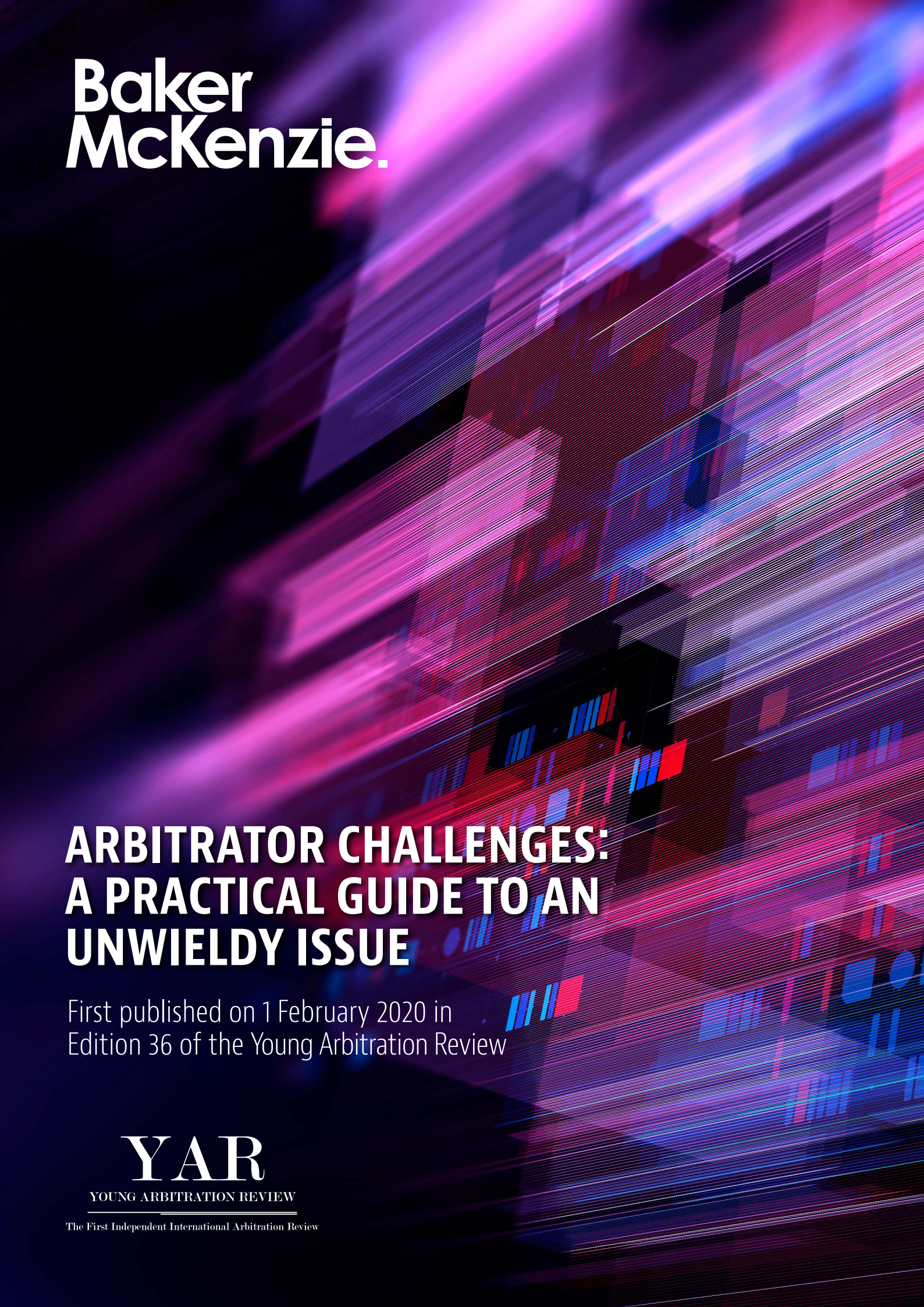

Baker McKenzie.

ARBITRATOR CHALLENGES: A PRACTICAL GUIDE TO AN UNWIELDY ISSUE

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A CASE FOR CHALLENGE

Nothing is more important in arbitration than the impartiality and independence ofarbitrators.[II] Parties hand over their fundamental right to have their dispute heard toone or more individuals in the hope that they will get it right. Arbitrators enjoyextensive power to decide on the merits and, apart from some limited circumstances,nothing can be done if they get it wrong.[III] Faith in the fact that these individuals willdecide the case impartially and independently is paramount. Due to the arbitrator's dual quality as a party creation and final adjudicator, there is nothing quite equivalent in other systems of dispute resolution.

