Background

1.1 The underlying dispute arose out of a document alleged by the Claimant to be a share purchase agreement (the “SPA”), which contained an LCIA arbitration clause. The SPA was governed by Swiss law, the seat of the arbitration was Zurich and the language was English.

1.2 The Claimant filed a Request for Arbitration with the LCIA on 13 November 2013. The Respondent filed a Response on 12 December 2013, in which it objected to jurisdiction on the grounds that it had never heard of the Claimant until it received the Request and that its purported signature on the SPA and entire document was forged.

1.3 On 17 January 2014, the LCIA notified the parties that it had appointed the Sole Arbitrator.

1.4 In view of the Respondent’s objections to jurisdiction, a threshold issue was the authenticity of the Respondent’s signature, in relation to which the parties and the arbitrator engaged handwriting experts. The Arbitrator’s two handwriting experts each concluded in their reports submitted on 23 October 2014 that the Respondent’s signature on the SPA was forged. A hearing on the Arbitrator’s handwriting experts’ reports was held on 10 November 2014.

1.5 A second related issue arose when on 21 February 2015 and 3 March 2015 the Claimant applied to admit evidence purporting to show that one of the Arbitrator’s experts had received bribes from officials of the Respondent’s country, on the basis of which the Claimant had commenced criminal proceedings in Switzerland. The Respondent denied the Claimant’s allegations and filed criminal proceedings in its country, charging that agents of the Claimant had ordered the payments in
order to discredit the Respondent in the arbitration. The Sole Arbitrator deferred consideration of evidence of this issue until “a later decision”.

1.6 A third preliminary issue was the Respondent’s challenge to the authenticity of video evidence submitted by the Claimant allegedly showing the Respondent’s agent signing the SPA. The parties and the Arbitrator retained face-recognition experts to analyse the videotape. The Sole Arbitrator heard the experts at a hearing on 7 April 2015, following which the Sole Arbitrator closed the preliminary proceedings.

1.7 By letter of 15 April 2015, the Claimant challenged the appointment of the Sole Arbitrator and by letters of 13 April 2015 and 4 May 2015, the Claimant expanded on its grounds for challenge.

1.8 By letters of 20 April 2015, 3 June 2015 and 19 June 2015, the Respondent stated that it disagreed with the challenge and believed that it was unfounded.

1.9 By letters dated 30 April 2015 and 26 June 2015, the Sole Arbitrator stated that he did not agree to the challenge and did not intend to withdraw.

1.10 On 22 May 2015, the LCIA notified the parties that, pursuant to Article 10.4 of the LCIA Rules, and paragraph D.3(c) of the Constitution of the LCIA Court, the LCIA Court had appointed a three-member Division of the Court to determine the challenge.

1.11 On 22 July 2015, the Division rendered their decision on the challenge.

2 Decision excerpt

“[...]

IV. APPLICABLE LAW AND RULES

49. This challenge is governed by the 1998 LCIA Rules. The arbitration began in 2013, before the 2014 Rules were promulgated.

50. Articles 10.1, 10.2 and 10.3 of the 1998 LCIA Rules provide that an arbitrator’s appointment may be revoked by the LCIA Court in any of the following events:

   • 10.1 If... any arbitrator... refuses... to act...;

   • 10.2 If any arbitrator acts in deliberate violation of the Arbitration Agreement (including these Rules);

   • 10.2 If any arbitrator... does not act fairly and impartially as between the parties;

   • 10.3 If circumstances exist that give rise to justifiable doubts as to [an arbitrator’s] impartiality or independence.

51. Article 10.4 of the 1998 LCIA Rules sets the procedural requirements that must be met by a party seeking the revocation of an arbitrator’s appointment:
10.4 A party who intends to challenge an arbitrator shall, within 15 days of the formation of the Arbitral Tribunal or (if later) after becoming aware of any circumstances referred to in Article 10.1, 10.2 or 10.3, send a written statement of the reasons for its challenge to the LCIA Court, the Arbitral Tribunal and all other parties. Unless the challenged arbitrator withdraws or all other parties agree to the challenge within 15 days of receipt of the written statement, the LCIA Court shall decide on the challenge.

