7.1. General Procedure

1. The Oral Hearings consist of Preliminary, Semi-Final and Final Rounds. If the Organizer deems it beneficial to the Moot, Quarterfinal Rounds or a Round of 16 may be conducted prior to the Semi-Final Rounds.
2. The Oral Hearings take place generally at the premises of the Host announced for each year (see [www.fdimoot.org](http://www.fdimoot.org)).

## 7.2. Oral Arguments

Each Team presents in English oral arguments for Claimant/Applicant and for Respondent. Its oral pleadings are not restricted to the arguments stated in its Memorials.

### **7.3. Oral Rounds**

1. Each Oral match consists of 80 minutes of oral pleading. Claimant and Respondent are each allotted 40 minutes, including not more than 5 minutes thereof each for any rebuttal or sur-rebuttal. A Team must allocate at least 15 minutes to each oral advocate. The time allotted includes the time needed to answer any questions from the panel.
2. Before the hearing begins, teams must submit to the Tribunal in writing an order of argument, including any time reserved for rebuttal or sur-rebuttal, that is either (i) agreed between the teams or (ii) each team's proposal (with copy to the opposing team). If there is no agreed order of argument, the presiding arbitrator's decision is final as to the proposals. Arbitrators must ensure that both teams are treated fairly.
3. Only students registered as Team members may act as oral advocates. No more than two Team members may plead during one Oral Round. Other Team members may be present in the session in which their Team is pleading.
4. The Organizer will supply the Teams with the Schedule of the Oral Rounds one week before.

### **7.4. Arbitrators**

Three arbitrators preside over each Oral Round. If there is a shortage of Arbitrators, the Organizer may assign two or one arbitrator to preside over the Oral round. The Organizer appoints the Arbitrators from its College of Arbitrators.

### **7.5. Communication and Use of Electronic Devices During Oral Rounds**

1. During an Oral Round, the Team members pleading may only communicate with those team members at the counsel's table, the Tribunal, the Secretary and opposing counsel.
2. Behavior that distracts from the hearing is prohibited. Team members pleading in a given Oral Round may exchange written notes or assist each other in finding the necessary documents. No other communication is be allowed.
3. Use of any electronic devices (cell phones, tablets, laptops, etc.) such as for time-keeping, note-taking, argument outlining or providing information in support of the pleadings is permitted. Use of these devices to communicate with any person is prohibited (see 1 above).

### **7.6. Publicity**

1. All Oral Rounds may be open to the public, subject to "scouting" restrictions and the security requirements of the host venue.

2. The Organizer may provide for the live web cast (and recording) of the Teams pleading in the final.

By participating, team members and arbitrators consent to the use of their images and audio-video recordings for the educational and promotional purposes of the FDI Moot.

### **7.7. Evidence**

No documentary evidence (exhibits, handouts, flip-charts, etc.), slideshows, or examination of witnesses or experts is allowed during the Oral Hearing.

### **7.8. Scouting**

1. Team members or persons directly affiliated with any Team may only attend matches in which their Team is competing, unless their Team has already been eliminated from the Moot. This applies *mutatis mutandis* to Regionals, Nationals and pre-moots.

2. No audio, video or photographic recording is permitted without prior consent of the Organizer once the Round has commenced.

### **7.9. Ex Parte Oral Rounds**

1. In case a Team fails to appear for a scheduled Oral Round, the arbitral tribunal after notifying the Organizer and waiting for 15 minutes will conduct the Oral Round ex parte. The attending Team may present its arguments and will be scored as if the absent Team were present.

2. The Team that fails to appear at the scheduled Oral Round forfeits all points for the round.

### **7.10. Scoring**

1. The Arbitrators score the individual oral advocates' presentations during Preliminary Rounds. The Organizer will prepare and supply the Arbitrators with official scoring sheets.

2. In estimating individual oral advocates' presentations, the Arbitrators will take into account the competence, inclusion of relevant facts, knowledge of legal norms, structure and logic of the arguments, and responses to questions. The Arbitrators will also take into account that for some Teams English is not their mother tongue.

3. Every Arbitrator may award each oral advocate a maximum of 100 points per round. The score per Oral Round for the oral arguments of a Team is the total of the points awarded and may be a maximum of 600 points (300 points for each Team's oral advocate).