A dreaded circumstance is where, unbeknownst to one side, an arbitrator (or several) have a clear preference for the other side. A fear mounts that the case will not bedecided objectively but on the basis of prior knowledge of the issues, the parties, ortheir counsel, and that there may be a pre-disposition toward one side's arguments(whether consciously or not). Proving actual bias is very difficult. The test is one ofapparent bias that is assessed objectively on the basis of all the circumstances.ivDisclosure is key: we must avoid the unknown unknowns. That is the focus of the IBAGuidelines on Conflicts of Interest (the "IBA Guidelines")v and that was the focus ofthe Supreme Court case in Halliburton v Chubb, on which a decision is expectedimminently.[VI]

This article stands a practical guide for parties who wish to challenge one or moremembers of an arbitral tribunal (or defend a challenge). It looks at three sets of arbitralbodies: the LCIA, the ICC and ICSID. Although different in nature and scope, thesehave been chosen due to their popularity, the availability of data around challengesand because, together, they cover a wide range of disputes and both internationalcommercial and investment arbitration.

THE MECHANICS

Applicable rules

The process for bringing a challenge before arbitral bodies is fairly straightforward and, now, relatively standardised.[VII] A typical challenge requires for it to be made in writing by reference to specific grounds and accompanied by substantiating evidence. Once the challenge is made, the arbitration proceedings are suspended pending the decision on the challenge. Other parties, the arbitrator(s) subject to the challenge and any co-arbitrators are permitted to comment. If the challenge is rejected the arbitrator remains in situ and the arbitration resumes. If the challenge is accepted, one or more arbitrators are removed and another appointed in his or her place. The appointment of the replacement arbitrator(s) usually follows the same process as the one for the original appointment.

Applicable law

In international commercial arbitration, the applicable law is likely to be the lex arbitri as supplemented, to the extent permitted, by the parties' chosen arbitration rules and often the IBA Guidelines.[VIII] Although the parties will be guided mostly by the content of the arbitration rules (and temporally any challenge may first need to be brought under these), the starting point for any challenge must be the law of the seat. The law of the seat and the courts of the seat would usually have the final say on matters of arbitrators' challenge; an imperative to preserve the integrity of the arbitration process.[IX]

Where the seat of arbitration is in London, section 24 of the English Arbitration Act 1996 permits a party to apply to court to seek the removal of an arbitrator on the basis of a lack of impartiality, relevant qualifications, capacity or inappropriate conduct of the proceedings, once all of the remedies under the parties' chosen arbitration rules have been exhausted.[X] During the court's review, the arbitration proceedings may continue. When considering such an application, the court will apply the test of whether a fair-minded and informed observer, having considered the facts, would consider that there was a real possibility that the tribunal was biased.xi The outcome of this process is likely to be the end of the road for any challenge.[XII]

In an ICSID arbitration, and apart from the different terminology that is used for a similar set of processes, the key difference is that the lex arbitri is the ICSID Convention. It is an integrated system established under international law with ICSID as its own safeguard to the integrity of the arbitration process. The test that is applied to determine the challenge is an objective one, based on how a reasonable third party would evaluate the evidence (strikingly similar to the one set by the English courts) and if a challenge is refused, a party may still have the option to seek an annulment of the award if it can show that the Tribunal was not properly constituted, there was corruption on the part of a member of the Tribunal, or there was a serious departure from a fundamental rule of procedure.[XII]

Table 1: The rules governing challenges to arbitrator(s) under the ICC Rules, the LCLA Rules and ICSID as at date of writing.