52. This challenge must also take into account the lex arbitri. Because the arbitration is seated in Zurich, the applicable lex arbitri is Swiss law.

V. ANALYSIS OF THE DIVISION

A. General Observations

53. Before addressing each of the Claimant’s allegations in turn, the Division sets out a number of general observations that have guided it in the determination of this challenge.

1. The scope of the Tribunal’s Procedural Discretion

54. Article 10 of the 1998 LCIA Rules provides a mechanism for the revocation of an arbitrator’s appointment by the LCIA Court in the event that: an arbitrator fails to do his or her duty; that he or she fails to act fairly or impartially; and also if circumstances arise that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.

55. Article 10 does not, however, create a mechanism for appellate review of the procedural decisions of an arbitrator. Rather, the LCIA Rules, in Article 14.2, provide that ‘the Arbitral Tribunal shall have the widest discretion to discharge its duties allowed under such law(s) or rules as the Arbitral Tribunal may determine to be applicable.’ As explained by one leading authority:

   Article 14.2 grants the tribunal the widest discretion to discharge its duties under such law(s) or rules of law as the tribunal may determine to be applicable. The discretion of the tribunal in conducting the reference is therefore subject to the application of the mandatory rules or international public policy of the law applicable to the arbitration, also known as the lex arbitri. This is a fundamental tenet of international arbitration practice.¹

56. No conduct of the Arbitrator at issue here is claimed in terms to have been in violation of any provision of the applicable law, which is Swiss law. Even if any such claim had been made, for the reasons articulated in this Decision, it would be bound to fail.

2. Expedition

57. The LCIA Rules emphasize in a number of articles the need for expedition in the arbitral process; the need to avoid delay; and the authority of the arbitrator to manage the process accordingly. For example, Article 14.1(iii) mandates arbitrators to adopt procedures suitable to the circumstances of the arbitration, inter alia ‘avoiding unnecessary delay or expense.’ Article 19.5 of the LCIA Rules provides that ‘The Arbitral Tribunal shall have the fullest authority to establish

¹ Peter Turner & Reza Mohtashami, A GUIDE TO THE LCIA ARBITRAION RULES, (OXFORD 2009), pp. 98-100
time-limits for meetings and hearings, for any parts thereof.’ Similarly, Article 20.2 of the LCIA Rules provides that ‘The Arbitral Tribunal may also determine the time, manner and form in which such materials should be exchanged between the parties and presented to the Arbitral Tribunal.’

58. In this case, at the outset of the proceedings, the need for expedition was also the subject of an express agreement as between the parties themselves and the Arbitrator. The Arbitrator recorded in the ‘Summary Minutes of Organisational Hearing of 6 February 2014’ that:

‘The Parties and the Arbitrator do share the understanding, however, that this arbitration shall be conducted in an expeditious manner’ (emphasis added).

59. Article 14.1 of the LCIA Rules permits the parties, by agreement in writing between them or recorded by the Arbitral Tribunal, to adopt rules for the conduct of an arbitration proceeding, and Article 14.2 makes such agreements binding upon the tribunal. This agreement on the need for expedition, duly recorded by the Arbitrator in the Summary Minutes of Organisational Hearing, therefore became part of the rules of procedure applicable to this arbitration under Article 14. It is important to note that it also provided an agreed basis, if any further basis were needed, for the Arbitrator to require strict adherence to the procedural timetable and to all time limits.

3. Time Limit for Challenges

60. Article 10.4 of the LCIA Rules also imposes a strict time limit on challenges to an arbitrator. That article provides, in part, that ‘A party who intends to challenge an arbitrator shall, within 15 days of the formation of the Arbitral Tribunal or (if later) after becoming aware of any circumstances referred to in Article 10.1, 10.2 or 10.3, send a written statement of the reasons for its challenge to the LCIA Court.’ (Emphasis added.) The deadline established by Article 10.4 is a strict one. The LCIA Court has not hesitated to reject a challenge on the ground that it is untimely.2

61. The time limit established in Article 10.4 is only one manifestation of the general rule stated in Article 32.1 of the LCIA Rules:

A party who knows that any provision of the Arbitration Agreement (including these rules) has not been complied with and yet proceed with the arbitration without promptly stating its objection to such non-compliance, shall be treated as having irrevocably waived its right to object.

