

## CHALLENGES: THEIRS IS TO REASON WHY

David Hacking of Littleton Chambers says it is time all major arbitral institutions gave reasons when deciding challenges to serving arbitrators

Recent years have witnessed an unprecedented increase in the number of challenges to arbitral appointments.

A look at the statistics of the major institutions confirms this. In the five years between 1995 and 1999, there were 92 challenges of arbitrators to the International Chamber of Commerce Court of Arbitration. In the next five years, 2000 to 2004, the figure rose to 140 or 28 per year (source: ICC statistical reports). More recently the ICC reported 37 challenges against serving arbitrators in 2004 and 40 challenges against serving arbitrators in 2005. Extrapolating from these, and assuming no further growth in the rate of challenge (although such growth is likely) then between 2005 and 2009 at least 200 challenges can be expected in ICC arbitrations.

The International Centre for Dispute notes an increase in the challenges of serving arbitrators and the Arbitration Institute of the Stockholm Chamber of Commerce also records increases in arbitrator challenges. In the five-year period between 1995 and 1999, the Stockholm Chamber of Commerce received 19 challenges. In the next five years, between 2000 and 2004, it received 23 challenges, but more significant increases are to be found in the SCC's most recent figures: these show the number of challenges rising from just over three challenges per year (based on the 2000 to 2003 period) to 10 challenges in 2004 and the same figure in 2005. Although fewer in number, the figures for the London Court of Arbitration reflect the same trend: from 1996 to 2000 there were six recorded challenges but in the period from 2001 and 2005 there were 14 recorded challenges.

This trend is not reflected in every region of the world. The Singapore International Arbitration Centre reports a mere three challenges between 2004 and 2006, of which one was withdrawn, and the Hong Kong International Arbitration Committee reports only one challenge during 2005.

Behind the primary reason for this increase – more arbitrations – lie other causes. First, the greater complexity of commercial and professional relationships has brought out 'conflict' situations that previously did not exist. One has only to look at the variety of potential conflicts identified in the International Bar Association's Guidelines on Conflicts of Interest in International

Arbitration to realise how complex this problem has become and how it is likely to become more complex in the future. Indeed, the opening paragraphs of the IBA Guidelines recognises exactly this:

"The growth of international business and the manner in which it is conducted, including interlocking corporate relationships and larger international law firms, have caused more disclosures and have created more difficult conflict of interest issues to determine [...] Parties have [now] more opportunities to use challenges of arbitrators to delay arbitrations or to deny the opposing party the arbitrator of their choice. Disclosure of any relationship, no matter how minor [...] [leads] to objections, challenge and withdrawal or removal of the arbitrator."

Arbitrator challenges, and the decisions made on them, have important consequences for the parties, their lawyers and the arbitrators themselves

Second, international arbitrations are increasingly subject to litigious strategies in which, regrettably, parties use any available tool to cause grief and difficulty to the opponent in the hope of gaining a tactical advantage. The latest edition of the ICC's Bulletin (the ICC's 2006 Statistical Report) contains an account of "multiple or repeated challenges in six cases, including one where the respondent challenged all three members of the tribunal on *three separate occasions* and the chairman

alone on *an additional occasion*" [emphasis added].

Arbitrator challenges, and the decisions made on them, have important consequences for the parties, their lawyers and the arbitrators themselves. When a party's appointed arbitrator is challenged it impedes that party's right to select an arbitrator of its choice and inevitably runs up time and cost. When an arbitrator is challenged, it impinges upon his or her integrity.

It seems opportune, therefore, to examine how the major arbitral institutions handle challenges and whether their procedures meet the needs of today's international arbitrations.

### The different approaches in arbitration rules

In broad terms arbitrator challenges fall into three categories. First there is the 'conflict of interest' challenge. Second there is the challenge that the arbitrator is not properly qualified to undertake the task. And third there is the challenge relating to the performance of the arbitrator in the conduct of the arbitration. All of them are sensitive issues for the arbitrator.

We should start by identifying the arbitration rules of the major arbitral institutions:

- the ICC Rules of Arbitration effective from 1 January 1998;
- the ICDR Arbitration Rules effective from 1 May 2006;
- the Rules of the Arbitration Institute of the SCC effective from 1 April 1999;
- the LCIA Rules effective from 1 January 1998; and
- the SIAC Rules (second edition) effective from 22 October 1997.