	ICC 2017	LCIA 2014	ICSID 2006
TIME LIMIT FOR CHALLENGING ARBITRATOR(S)	**Article 14(2)** Within 30 days from notification of appointment or confirmation of the arbitrator, or within 30 days from becoming informed of relevant facts and circumstances.	**Article 10.3** 14 days from appointment or, if later, 14 days from becoming aware of grounds.	**Rule 9** Promptly, and in any event before proceeding is declared closed.
ABILITY TO CHALLENGE ARBITRATOR	**Article 14(1)** A challenge may be made to the Secretariat. **Article 15(2)** An arbitrator can be replaced on the ICC Court's own initiative if it decides the arbitrator is prevented from or is not fulfilling his/her functions in accordance with the Rules.	**Article 10.1** A party may make a written challenge to an arbitrator's appointment. The LCIA Court may revoke any arbitrator's appointment upon its own initiative, by reference to the grounds in Article 10.2.	**Article 57** A party may propose to the Tribunal that an arbitrator lacks a quality required by **Article 14(1)**. A party may also propose the disqualification of an arbitrator on the ground he/she was ineligible for appointment under Articles 37 - 40.
PROCEDURE FOR PARTY CHALLENGE	**Article 14(1)** Written statement to be sent to the Secretariat, specifying the facts and circumstances on which the challenge is based. **Article 14(3)** The Secretariat will allow a suitable period of time for the other party/parties, the arbitrator concerned and/or the co-arbitrators to comment in writing. The ICC Court shall decide on the admissibility and merits of the challenge. **Article 15(1)** Upon acceptance of the ICC Court of a challenge, the arbitrator shall be replaced.	**Article 10.3** Written statement to be sent to the LCIA Court specifying the reasons for the challenge. **Article 10.4** The LCIA Court will allow a reasonable opportunity for the challenged arbitrator and the other parties to comment on the written statement. The LCIA Court may request further information from any party. **Article 10.5** If all parties agree to the challenge, the LCIA Court shall revoke that arbitrator's appointment (without reasons). **Article 10.6** In the absence of agreement or resignation of the arbitrator, the LCIA Court will decide the challenge and provide reasons in writing.	**Article 58** The decision on a challenge shall be taken by the other members of the Tribunal, unless they are equally divided, or where the challenge is against a sole arbitrator, or where the challenge is against a majority of the Tribunal, in which case the decision shall be taken by the Chairman (being the President of the World Bank - Article 5 of the ICSID Convention). If it is decided that the challenge is well-founded, the arbitrator shall be replaced.
REPLACING AN ARBITRATOR FOLLOWING A SUCCESSFUL CHALLENGE	**Article 15(4)** The ICC Court has discretion to follow the original nominating process or not. Once reconstituted, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.	**Article 11.1** The LCIA Court may determine whether or not to follow the original nominating process or not. **Article 11.2** The LCIA Court may determine that any opportunity given to a party to re-nominate shall be waived if not exercised within 14 days, after which the LCIA Court shall appoint a replacement arbitrator.	**Rule 11(1) and 11(3)** The arbitrator shall be replaced in accordance with the requirements of Articles 37 - 40, and following the original nominating process unless no new appointment is made and accepted within 45 days of notification of vacancy, in which case the Chairman will make the appointment at the request of one of the parties.
OVERSIGHT	**Article 11(4)** The decisions of the ICC Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.	**Article 29.1** The determinations of the LCIA Court with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties.	**Article 52 and Rules 50, 52-55** Either party can request annulment of the award, including if the Tribunal was not properly constituted, there was corruption on the part of a member of the Tribunal, or there has been a serious departure from a fundamental rule of procedure.

Table 2: Comparative table between the grounds for challenge under the ICC Rules, the LCIA Rules and ICSID as at the date of writing.

	ICC 2017	LCIA 2014	ICSID 2006
GROUNDS FOR CHALLENGE	**Article 14(1)** An alleged lack of impartiality or independence, or otherwise.	**Article 10.1** [Where] circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence; AND **Article 10.2** The LCIA Court may determine that an arbitrator is unfit to act under Article 10.1 if that arbitrator: (i) acts in deliberate violation of the Arbitration Agreement; (ii) does not act fairly or impartially as between the parties; or (iii) does not conduct or participate in the arbitration with reasonable efficiency, diligence and indstry.	**Article 57** Any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. **Article 14(1)** High moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment.

The grounds

Each of the three arbitral bodies allows for a challenge where there is doubt over an arbitrator's impartiality or independence. Each seeks to achieve confidence in the arbitration process. Under the ICC Rules this must be "alleged", under the LCIA Rules there must be "justifiable doubts", and under ICSID there must be a "manifest lack" of the qualities required of arbitrators. A plain reading suggests that there are different standards, with ICSID having the strictest threshold to be met by the parties, but the test (although not expressly set out) is often the same: that of an objective third party with the relevant knowledge. Each institution also requires specific reasons to be articulated, which often emerge from the background of the appointment of the arbitrator, or the arbitrators' conduct during proceedings. These are frequently based on the IBA Guidelines discussed below.

IMPORTANCE OF DISCLOSURE

The IBA Guidelines

The IBA Guidelines do not form part of thelex arbitriand are seldom expressly chosenby the parties in their arbitration agreement. And yet,theyare often (if not always)cited and relied on when a challenge is brought.First issued in 2004,they werelast updated in 2015, and intheircurrent introductory wording state that they have "gained wide acceptance within the international arbitrationcommunity".The IBA Guidelines areglobal in nature and have the goal of consistent application across common and civillaw jurisdictions, commercial and investor statearbitration, in all industry sectors andwhether or not the arbitrators are legally qualified persons. They seek to achieveuniformity across a disparate landscape.