62. In this case, twelve of the seventeen grounds for challenge advanced by the Claimant (namely Challenges C, E, F, G, H, I, J, K, L, M, N and O) were put forward more than 15 days after the Claimant was (or in the case of Challenge N should have been) aware of the circumstances complained of. While the Division will examine each of the Claimant’s challenges in turn, it

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2 See M. Scherer, L. Richman, and R. Gerbay, Arbitrating under the 2014 LCIA Rules, p. 172 (Wolters Kluwer 2015). The authors observe that the legal bases for the removal of arbitrators did not change significantly with the adoption of the 2014 LCIA Rules; they remain substantially the same as under the 1998 Rules. Id p. 169.
wishes to emphasize that the lateness of these twelve Challenges is by itself sufficient grounds under Articles 10.4 and 32.1 for rejecting each of these challenges.

4. The Operative Cause for Certain Complaints

63. Finally, the Division wishes to observe that many of the grounds for challenge advanced by the Claimant appear to have at their base the inability of one or more of the experts retained by the Claimant to complete his or her work on time. Article 14.2 of the LCIA Rules provides that ‘at all times the parties shall do everything necessary for the fair, efficient, and expeditious conduct of the arbitration’ (emphasis added). Especially when the parties have jointly given the arbitral tribunal a mandate to conduct a proceeding expeditiously, as the parties did here, they have a responsibility under the LCIA Rules to present their representative cases in compliance with the timetable established by the tribunal.

64. It is not the arbitrator’s responsibility to find experts for the parties capable of meeting a demanding schedule; that is the responsibility of each party. Nor does any party have a free licence to appoint experts who are unable to comply with the schedule set for the arbitration.

B. The Specific Challenges

The Challenges under Article 10.1: Refusals to Act

CHALLENGE A

65. The Claimant’s first challenge is to the decision of the Arbitrator to decline to read a 14-page letter written by the Claimant’s face-recognition experts and sent to the Arbitrator after a deadline for submissions to be considered at the hearing on 7 April 2015.

66. The Division rejects this challenge. The Arbitrator set deadlines well in advance of the hearing, and it was part of his responsibility to do so both under the LCIA Rules and under the agreement of the parties that the proceeding should be conducted expeditiously. The Claimant advanced no grounds for exemption from the deadline other than the recurring story that its experts were prevented by other commitments from getting the work done on time. This Division declines to second-guess the Arbitrator’s rejection of that excuse.

67. We also observe that any injury the Claimant may have suffered in consequence of the Arbitrator’s refusal to read the letter was largely self-inflicted, because Claimant was offered the opportunity to read the letter in question into the record and declined to do so.

CHALLENGE B

68. The Claimant’s second Challenge is that the Arbitrator declined, on the basis that the record was closed, to read the Claimant’s letter of 15 April 2015 challenging his conduct.

69. The Division also rejects this challenge. First, the letter was sent after the deadlines established in procedural orders and after the Arbitrator had closed the record. The Arbitrator has evidently now read the letter in question, is shown by his responses to the complaints made by the Claimant in the Arbitrator’s subsequent letters to the Registrar of the LCIA and to the Division of the LCIA Court, so that no prejudice would appear to have resulted from his initial refusal.
Challenges under Article 10.2: Deliberate Violation of the LCIA Rules

CHALLENGE C

70. Challenge C is to the denial, in Procedural Order No. 18 on 23 December 2014, of a request to submit a supplementary report on alleged errors in the report of the Arbitrator’s handwriting experts.

71. The Division denies this challenge. First, it is late. The Claimant waited for four months after the ruling in question to make the challenge, which is eight times the amount of time allowed by Article 10.4 of the LCIA Rules, and has shown no good reason for that delay.