HKIAC arbitrations are conducted under the UNCITRAL Arbitration Rules, subject to the Procedures for the Administration of International Arbitrations (as adopted to take effect from 31 March 2005). In addition, as an adjunct to the UNCITRAL Rules, the HKIAC adopted its Challenge Rules on 7 March 2005.

In considering the operation of these rules, I focus on three aspects of them:

- What is the basis, in each set of rules, upon which the challenges are decided?
- What procedures are followed in taking these challenges?
- What reasons, if any, are given and/or are published by the institution?

### The conflict of interest test

There is much in common among the major arbitral institutions upon the basis for deciding arbitrator challenges. On a conflict of interest challenge, the test rests on whether the arbitrator can be considered as independent or impartial.

#### ICC

In ICC arbitrations the test is on the ‘independence’ of the arbitrator (see articles 7.2 and 11.1 ICC Rules). In making his or her statement of independence, the prospective ICC arbitrator has to make disclosures “of any facts or circumstances which might be of such a nature as to call into question the arbitrator’s independence in the eyes of the parties” (see article 11.1 ICC Rules). The ICC Secretariat explains that this subjective test exists to ensure that the prospective arbitrator makes the fullest disclosure, but the decision on whether an arbitrator should be treated as independent follows an objective test.

#### ICDR

In ICDR arbitrations, the test for challenging arbitrators is whether there are “justifiable doubts as to the arbitrator’s impartiality or independence” (see article 8 ICDR Rules).

#### SCC

The test contained in the SCC Rules is for all intents and purposes identical. Instead of providing the test relating to the arbitrator’s “impartiality or independence” under the SCC Rules, it goes to the arbitrator’s “impartiality and independence” (see article 17 SCC Rules). Readers should also note that from 1 January 2007 new SCC Rules will be in effect; this article refers only to the SCC Rules effective from 1 April 1999.

#### LCIA

With the same slight variation of words, an identical test is also to be found in the LCIA Rules (see articles 5.2, 5.3 and 10.3 LCIA Rules).

#### SIAC

The test in SIAC arbitrations is the same (see rules 11.2 and 12.1 SIAC Rules).

#### HKIAC

Unsurprisingly, since all these tests, in the rules of ICC, ICDR, SCC, LCIA and SIAC arbitrations, have been obtained from the UNCITRAL Arbitration Rules, (see articles 9 and 10 of the UNCITRAL Rules), HKIAC takes the same approach to challenges.

### The ‘ability’ or ‘suitability’ test

The ICC and the LCIA Rules both allow for a prospective arbitrator’s “ability” (this is the ICC’s term; see article 9 ICC Rules) or “suitability” (the LCIA’s term; see article 11 LCIA Rules) to be taken into account. Hence under both these rules,

it is open to parties to make a challenge based on an alleged lack of qualification of an arbitrator.

Recently in an arbitration in which I was counsel, the opposing side took the point – I thought quite erroneously – that the arbitrator we had nominated was insufficiently qualified in the applicable agency law of the arbitration. In this case it did not become a formal challenge, but it illustrates how an arbitrator can be challenged for alleged lack of qualification – a challenge which can clearly be made under the ICC and LCIA Rules. The rules of the ICDR, SCC, SIAC and the UNCITRAL Rules have no similar provision,

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but there is a record of such a challenge being taken to and decided by the SCC (see page 62 of ‘Recent Practice of the Arbitration Institute of the Stockholm Chamber of Commerce: Prima Facie Decisions on Jurisdiction and Challenges of Arbitrators’, by Annette Magnusson and Hanna Larsson, published in *Stockholm Arbitration Report* 2004:2). In that case, the challenge for lack of qualification was based on the inability of an arbitrator to speak both of the languages (Russian and English) in which it had been agreed the arbitration would be conducted. From this one might draw a presumption that challenges can be made to ICDR, SCC, SIAC or HKIAC arbitrations on grounds that an arbitrator is lacking in relevant professional experience, knowledge of relevant law, linguistic skills or other necessary qualifications. This presumption is, it should be said, not certain and, in any event, since such deficiencies are usually known before the arbitral tribunal is constituted, a challenge based upon them faces a narrow prospect of success. All the same, it might be thought that the ICDR, SCC and SIAC Rules could be more explicit on the point. Interestingly there is no power in

the ICDR Rules (unlike in the rules of other institutions) to refuse to confirm the appointment of an arbitrator for lack of suitability; this may therefore make it harder in an ICDR arbitration to mount a challenge under this ground.