Part I of the IBA Guidelines detail seven "General Standards", which set out thefundamental principles of an arbitrator being, and being seen to be, impartial andindependentand discussing when a disclosure should be made.Disclosure, it is said,rests on the principle that the parties have an interest in being fully informed.Explanatory notes accompany each standard,setting outthe motivation for thestandard, or adding further detail to promote consistent interpretation andapplication.[XV]

Part II, described asa"practical application" of the seven standards, explains thepurpose of the categoriesand providesnon-exhaustive examples of scenarios that are: (i) acceptable andunlikely to require disclosure (Green); (ii) potentially acceptable, butcould objectively giveriseto a concern over impartiality and independence, andtherefore may require disclosure (Orange); (iii) serious circumstances that must bedisclosed, but parties may permit the person to be or remain an arbitrator, so long asthey are fully informed of the relevant detail (Red Waivable); and (iv) seriouscircumstances, deriving from the principle that no person can be his or her own judge, that cannot be ignored or waived, with the consequence that the arbitrator in questionshould not act (Red Non-Waivable).[XVI]

The examples provide helpful and illustrative context for the interpretation of Part I. Of course, no list could ever be exhaustive-nor should that beattempted. It isinevitable that no matter how well the guidelines are drafted, a degree of varyinginterpretationwillpersist, judged by differing standards, cultural norms andexpectations.

The premise of the Red Non-Waivable category, illustrates a weakness of the IBAGuidelines. The list purports to remove control from the parties, by

Table 3: Summary of the current IBA Guidelines

WHEN SHOULD AN ARBITRATOR REFUSE TO ACT OR CEASE ACTING?	· If an arbitrator may not be impartial or independent. · If a reasonable third person, having knowledge of the relevant facts and circumstances, considers the arbitrator may not be impartial or independent. · If any of the circumstances described in the Red Non-Waivable list arise. · If any of the circumstances described in the Red Waivable list arise and the parties cannot reach agreement on the arbitrator acting or continuing to act.
WHEN SHOULD A DISCLOSURE BE MADE?	· If facts or circumstances exist that may give rise to doubts as to an arbitrator's impartiality or independence.

RED NON-WAIVABLE: an arbitrator should not act	**RED WAIVABLE:** an arbitrator may act if the parties agree	**ORANGE:** an arbitrator should disclose and may act in the absence of any objections	**GREEN:** no duty to disclose
Regular advice to appointing party, with a significant financial income	Relationship with the dispute	Current or previous services for a party	Previous services against a party
Arbitrator is the legal representative of, or shares an identity with, a party	Direct or indirect interest in the dispute	Arbitrator holds a position in the appointing arbitral institution	Contracts with another arbitrator or counsel for a party
Arbitrator has a controlling influence over a party	Direct or indirect interest in the dispute	Arbitrator has a controlling influence over a party's affiliate	Previously expressed legal opinion

seeking to mandate that any scenario falling within the Red Non-Waivable list cannot be approved of by the parties such that the arbitrator remains on the tribunal. The recent English case of *W Limited v M SDN BHD*[XVII] illustrates the inherent problem with this approach. Whilst the conflict situation fell squarely within the Red Non-Waivable list,[XVIII] the English Court concluded that there was no apparent bias due to the particular facts of the case. The arbitrator had been unaware of the affiliate company being linked to his firm after it was purchased, and his firm's conflict checker did not6 pick up the relationship either. Some degree of flexibility may be needed, and on a straight reading of the IBA Guidelines this is not provided for.

The Halliburton Case

The IBA Guidelines have recently come under strict scrutiny. The facts of the Halliburton casexix are simple. The Halliburton Company (Halliburton) provided services to BP in the Gulf of Mexico. Transocean Ltd also provided services to BP, including overlapping services to those provided by Halliburton. Halliburton entered into a liability policy with Chubb Bermuda Insurance Ltd (Chubb), which also insured Transocean Ltd. In 2010, there was an explosion and fire on an oil rig in the Gulf of Mexico, the "Deepwater Horizon" oil spill. Many claims were brought against BP, Halliburton and Transocean. BP also claimed against Halliburton and Transocean.