72. Second, the challenge misreads the rule alleged to have been violated. Article 21.2 of the LCIA Rules requires that a party be given an opportunity to question a tribunal expert on his report at a hearing; it says nothing about the right to submit rebuttal reports after the hearing. The parties had an opportunity to question the Arbitrator’s experts at the hearing on 10 November 2014, and that was all that the rules required.

73. The Division also observes that Article 10.2 requires a ‘deliberate violation’ of the arbitration agreement or the LCIA Rules. The Claimant’s Challenge C establishes no violation at all, and certainly not a deliberate one.

CHALLENGE D

74. The Claimant’s Challenge D asserts that the Arbitrator’s decision, sometime after 21 April 2014, to send a transcript of a hearing to an expert who had testified at that hearing was a violation of the confidentiality provisions of Article 30.1 of the LCIA Rules.

75. The Division finds this challenge frivolous. It would be no breach of confidentiality to provide a witness transcript of his or her own testimony even if a confidentiality obligation was in place. Here, however, the rule invoked by the Claimant is one that constrains the parties. The Claimant has shown no breach of Article 30.1, much less a deliberate one.

76. This challenge is rejected.

Challenges under Article 10.2 of the Rules: Failure to Act Fairly and Impartially

CHALLENGE E

77. Challenge E asserts that the Arbitrator failed in his duty to act fairly and impartially when, in Procedural Order No. 15, dated 28 October 2014, he denied the Claimant’s request to postpone the hearing with the Arbitrator’s handwriting experts that was scheduled for 10 November 2014.

78. The Division denies this Challenge. First, it is late. The Claimant waited almost six months after the procedural order in question to make the challenge, and offers no good reason to excuse that delay.

79. Second, the Arbitrator was acting under an agreement between the parties to conduct the proceedings expeditiously. He conducted that three weeks was sufficient time to prepare for the hearing, and that determination does not seem unreasonable, much less unfair or partial.
Third, it is evident from the Claimant’s submissions that the real difficulty it faced was that ‘none of its experts managed to produce their reports prior to the hearing.’ […] The inability of the Claimant’s experts to perform on schedule does not evidence unfairness or a failure to act impartially, or on the part of the Arbitrator.

CHALLENGE F

81. The Claimant’s Challenge F asserts that the Arbitrator acted unfairly and partially when he declined to turn over possession of the original of the Agreement to one of the Claimant’s experts. Whether or not the Agreement was a forgery is a central issue in the arbitration, and both parties had agreed, for obvious reasons, that the Arbitrator should take possession of the document in question while that issue was being decided.

82. Again, this challenge is late, and could be rejected on that basis alone. The Division also finds the challenge frivolous. The parties had agreed that the Arbitrator should take possession of the original document, presumably to assure that no one had an opportunity to tamper with it. The Arbitrator extended every courtesy to the Claimant in offering to allow their expert to inspect the document at his office. He was acting within his proper discretion in declining to relinquish possession of the document. Indeed, he would have been exposed to criticism if he had permitted to leave his possession before the issue of his authenticity was decided.

83. As with several other challenges, the real problem here appears to have been that the Claimant’s experts were not available: ‘The Claimant’s experts, who asked to examine the original SPA, could not examine it at the Tribunal’s offices prior to the 10 November 2014 hearing, because they had to travel back to the United States on 6 November 2014.’[…]

84. This challenge is denied.

CHALLENGE G

85. Challenge G asserts that the Arbitrator failed to act fairly and impartially in denying, in Procedural Order No. 18 on 23 December 2014, the Claimant’s request to submit new handwriting reference material to the tribunal-appointed experts.

86. This challenge is denied. First, it was made four months after the ruling in question, and is thus out of time. Second, it was well within the Arbitrator’s discretion to set time limits for submissions, and the time for this submission had passed. Third, the Arbitrator had already heard from both of the tribunal-appointed experts at the hearing on 10 November 2014 that they did not require any additional material […]. He was thus well within the proper bounds of his discretion is [sic] deciding not to wait for further evidence.

CHALLENGE H

87. Challenge H asserts that the Arbitrator failed to act fairly and impartially in denying, by Procedural Order No. 20 on 27 January 2015, the Claimant’s application to postpone the hearing scheduled for 7 April 2015.