### Performance-related challenges

There is also considerable commonality between the major arbitral institutions in the tests which should be applied when the challenge relates to the arbitrator’s performance in the conduct of the arbitration. All of the arbitration rules of the major institutions set out the duty of an arbitrator to act “fairly and impartially” between the parties giving each of them a reasonable opportunity of presenting its case. The LCIA goes into more detail and sets out three sets of circumstances in which an arbitrator’s mandate may be revoked. First is the test set out in article 10.1 of the LCIA Rules when the arbitrator “refuses, or becomes unable or unfit to act”. Second is the test under article 10.2 of the LCIA Rules when an arbitrator “acts in deliberate violation of the Arbitration Agreement (including these Rules) or does not act fairly and impartially between the parties”; and third is the test in article 10.3 where an arbitrator can be challenged “if circumstances exist that give rise to justifiable doubts as to his impartiality or independence”. According to the director general of the LCIA, almost invariably parties rely on the last of these tests when challenging an arbitrator. One can note that this is the same provision used in a ‘conflict of interest’ challenge.

As Dominique Hascher commented in ‘ICC Practice in Relation to the Appointment, Confirmation and Replacement of Arbitrators’ (*ICC International Court of Arbitration Bulletin*, vol 6 No. 2, November 1995) many of these challenges arise because a party dislikes a decision of the arbitral tribunal (such as the imposing of a time limit or the refusal to receive certain evidence in circumstances which the complaining party believes that there has been a breach of ‘due process’ or, as we would describe in England, a breach of ‘natural justice’) and the complaining party is, in fact, seeking to undermine the decision-making process of the arbitral tribunal. This, however, is not always so. There are challenges in which serious allegations are made against an arbitrator for behaving quite improperly, such as entering into private discussions with one party without the presence of the other party or persistently favouring one party against the other during an oral hearing.

### Challenges creating bias

By making repeated challenges against an arbitrator, a party can cause that arbitrator to be irritated to the point that he or she begins to show bias against the continually complaining party. Moreover it has been advanced that when a party has instigated, for example, court proceedings against an arbitrator (say on an issue

of jurisdiction) that arbitrator in the further conduct of the arbitration can no longer be treated as impartial (see the Dominique Hascher paper, above, at page 12). This can cause problems. It has been known for a challenge to be received by an institution which, in its original form, may not have been sustainable but which provokes the arbitrator to respond so immoderately that the arbitrator's response (rather than the original challenge) produces doubts about the arbitrator's

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impartiality – doubts sufficient to have that person removed as arbitrator. Thus arbitrators should be very careful in how they respond to challenges against them!

**Procedures for deciding challenges**

Turning to the procedures for handling challenges, again there is much in common in the rules of all the arbitral institutions. The standard format is as follows. The challenge must be made in writing and should be served on the other party and the arbitral tribunal: thereafter the other party has an opportunity to accede to or reject the challenge and so too, usually, does the arbitrator who is being challenged. On this last aspect, the SCC Rules and the HKIAC Challenge Rules specifically give the challenged arbitrator a right to make comments on the challenge, and most of the other institutions follow this practice. However, the SIAC does not nor does the ICDR as a regular practice. On disclosure of interest issues, the ICDR does, when thought necessary, make enquiries of the challenged arbitrator but not otherwise. On the question of whether the comments of the challenged arbitrator and, if the

panel is a three-person panel, the comments of the other two members of the panel, are conveyed to the parties, it is generally now the practice of all institutions to do so. Formerly the ICC did not follow this practice and since the ICDR only makes limited enquiries to its arbitrators, it follows that only a limited amount of arbitrator comments are passed to the parties.

There are greater differences in how the actual decision on a challenge is made.

**ICC**

In ICC arbitrations, after the parties and the arbitral tribunal have had an opportunity to make their representations on the challenge, the case team designated to manage the arbitration in question will prepare papers for a plenary session of the ICC Court. The team does so in consultation with the senior staff in the secretariat. The full ICC Court is constituted of 124 members, but the usual attendance at its plenary sessions consists of between 30 and 50 members. At the plenary session, one member of the court is usually asked to act as a rapporteur. He or she then presents a report highlighting the points at issue and recommends a decision that the court should take. As well as preparing a written report, the rapporteur customarily speaks to his report at the plenary session. Thereafter the decision is taken by the court (for more on ICC's processes see 'The ICC Court: A Behind-the-Scenes Look' by Jennifer Kirby, *ICC International Court of Arbitration Bulletin* vol 16 No. 2, 2005). It should, however, be noted that although generally these procedures are followed, there is no requirement, as such, in the ICC Rules for decisions on challenges to be taken by the ICC Court.