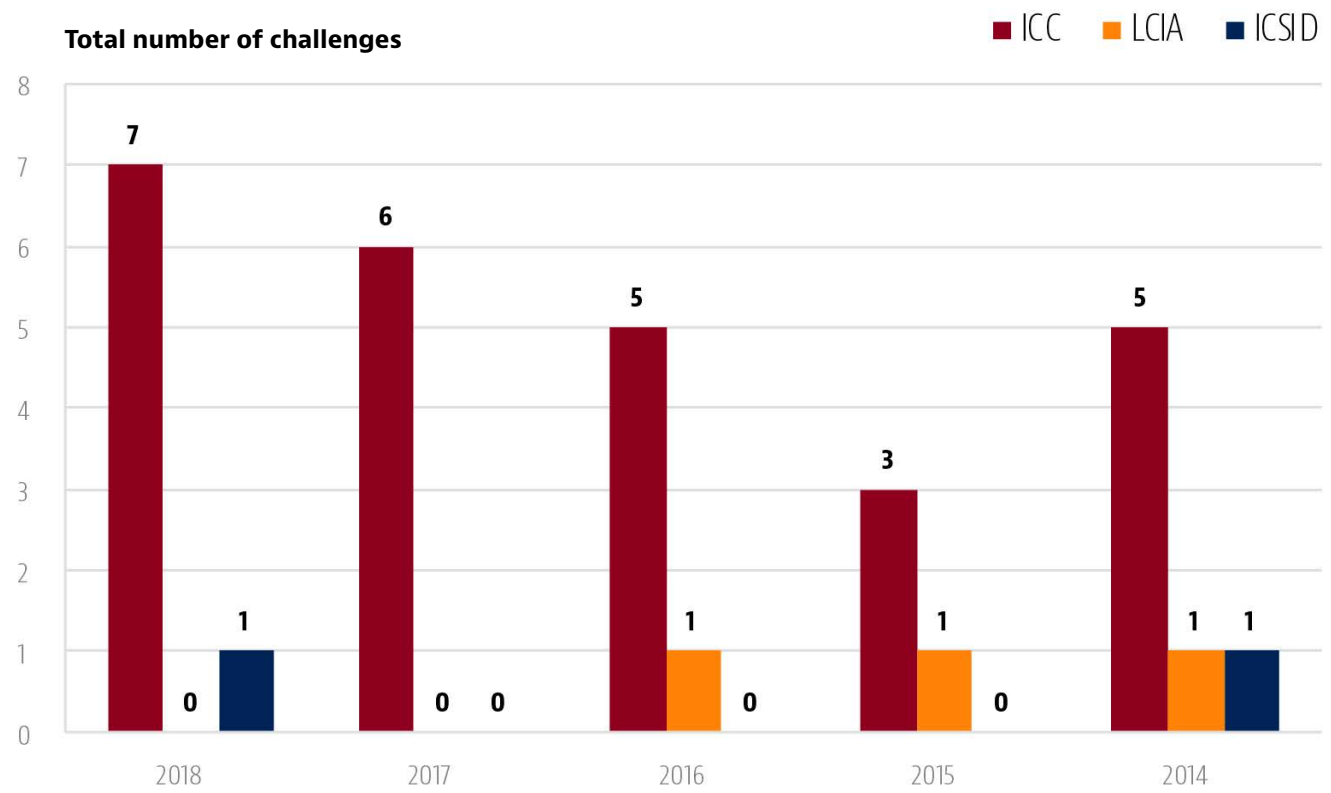
Following a trial in the US, Halliburton concluded a settlement on damages and claimed a proportion of this settlement under its insurance policy. Chubb refused to pay. Arbitration was commenced. Both parties selected their own arbitrator, but the parties were unable to agree on the Chairman. This resulted in an application to the High Court following which Chubb's first-choice "M" was selected. In 2016, Halliburton discovered that, after M's appointment and without Halliburton's knowledge, M had accepted appointments as an arbitrator in two other references, both of which arose out of the same Deepwater Horizon incident: (i) Transocean's claim against Chubb; and (ii) a nomination by another insurer to arbitrate another claim by Transocean arising out of the same incident.