88. This challenge is denied. It was made beyond the time limit set in Article 10.4 of the LCIA Rules. Moreover, a decision by the Arbitrator to maintain the hearing date more than two months in
the future was entirely consistent with the Arbitrator’s duty to conduct the proceeding expeditiously.

89. As with many other challenges, the problem underlying this challenge appears to have been the ‘other commitments’ of the Claimant’s experts. […]

**CHALLENGE I**

90. Challenge I calls into question the decision of the Arbitrator to defer a decision concerning the consideration of evidence put forward by both parties in support of and in opposition to the allegation that one of the tribunal-appointed experts had been bribed.

91. First, this challenge was made too late. The decision in question was made in Procedural Order No. 21 on 10 March 2015, and was not challenged until more than a month later.

92. Second, the Claimant does not even assert that the Arbitrator has decided this issue against it, but only that he has deferred his decision. Article 14.2 of the LCIA Rules provides that ‘the Arbitral Tribunal shall have the widest discretion to discharge his duties.’ Decision on when to take up a particular issue is certainly within the discretion afforded to an arbitrator under the rules.

93. This challenge is denied.

**CHALLENGE J**

94. In Challenge J, the Claimant asserts that the denial by the Arbitrator of its application to submit expert reports after the deadline for such reports had passed is evidence of unfairness and partiality.

95. This challenge is denied. As with others, it was made too late: The ruling in question was made on 10 March, 2015, and it was not challenged until over a month later. In addition, the enforcement by the Arbitrator of time limits for making submissions is consistent with his duty, imposed by both parties, to conduct the proceeding expeditiously. When an arbitrator is conducted on a tight schedule, as this one has been, fairness to both parties requires that time limits, once set, be enforced even-handedly. The Claimant was not entitled to special consideration.

96. Moreover, as with many of the other complaints made by the Claimant, the underlying problem with this ruling appears to have been other ‘professional commitments’ on the part of the Claimant’s expert. […]

**CHALLENGE K**

97. In Challenge K, the Claimant asserts that the Arbitrator’s denial of the Claimant’s application to cross examine the Respondent’s face-recognizance excerpts was unfair and shows partiality. The Claimant claims to have made the application on 18 March 2015, two days after the deadline of 16 March 2015 set by Procedural Order No. 21. The Respondent argues that the Claimant did not request an extension of the deadline, but merely made an unsolicited submission outside the time limit. […]
98. Again, the application is untimely. The ruling in question was made on 19 March 2015, more than 15 days before the challenge. And again, the underlying problem appears to have been ‘other commitments’ on the part of either of the Claimant’s counsel or its experts. [...] The Arbitrator’s ruling in this instance appears to the Division to have been strict, and perhaps more severe than necessary, but do not evidence unfairness or partiality.

99. This challenge is denied.

**CHALLENGE L**

100. Challenge L takes issue with the Arbitrator’s decision to allow one of the Claimant’s face-recognition experts [...] to file a rebuttal report in response to the reports of the Respondent’s experts, but to deny a request that its other expert [...] be permitted to do so. The Arbitrator also required that [the Claimant’s expert]’s report be filed on 30 March 2015, a week before the hearing.

101. This application is also untimely, although less so than many others; the decision challenged was made on 23 March 2015 and was not challenged until 15 April.

102. These rulings made by the Arbitrator must also be seen in context. The Claimant complained of the tightness of the time it had to consider the Respondent’s expert report, which was filed on 10 March, with additional materials provided on 20 March. Nevertheless, unless he postponed the hearing (which he had previously refused to do) the Arbitrator was faced with how to manage and allocate the limited time available. This Division sees no evidence of favouritism in how he did so.

103. This challenge is accordingly denied.

**CHALLENGE M**

104. Challenge M contents that the same procedural order considered in Challenge L, Procedural Order No. 22, dated 23 March 2015, demonstrated unfairness and partiality on the part of the Arbitrator in denying the Claimant’s application to take its own photographs of the Respondent’s agent.