**ICDR**

In ICDR arbitrations, once parties have had an opportunity to make submissions and offer comments on any challenge, the decision-making process is handled within the ICDR Case Management Centre. The case manager reviews all submissions and makes a recommendation as to the removal or reaffirmation on the arbitrator being challenged. The same action is taken by the team supervisor. These recommendations are then presented to the centre's vice president who will normally make a final decision on the challenge. There are occasions where the centre vice president will engage in discussions on selected challenges with the ICDR senior vice president or American Arbitration Association's general counsel or with both.

**SCC**

In SCC arbitrations the decision is taken by the SCC board and communicated to the parties by the chairman of the board, unless the matter is very urgent and it is difficult for the board to convene, in which case a decision is taken by the chairman. The papers are prepared by

the secretariat with a recommendation on the decision to be taken by the board.

**LCIA**

The LCIA makes its decision on challenges differently. The party making the challenge sends to the LCIA Court, the tribunal and the other parties a written statement containing its reasons for the challenge (see LCIA Rules article 10.4). Unless the challenged arbitrator withdraws or the other parties agree to the challenge, the LCIA Court decides on the challenge (see again LCIA Rules article 10.4). As part of this process the LCIA Secretariat prepares the papers and places them before the court. These papers include any responses received from the other parties on whether they agree or disagree with the challenge. Under the LCIA Constitution, the functions of the LCIA Court are performed by the LCIA's president, a vice-president or a division of the court – which consists of three or five members of the court as appointed by the president and chaired by him or by a vice president (see LCIA Constitution [2002] section D paragraphs 1(b) and 2). It is the normal practice of the LCIA when taking challenges to form a three-person division of the court consisting of a vice president and two members of the court (one of whom should have previous experience in considering arbitrator challenges) who, having considered all the papers submitted, makes the reasoned decision in the name of the court.

**SIAC and HKIAC**

In SIAC arbitrations, after the submissions from the arbitrators and the parties have been received, the centre's chairman, or if delegated to him, the centre's deputy chairman, is empowered to make the decision on the challenge. The same procedures are followed in HKIAC arbitrations.

**Presenting challenge decisions**

There are also significant differences between the institutions in how they choose to present their decisions on challenges to the parties.

**ICC**

It is the practice of the ICC to give its decisions without reasons. This follows article 7.4 of the ICC Rules which reads: "The decisions of the Court as to the [...] challenge [...] of an arbitrator shall be final and the reasons for such decisions shall not be communicated."

Even without this provision it would be quite difficult to obtain reasons out of a plenary session of the ICC Court, given that they can be attended by up to 50 persons.

**ICDR**

Similarly it is not the practice of the ICDR to provide reasoned decisions on challenges – although, in fact, nothing in the ICDR Rules prevents its doing so. The ICDR believes that,

as most challenges “are quite unique in fact and circumstance, they must be addressed on an individual basis.” The centre also makes the point that the publication of reasoned decisions “would be time-consuming, have the parties attempting to compare circumstances and would not assist in the decision-making process”. Additionally the centre argues that publishing reasoned decisions could provide the parties with additional grounds when those decisions have been made subject to court challenges. The centre goes on to say that this likely to “delay the arbitration process and foster increased numbers of challenges, in some instances as a dilatory tactic” – all with undesirable consequence of increases in costs and time.

### SCC

It is also not generally the practice of the SCC to issue reasons, although it does do so on occasion (for example, see the decision reported on page 84 of the *Stockholm Arbitration Report 2004:2*, concerning case 61/2004). On the other hand, the SCC does from time to time issue reports on challenges which have been made to it. These reports record the facts at issue and contain the summaries of the submissions made by the parties and the comments of the arbitral tribunal (summaries can be found in ‘Recent Practice of the Arbitration Institute of the Stockholm Chamber of Commerce: Prima Facie Decisions on Jurisdiction and Challenges to Arbitrators’, by Annette Magnusson and Hanna Larsson at pages 66 to 84 *Stockholm Arbitration Report 2004:2*). These summaries, although they omit the reasons (except in one case) for the acceptance or rejection of the challenge, provide a good record of the facts and submissions on which the SCC makes its challenge decisions.

### SIAC and HKIAC

Under the SIAC Rules there is no obligation to give reasons, but thus far the SIAC has given reasons for its challenge decisions. In article 8 of the HKIAC challenge rules, it is stated: “The Council’s determination in respect of any challenge shall be given to the parties in writing. The Council may in its sole discretion decide whether to support such determination with reasons.”