4. Arbitrators must conduct the Oral Hearings in accordance with the Conduct of Hearing Guidance (<http://fdimoot.org/Instructions.doc> *as updated from time to time*).

### **7.11. Preliminary Rounds**

1. Each Team must present an oral argument in at least four Preliminary Rounds: twice as Claimant and twice as Respondent.
2. The Organizer may elect to conduct Preliminary Rounds in pools, round-robin or Swiss-tournaments, and seed teams according to their memorial scores and/or progressively during the preliminary rounds. The Teams will plead as Respondent and as Claimant an equal number of times, and any two Teams may not face each other more than twice.
3. Teams may advance to the elimination rounds on the basis of the aggregate scores of its oral advocates, the number of matches it has won, or a match ranking system. The Organizer may also factor memorial scores (on a weighted basis) into a Team's aggregate scores or into each Team's match scores in order to determine the winner of each match.

## **7.12. Elimination Rounds**

1. The teams emerging from the preliminary rounds or a preceding elimination round may be paired strongest v weakest, second strongest v second weakest, etc.
2. If the pairings do not involve each team pleading both as Claimant and Respondent, the decision as to which Team pleads Claimant or Respondent may be determined by lot.

## **8. PRIZES**

### **8.1. Winner of the Oral Competition**

The winning Team of the Final Round is the winner of the Moot and receives the Skadden, Arps, Slate, Meagher & Flom Trophy.

### **8.2. Best Advocate**

The best individual oral advocate is determined by the average of the normalized scores awarded in three or more Preliminary Rounds (irrespective of representing Claimant or Respondent), and will receive the [Thomas Wälde](#) Advocacy Award.

On the same basis, the next 9 highest advocates will be honourably mentioned.

The best advocates arguing two rounds as Claimant or two rounds as Respondent will be recognised.

The best advocate of the Final will also be recognised.

### **8.3. Best Memorial for Claimant**

The Team that receives the greatest number of points from the Memorial Judges for its Memorial for Claimant receives the Award for the Best Memorial for Claimant.

### **8.4. Best Memorial for Respondent**

The Team that receives the greatest numbers of points from the Memorial Judges for its Memorial for Respondent receives the Award for the Best Memorial for Respondent.

### **8.5. Highest-Ranked Team**

The Team with the highest score resulting from the sum of its normalized scores from the preliminary oral rounds and its Memorial scores receives the Highest Ranked Team Award.

## **9. PENALTIES**

### **9.1. Penalties for Written and Oral Performances**

1. The Memorial Judges may reduce the number of points awarded to a Team's Memorial for violations of Rules 6.1-6.7.
2. The Arbitrators scoring the Preliminary Rounds may reduce the number of points awarded to an advocate for violations of Rules 7.5 and 7.7.
3. The Organizer may reduce the number of points awarded to a Team for violation of Rules 6.1 (1) or 7.8.
4. The number of points deducted will correspond to the severity of the violation as adjudged by the Memorial Judges, the Arbitrators, or the Organizer accordingly.
5. The Memorial Judges and the Arbitrators will be provided with the internal instructions as to the number of points to be deducted for each violation of the present Rules.

### **9.2. Disqualification**

The Organizer may disqualify a Team for serious violations of the Rules that the Organizer deems to be dishonest rather than inadvertent. The decision of the Organizer is final.

## **10. MISCELLANEOUS**

### **10.1. Communication**

All requests regarding the organization and administration of the Moot must be directed to the Organizer via e-mail. No Team may seek direct ex parte communication with any arbitrator or memorial judge (exceptions may apply if the Organizer must use a coach as a substitute arbitrator).

### **10.2. Interpretation of Rules**

Submit all requests for the interpretation of the present Rules to the Organizer. The Organizer annually reviews and amends the Rules as necessary.

### **10.3. Observance of Rules**

Any Team submitting the Registration Form agrees to observe the present Rules.

### **10.4. Decisions of Organizer**

Any decision of the Organizer in connection with the Moot is final and not subject to appeal.

The liability of the Organizer, co-founders, hosts, sponsors and arbitrators for errors or omissions is limited to the full extent legally permissible.