105. As with Challenge L, this challenge was made too late, although not as late as many others. More important, it calls into question the Arbitrator’s conduct of the proceeding at a moment when time leading up to the 7 April 2015 hearing was scarce. The challenge concerns an application for relief that ought to have been made by the Claimant to the Arbitrator at an earlier time in the proceedings. The Division agrees with the Arbitrator’s statement, in the excerpt from his order quoted at paragraph 38 above, that ‘neither the right to be heard, nor equal treatment of the parties’ required a different ruling.

106. This challenge is denied.
The Challenges under Article 10.3: Justifiable Doubts as to Impartiality or Independence

CHALLENGE N

107. Challenge N, made on 4 May, 2015, asserts that the Arbitrator’s impartiality and independence are called into question by his failure to disclose, prior to the commencement of the arbitration, the existence of a ‘long relationship with all three of Respondent’s Counsel.’ The Claimant’s Letter of 4 May 2015 points to four circumstances that it argues should have been disclosed:

a. The Arbitrator and the Respondent’s lead counsel both obtained their law and doctoral degrees from the [same university] at the same time [...];

b. The Arbitrator and the Respondent’s second counsel served on the same Pre-Moot Panel [...] as part of the Vis International Commercial Arbitration Competition;

c. The Arbitrator edited a [...] book in which the Respondent’s second counsel published an article; and

d. The Arbitrator until [a few years ago] taught at the [university], from which the Respondent’s second counsel obtained her doctoral degree.

108. The Claimant argues that the Arbitrator should have known that the above circumstances required disclosure, because he had disclosed the more trivial fact that the Respondent’s third counsel and he were ‘members of the same social club [...]’. [...]

109. The Claimant further argues that the Arbitrator should have disclosed these connections under the standards established by the IBA Guidelines on Conflict of Interest in International Arbitration (‘IBA Guidelines’). The IBA Guidelines were revised in 2014, so the version in effect that the commencement of this arbitration was the version approved by the Council of the IBA on 22 May 2004.

110. According to the Claimant, the Arbitrator’s non-disclosure of his relations with certain members of the law firm representing the Respondent, as described in paragraph 107 above, is in violation of General Standard 3 of the 2004 IBA Guidelines. That standard provides:

(3) Disclosure by the Arbitrator

(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator’s impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institution rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them.

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(c) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.
111. Under the IBA Guidelines, however, it does not follow that any circumstances has to be disclosed. A fact or circumstance needs to be disclosed under General Standard 2(b), only if it raises ‘justified doubts’:

Doubts are justified if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.

112. Therefore, the question, properly framed, becomes whether the educational and professional links the Arbitrator shares with counsel for the Respondent would cause a reasonable third person to conclude that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case. To resolve that question, the IBA Guidelines provide not only an ‘objective’ test, but also an indicative list, catalogued in the Green List, the Red List and the Orange List, of what circumstances may give rise to justifiable doubts. Most of the facts and circumstances forming the ground for the Claimant’s Challenge N are comprehended in the Green List, a list of circumstance that generally do not require disclosure.

113. Paragraph 6 of the chapeau to Part II of the 2004 IBA Guidelines states that ‘the arbitrator has no duty to disclosure situations falling within the Green List.’ Specifically, the Green List includes:

4.4.1. The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association or social organisation.

4.4.2. The arbitrator and counsel for one of the parties or another arbitrator have previously served together as arbitrators or as co-counsel.

114. None of the circumstances giving rise to Challenge N are included in the Red List nor the Orange List of the IBA Guidelines, the two lists that would require disclosure. While some of those circumstances do not fit neatly into the Green List, that seems to the Division likely to be because they are too trivial to be listed. The Division does not consider having attended a university during the same year, or having taught at a university when someone else was attending it, can seriously be considered to require disclosure. Nor does editing a book to which another lawyer contributed an article. As for sitting on a Vis Moot mock arbitration panel together, if sitting an actual arbitration together does not require disclosure under paragraph 4.4.2 of the Green List, sitting on a mock panel certainly does not.