Despite this, in the sole recorded case of a challenge, the HKIAC refrained from giving reasons.

### LCIA

The LCIA stands alone among the arbitral institutions in giving reasons for its decisions on challenges. In fact, under article 29.1 of the LCIA Rules, the LCIA Court is not required to give reasons but it has been its practice to do so. On occasions, the issue of reasoned decisions by the LCIA Court can stretch over pages in careful analysis of the challenge and the reasons that it is accepted or rejected. In one recent LCIA

challenge, the reasoned decision (covering the facts and all matters taken into account) stretched over 40 pages and in another over 70 pages. Moreover the LCIA has now announced that it will publish abstracts of all its challenge decisions, which – since they contain reasons – will go further than the published decisions of the SCC.

### Success rate of challenges

Challenges, after appointment, against arbitrators are subject with all arbitral institutions to a different process from that used when taking objections on nominated arbitrators during the appointment procedure. On the second, it is often suggested that some arbitral institutions accept too easily the objection and refuse to appoint arbitrators on trivial grounds

The statistics on challenges do not show the institutions behaving in a similar way. In 2004, the ICC accepted two out of 37 challenges and in 2005 two out of 40 challenges (see ICC Bulletins and Statistical Reports) (a 5.4 per cent and a 5 per cent success rate). Of the 20 challenges received by the LCIA between 1996 and 2005, only four challenges were upheld (20 per cent success rate). Of the 52 challenges received by the SCC between 1995 and 2005, 16 were upheld (30 per cent success rate; see page 66 *Stockholm Arbitration Report 2004:2* and confirmed by the SCC). Out of the very small number of challenges received by the SIAC and the HKIAC, no meaningful conclusions can be drawn.

What can be drawn from these different figures?

### Cultural differences

It seems fair to suggest that cultural attitudes influence the decision-making process at the institutions. In addition, it appears that some are more willing to allow challenges if they occur at the beginning of the arbitration (when the tribunal has hardly started work) than if they occur at a more advanced stage (when a great deal of time and money has been expended in the arbitration). Practitioners in the UK, Europe and Asia tend to view with some incredulity how mild social or professional contacts between parties and arbitrators are permitted to form grounds for challenge in North America.

Although I recognise this incident is related to litigation rather than arbitration, I was surprised at a recent International Bar Association meeting in Chicago to be told by a senior US Federal Court Judge that she had felt a need to recuse herself from an appeal after discovering that one of the law firms in the appeal before her was temporarily employing her son. The firm was only an affiliate firm in the appeal (not acting as counsel in it) and the son was working in an entirely different sector of the firm, and as a paralegal. If this had arisen in an arbitration when I was arbitrator, I would have mentioned to the parties my son’s presence in the law firm but assured them that he was not

privy to any knowledge about the arbitration and that, in any event, this was not a matter of any influence upon me, and I would have expected that none of the parties – or anybody else – to have raised any objections.

### The future

For me, the most troubling feature arising from this review is the practice among the institutions to withhold the reasons when issuing challenge decisions. I have had the advantage of seeing the excellent report prepared by Geoff Nicholas and Constantine Partasides to assist the LCIA in its deliberations upon whether to publish reasoned decisions on arbitrator challenges – a decision, which, as earlier mentioned, the LCIA has now taken. This report, in edited form, will be published early next year in *Arbitration International*. Kindly (and exceptionally) the authors, the court and the general editor of that publication have allowed me to refer to the segment of this report where the authors consider the justification for issuing reasoned decisions on challenges. The main thrust of the Nicholas and

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Partasides report goes to the arguments for and against the publishing of the LCIA’s arbitrator challenge decisions. This is not the subject of this paper but it is well worth reading the full dimensions of the report when it is published.

### The giving of reasons

On the giving of reasons issue, the premise of Nicholas and Partasides is that: “It is a matter of basic fairness and natural justice to know the reasons underlying the ultimate challenge

decision”. They refer to article 6 of the European Convention of Human Rights which recognises the right for reasons to be given as an “important component of a fair trial” in the judicial system and cite from the essay of Sir Patrick Neil QC (now Lord Neil of Bladon) on ‘The Duty to Give Reasons: the Openness of Decision-Making’ (see *The Golden Metwand and the Crooked Cord*, Oxford University Press, 1998, at page 183):

“The interests of fairness will very generally be found to require that a person affected by a decision should both be aware of the material in the hands of the decision-maker which may be used as a basis for the decision and, secondly, that he should know the reasons underlying the ultimate decision [...]”