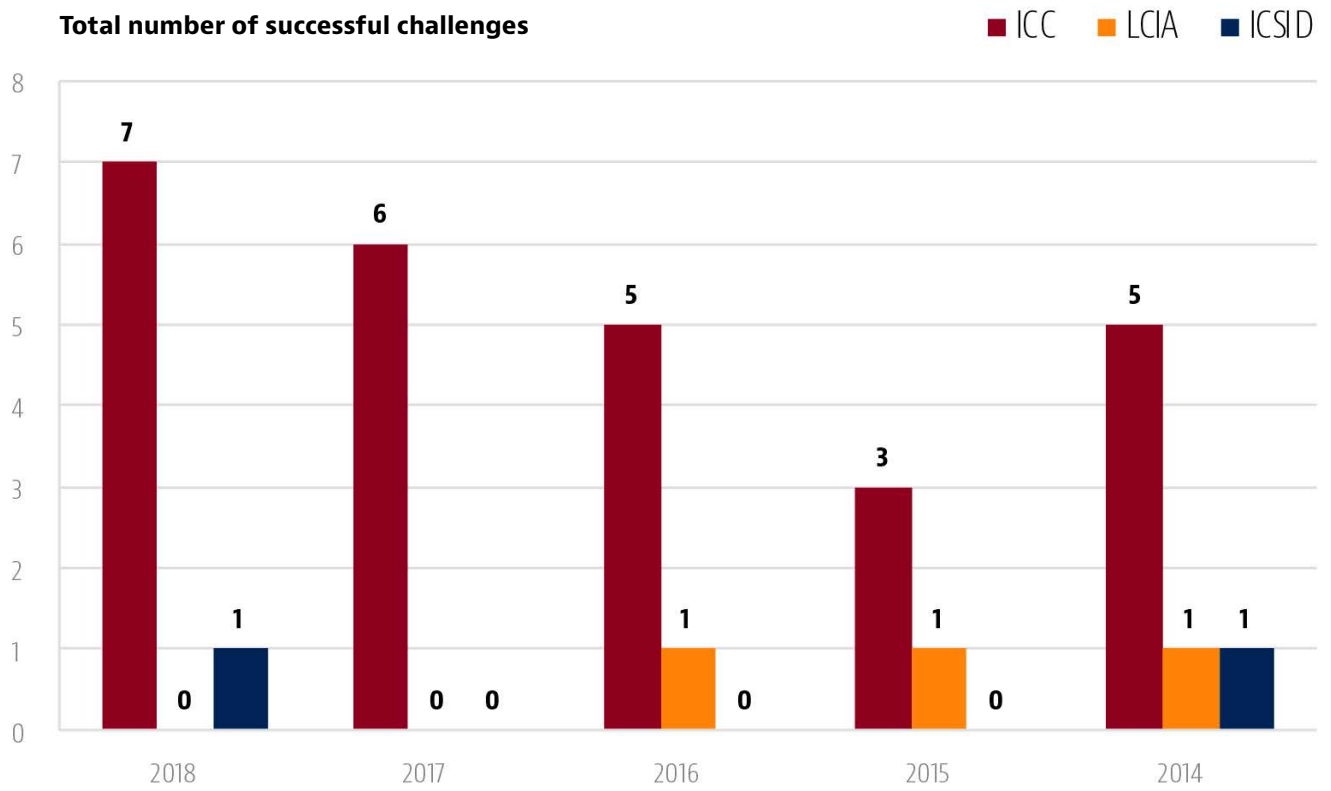
The decision centres on (the absence of) disclosure. The Supreme Court has to decide when an arbitrator must make disclosure of circumstances which may give rise to justifiable doubts as to his or her impartiality.

Arbitrators have a duty of disclosure but the consequences of non-disclosure are currently unclear. It seems as though non-disclosure may help

Table 4: A comparative table detailing the number and proportion of challenges in comparison to the total case load for arbitrations administered under the ICC Rules, the LCIA Rules and ICSID for the period from 2014 to 2018.

		ICC 2017	LCIA 2014	ICSID 2006
2018	Total number of cases	842	317	56
	Total number of challenges	45	6	11
	Rate of new cases: challenges	5.34%	1.89%	19.64%
	Total number of successful challenges	7	0	1
	Rate of successful challenges	15.6%	0%	9.09%
2017	Total number of cases	810	285	53
	Total number of challenges	48	6	6
	Rate of new cases: challenges	5.93%	2.11%	11.32%
	Total number of successful challenges	6	0	0
	Rate of successful challenges	12.50%	0%	0%
2016	Total number of cases	831[2]	303	48
	Total number of challenges	50	6	1
	Rate of new cases: challenges	6.02%	1.98%	2.08%
	Total number of successful challenges	5	1	0
	Rate of successful challenges	10.00%	16.6%	0%
2015	Total number of cases	801	326	52
	Total number of challenges	28	6	9
	Rate of new cases: challenges	3.50%	1.84%	17.30%
	Total number of successful challenges	3	1	0
	Rate of successful challenges	10.71%	16.6%	0%
2014	Total number of cases	791	296	38
	Total number of challenges	60	4	8
	Rate of new cases: challenges	7.59%	1.35%	21.05%
	Total number of successful challenges	5	1	1
	Rate of successful challenges	8.33%	25.0%	12.5%
TOTAL	Total cases	4075	1527	247
	Total challenges	231	28	35
	Rate of cases: challenges	5.68%	1.83%	14.28%
	Rate of successful challenges	11.42%	11.64%	4.32%





demonstrate a lack of impartiality and independence, but cannot prove it by itself. There is no practical consequence for non-disclosure. In Halliburton, the Court of Appeal ruled that "something more [than non-disclosure] is required".[XX]

THE DATA

In the context of the case load statistics we have reviewed, formal challenges against arbitrators are limited, and they rarely succeed.

In the years 2014 to 2018, ICC and LCIA caseloads have increased steadily and the proportion of cases where a challenge against one or more arbitrators was made has remained consistently low. Far fewer challenges are brought under the LCIA Rules, with an average 1.83% of cases compared to the ICC Rules with an average 5.68%[XXI] - almost triple. A possible reason for this is the short period in which the challenge must be brought under the LCIA Rules (14 days). However, the success rate of these challenges is remarkably similar: challenges under the LCIA Rules have an average

success rate of 11.64% and challenges under the ICC Rules have an average success rate of 11.42%.[XXII]

With a predictably lower caseload, the data is very different for challenges brought under ICSID. Parties are more comfortable bringing challenges in ICSID proceedings, but these hardly ever succeed. However, this greater number of challenges could be indicative of a greater level of tactical challenges for the purpose of delay.[XXIII] On average, for the period of 2014 to 2018, 14.28% of ICSID cases involved a challenge to one or more arbitrators. Of these, an average of only 4.32% were successful (three in the five years under consideration). There are also likely to be overlapping cases[XXIV] and one or two particularly discontent parties (involving Venezuela) having brought at least 8 of the total 35 challenges.[XXV]

A CASE FOR CHANGE?