115. The Division takes note of the Arbitrator’s statements in his letter to the Division of 26 June 2015 that: (a) the Arbitrator and [the Respondent’s lead counsel] did not know each other during their student days at the [university]; (b) the Arbitrator is a regular participant in the Vis Moot and sits with about twenty different co-arbitrators each year, one of whom, once, was [the Respondent’s second counsel]; (c) [the Respondent’s second counsel] dealt with the Arbitrator’s co-editor with respect to her contribution to the [book] co-edited by the Arbitrator; and (d) the

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3 Explanation (b) to General Standard 2, IBA Guidelines, p.8.
Arbitrator teaches only seminars at the [university], and [the Respondent’s second counsel] attended none of the seminars taught by the Arbitrator.

116. Aside from the Green List, the Division finds, applying the objective test of the IBA Guidelines, that none of the circumstances that are the subject of Challenge N do or should raise justifiable doubts in the eyes of a reasonable third person as to a likelihood that the Arbitrator could be influenced by those factors in reaching his decision on the merits of the case.

117. While the IBA Guidelines are not binding in an LCIA Arbitration, the formulation of ‘justifiable doubts as to [the arbitrator’s] impartiality and independence’ is the same as that used Article 10.3 of the LCIA Rules. The Division concludes that none of the circumstances advanced in Challenge N give rise to such justifiable doubts.

118. Further, Article 10.4 of the LCIA Rules requires that a party assert grounds for a challenge within 15 days of ‘becoming aware of any circumstances referred to in Article 10.1, 10.2, or 10.3.’ In addition, the Swiss lex arbitrti imposes on the parties a duty to look into publicly available information that might bear on an arbitrator’s impartiality at the beginning of an arbitration. All of the circumstances that form the basis for Challenge N could have been ascertained at the time of the commencement of this arbitration. Challenge N is accordingly out of time in any event.

119. For all the above reasons, the Division rejects Challenge N.

**CHALLENGE O**

120. Challenge O simply re-packages Challenges E through M, which were made under Article 10.2 of the LCIA Rules, by alleging that each of them gives rise to justifiable doubts about the arbitrator’s impartiality and independence under Article 10.3. The Division disagrees. In addition to the lateness of those challenges, which makes Challenge O late as well, the Division’s discussion of them above demonstrates that: these procedural rulings were well within the discretion entrusted to the Arbitrator under the LCIA Rules; they were consistent with the mandate given to the Arbitrator by the LCIA Rules; they were consistent with the mandate given to the Arbitrator by the Parties to conduct the proceedings expeditiously; and none of them manifests partiality or favouritism.

121. Challenge O is accordingly rejected.

**CHALLENGE P**

122. Challenge P asks the Division to draw the inference that an ex parte communication took place between the Arbitrator and counsel for the Respondent, on the basis that they sent letters 79 minutes apart, using similar language. The Claimant goes so far as to make the very grave charge that the Arbitrator, in his letter to the LCIA of 30 April 2015, was acting ‘as the Respondent’s advocate.’ [...]  

123. The Tribunal finds this challenge not only frivolous, but also irresponsible. The other challenges to the Arbitrator call into question his fairness and impartiality, but this one impugns his

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integrity. The Division finds no basis in the slender series of coincidences on which the Claimant bases this charge for doing so.

124. The Arbitrator has represented that he ‘prepared my 30 April 2015 letter independently of and absent any interaction with the Respondent.’ [...] He further states that ‘A first draft of my four page long letter of 30 April 2015 was saved to the firm’s computer system on 29 April 2015, 18:56 CET.’ (Id.) The Division is aware of no fact that would call those statements into question.

125. Challenge P is accordingly rejected.

**CHALLENGE Q**

126. Challenge Q accuses the Arbitrator of an ex parte communication with the Respondent, because the Arbitrator forwarded to the Respondent a Notice of Arbitration in a parallel ICSIC arbitration sent to him by the Claimant.

127. Far from engaging in an ex parte communication, it appears to the Division that the Arbitrator was remedying one, because he would otherwise have been in possession of information sent to him by the Claimant without the knowledge of the Respondent.

128. This challenge is frivolous, and is rejected.

V. **DECISION**

129. For the reasons explained in detail above, the Claimant’s challenge to the Arbitrator is denied in all respects.”