Partasides and Nicholas also cite an article of 20 years ago where the author was balancing the right of an arbitral institution to preserve the confidentiality of its internal procedures against the right of a party to know why a decision has been made in a certain way:

“On the one hand, an arbitral institution has a legitimate interest in preserving the confidentiality of its internal administration, and ensuring that challenges are disposed of expeditiously so as not to delay an award on the merits. On the other hand, a party which challenges in good faith might lose confidence in the arbitral process if there is no explanation whatsoever why its arguments were not persuasive” (Tupman: ‘Challenge and Disqualification of Arbitrators in International Commercial Arbitration’, *International Comparative Law Quarterly* vol 38 (1989) at page 183).

Nicholas and Partasides then go to argue that, citing a recent LCIA reasoned decision on a challenge which was issued within eight days of the initial challenge, there is no reason to conclude that the issuing of reasoned decisions will cause significant delay in the arbitral process and that there are, likewise, no grounds for concluding one way or the other that the scope of judicial challenge will be increased or diminished by the issue of reasoned awards. Indeed Nicholas and Partasides suggest that the giving of reasons should assist a national court when taking a judicial challenge to it.

### The right to know

This author believes that the argument presented by Nicholas and Partasides is wholly sound. The giving of reasons on challenges surely enhances the arbitral process and gives the users of arbitration more – not less – confidence in it. Quite apart from the frustration experienced, when reasons are withheld, by practitioners and parties, who have presented detailed submissions and supporting citations, anybody who has written arbitral awards (or court judgments or

position papers and the like) knows that the very act of writing such documents focuses the mind on the proper conclusions to draw. As argued earlier, the challenge of an arbitrator is a serious matter and the parties, their counsel and the challenged arbitrators have every right to know why a challenge has been accepted or rejected.

### A matter for fresh consideration

This author hopes, therefore, that the major arbitral institutes will give fresh consideration to the giving of reasons. It is true that the ICC

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does publish, from time to time, articles in its bulletins in which its challenge decisions are reviewed and analysed (as mentioned earlier, see Dominique Hascher’s ‘ICC Practice in Relation to the Appointment, Confirmation and Replacement of Arbitrators’). And it is true that the SCC also, from time to time, publishes information on the challenges made to it. (See again: Annette Magnusson and Hanna Larsson’s ‘Recent Practice of the Arbitration Institute of the SCC: Prima Facie Decisions on Jurisdiction and Challenges of Arbitrators’). Commendable though this publication on challenges is, it is not the same as handing out to the parties, at the time of the challenge, a fully reasoned response to it. Although there may be that practical difficulties for the ICC to obtain reasons out of 30 to 50 persons sitting of a plenary session of the ICC Court, the ICC does have powers of delegation in its decision making under rule 1(4) of the ICC Rules and under article 4 of its Internal Rules and there is no reason for it not to use those powers to set up special subcommittees operating in the same

way as divisions of the LCIA. I acknowledge in suggesting this that, since challenge decisions are ultimately treated as decisions of the ICC Court, that article 7(4) of the ICC Rules will have to be amended to remove the prohibition of giving of reasons by the ICC Court. Even so, I think that the ICC, and more so the ICDR, may find it a great advantage to have a three person-group (sitting in some form of delegated committee) of experienced arbitral practitioners deciding the difficult issues which can arise arbitrator challenges.

### To respond or not to changed times?

As always in life, things move on. While once arbitrator challenges were rarer and less complex, this is no longer the case. The arbitral community has, therefore, the choice of responding or not responding to changed times. When a law does not respond to change it becomes archaic and ceases to serve properly those it should be well serving. As a member of the UK’s House of Lords for nearly 30 years, I know how difficult it is to achieve changes in law; the passing of the 1979 and 1996 Arbitration Bills were considerable achievements! I venture to suggest that it would be rather easier for the arbitral community, if it has the will, to affect the changes on arbitrator challenges that I advance in this article. The changing of arbitration rules can be contentious but it is more achievable than seeking to change the law of the land. It is, at least, worth a go.

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*Except when other sources of information are identified in this article, all of the sources of information upon the statistics kept by the institutions (as named in this article) and the procedures used by them have been supplied in the discussions which the author had with each of these institutions. Although the author has strived at all times accurately to record all the information, which he has received, he takes sole responsibility for any mistakes which may occur in the text of this article.*