The Halliburton hearing concluded on 13 November 2019 after one and a half days of oral argument. The Supreme Court's judgment was expected within four to six weeks. Some two and a half months later the outcome is still pending.[XXVI] It is hoped that the Lord and Lady Justices will come to a unanimous and clear decision that will directly grapple with the contrasting positions put by the parties and the five arbitral institutions that intervened in the proceedings.

One thing is for certain, keen eyes will scour the judgment, once available, to discern all guidance that can be taken from it, in addition to the core message regarding disclosure. A number of questions hang in anticipation. One question is whether the Supreme Court will adopt a strict stance or rely on the flexibility of the arbitral process. Another is to what extent the Supreme Court will consider general internationa commercial arbitration as compared to that of maritime, insurance and re-insurance, where there is a much smaller pool of possible arbitrator candidates Ultimately, the judgment will come down to a policy decision is favour of disclosure or discretion.

As noted at the outset of this article, the integrity of the arbitral process is of fundamental importance to its continued success and to the trust placed in it by parties who choose to resolve their dispute by way of arbitration. With that in mind, if the Supreme Court comes down in favour of stricter disclosure, there is a concern that greater disclosure will lead to an influx of arbitrator challenges, or, as is often the case, lead the arbitral institutions not to confirm an arbitrator. Even if the disclosed information appears to be irrelevant to the dispute, an institution may feel compelled to refuse appointment if one of the parties contests the appointment (for genuine or strategic reasons)

The data described above demonstrates that challenges are fairly rare, and even fewer are successful. The IBA Guidelines are at pains to emphasise that disclosure does not go hand in hand with apparent bias. It does not follow that because a disclosure is made, an arbitrator cannot or should not act. Of course, this fact does not of itself guard against the risk of strategic challenges. In any event, maintaining trust and confidence in arbitration as a balanced and effective method of dispute resolution is likely to take precedence over the possibility of an increase in arbitrator challenges.

If greater disclosure is the answer, it may be that institutions would choose to be more robust in testing whether the disclosure has any impact on the arbitrator's independence or impartiality at the confirmation stage. Similarly, perhaps the corollary to the perceived threat of an increase in unnecessary challenges will be for institutions to sharpen their teeth into not just providing for, but enforcing, concrete consequences. Many sets of rules allow arbitrators to award costs against a party bringing a frivolous challenge, but anecdotal experience suggests that this is rarely done. If anything, the Halliburton case demonstrates that arbitral institutions have their skin in the game.

With the wait for an answer from England's highest judiciary almost at an end, the global arbitration community counts on a robust decision containing some clear guidance on this difficult issue. ■

CONTACT US

EDWARD POULTON
Partner | London
+ 44 20 7919 1993
ed.poulton@bakermckenzie.com

EKATERINA FINKEL
Senior Associate | London
+44 20 7919 1756
ekaterina.finkel@bakermckenzie.com

LOUISE OAKLEY
Knowledge Lawyer | London
+44 20 7919 1160
louise.oakley@bakermckenzie.com

APPENDIX

I We would like to thank Bradley Mycock for his invaluable assistance in reviewing and analysing the cases, compiling the key statistics and more generally for his help in writing this article during his time in the Dispute Resolution Department at Baker McKenzie in London.

II See, for example: paragraphs 2 - 4 of the introductory text to the IBA Guidelines (cited below at endnote (v)); section 33(1)(a) of the English Arbitration Act 1996, which states that the tribunal shall "act fairly and impartially as between the parties", this mirrors the provisions of Article 18 of the Model Law. Further, Gary Born calls impartiality a "defining characteristic" of arbitration (paragraph 8 of Chapter 1 of his 2015 book International Arbitration: Law and Practice 2nd edn.), and the enforcement of impartiality and independence of arbitrators "vital" (Chapter 7, Ibid); and Mustill and Boyd's seminal text refers to the requirement of the impartiality of the tribunal as being "so obvious as to require no elaboration" (page 44, subparagraph (v), Commercial Arbitration, 2nd edn, 1989).

III The UNCITRAL Model Law and the New York Convention do not allow a review on the merits (assuming that the dispute is arbitrable in scope by reference to that country's law) except for issues of public policy, although some systems allow a review of the law in limited circumstances, e.g. section 69 of the English Arbitration Act 1996 allows an appeal to the court on a question of law arising out of an award (this can, however, be contracted out of by the parties); and Article 52 of the ICSID Convention, which permits an application for annulment, an exceptional recourse to "safeguard against the violation of fundamental legal principles relating to the process".

IV See endnote xii below.

V IBA Guidelines on Conflicts of Interest in International Arbitration, adopted by resolution of the IBA Council on 23 October 2014, and updated on 10 August 2015. Available online at: https://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx (last accessed on 23 December 2019).

VI The Supreme Court website last accessed on 27 January 2020: https://www.supremecourt.uk/cases/uksc-2018-0100.html

VII See, for example, paragraph 50 of Chapter 7 of G. Born's 2015 book International Arbitration: Law and Practice (Op Cit), where he confirms, after discussing the UNCITRAL procedure, that the same basic structure of a challenge is followed by other institutional rules.

VIII This is consistent with paragraph 6 of the introductory wording to the IBA Guidelines (Op Cit), where it is acknowledged that the IBA Guidelines do not override any applicable national law, but it is hoped that they will find broad acceptance in the international arbitration community.11

IX Any other approach would arguably allow the final say on this critical matter to persons or organisms that may have an interest in the outcome of the decision. This is the reason for the English Arbitration Act providing for section 24 regardin g the removal of arbitrators as a mandatory provision that cannot be derogated by the parties. Before turning to the courts, the parties are required to have exhausted any challenges they can bring under their chosen rules. The final say, however, rests with the courts. This is reflected also in Article 13(3) of the Model Law and parties cannot contract out of this provision for the interlocutory judicial consideration of challenges.

X See section 24(1) and (2) of the English Arbitration Act 1996, and the cases referred to immediately below.

XI The test for bias was confirmed by the House of Lords (as it then was) in: Porter v Magill [2001] 1UKHL 67, namely: whether "a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased." This is, in effect, a test for apparent bias, as opposed to real or actual bias. The Court of Appel in Halliburton Company v Chubb Bermuda Insurance Ltd [2018] EWCA Civ 817 confirmed that this is an objective test that should not be confused with the approach of the person who brought the complaint (paragraph 40 of the judgment). Furthermore, Mr Justice Hamblen held that whether there is actual or apparent bias is irrelevant, if apparent bias is found that is sufficient to lead to substantial injustice, actual bias does not also need to be proved: Cofely Limited v Anthony Bingham [2016] EWHC 240 (Comm) at paragraph 116.

XII Though parties should also bear in mind the possibility of a challenge to an arbitrator being used as a ground to resist enforcement of or set aside any subsequent award (subject to any relevant time limits).

XIII See for example, Article 52 of the ICSID Convention and Arbitration Rules 50 and 52-55; and Article V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

XIV See, for example, paragraph 28 of the decision of Electrabel S.A. v. Republic of Hungary (ICSID Case No. ARB/07/19), where the arbitrators stated that "The Claimant accepts that our decision "must be made on the basis of an objective review of the established facts."

XV See paragraph 3 of the Introduction to the IBA Guidelines.

XVI See Explanation to General Standard 2 at sub-paragraph (d).

XVII [2016] EWHC 422 (Comm).

XVIII Paragraph 1.4 of the Non-Waivable Red List.

XIX Halliburton Company v Chubb Bermuda Insurance Ltd (UKSC 2018/0100).

XX Halliburton Company v Chubb Bermuda Insurance Ltd [2018] EWCA Civ 817, paras. 76, 77.

XXI The 2016 statistics include 135 related small claim cases arising from a collective dispute. The numbers here exclude these.

XXII LCIA statistics available online here: https://www.lcia.org/News/lcia-releases-challenge-decisions-online.aspx (last accessed on 23 December 2019).

XXIII See, for example, an article by Y. Kryvoi of BIICL entitled "ICSID Arbitration Reform: Mapping Concerns of Users and How to Address Them" available online at: https://ssrn.com/abstract=3280782 (last accessed on 27 January 2020).

XXIV Víctor Pey Casado v Chile, Fábrica de Vidrios Los Andes v Venezuela, and ConocoPhillips v Venezuela. Full references: Víctor Pey Casado and President Allende Foundation v Republic of Chile (ICSID Case No. ARB/98/2); Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/21); ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/30). These three cases alone account for 10 of the 35 challenged cases.

XXV ICSID decisions on disqualification, available online at: https://icsid.worldbank.org/en/Pages/Process/Decisions-onDisqualification.aspx (last accessed on 23 December 2019).

XXVI The Supreme Court's vacation period ran from Monday 2 December 2019 to Friday 3 January 2020, which may have impacted this four to six week estimate for delivery of the judgment.

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