**Subject:** Challenge to sole arbitrator’s appointment pursuant to Article 10.4 of the LCIA Rules 1998, based on Articles 10.2 (deliberate violation of the Arbitration Agreement (including the LCIA Rules), or failure by arbitrator to act fairly and impartially as between the parties, or failure by arbitrator to conduct or participate in the arbitration proceedings with reasonable diligence, avoiding unnecessary delay) and 10.3 (justifiable doubts as to arbitrator’s independence and impartiality)

**Division/Court member:** Former Vice President of the LCIA Court (acting alone)

**Summary:** A Tribunal has the discretion to make decisions on whether or not to grant an extension, proceed in spite of a challenge, appoint an independent expert and to make decisions on documents. The mere fact that a decision on these issues was made against one party does not automatically mean that the Sole Arbitrator acted unfairly or impartially.

Where a party does not attend a hearing, and the Sole Arbitrator is consistently mindful of the absence of that party and the hearing and tries to ensure the integrity of the proceedings, the Sole Arbitrator has acted diligently in the conduct of the proceedings, and has acted fairly and impartially.

### 1 Background

1.1 The underlying dispute arose out of a litigation finance agreement (the “Agreement”). Under the Agreement, the Claimant agreed to meet the legal costs and expenses incurred by the Respondent in another arbitration (the “Other Arbitration”) against a company (“Company X”), and in an English High Court litigation against a second company (the “High Court Case”). The Agreement was governed by English law and contained an LCIA arbitration clause. The seat of the arbitration was London and the language was English.

1.2 The Claimant filed a Request for Arbitration with the LCIA on 21 January 2015. The Respondent filed a Response on 24 February 2015.

1.3 The Claimant argued in the arbitration that it was entitled to receive 70% of the award and 100% of the costs issued in favour of the Respondent in the Other Arbitration in accordance with the Agreement. The Respondent alleged that the proceeds should be split on a 50-50 basis based on the alleged oral agreement (the “Frame Agreement”) between two individuals (“Mr A” and “Mr B”). The Respondent claimed that Mr A is the ultimate beneficial owner and controller of the Claimant and the Agreement between the parties is “just a formality within the partnership created by Mr A and Mr B” under Swiss law.
1.4 On 18 March 2015, the LCIA advised the parties that the LCIA Court had selected a candidate as sole arbitrator (the “Sole Arbitrator”). The Sole Arbitrator disclosed in his Statement of Independence and Consent to Appointment that, “different offices of [his] firm have been in the past and are currently acting for and adverse to various [companies affiliated to Company X]. [He had] not been involved in any of these matters. None of these matters had any connection to circumstances surrounding the current dispute”.

1.5 On 23 March 2015, the Respondent objected to the appointment of the Sole Arbitrator based on the Sole Arbitrator’s law firm’s representation of and against various companies affiliated with Company X, as well as its representation of Mr B, claiming, among other things, that (i) although Company X is not formally a party to the arbitration it is “strongly involved in the facts that lead to its defence and counterclaim” and (ii) Mr B is party to the Frame Agreement.

1.6 On 26 March 2015, the Claimant confirmed it had no objection to the appointment of the Sole Arbitrator.

1.7 On 2 April 2015, the LCIA advised the parties that it decided to proceed with the appointment of the Sole Arbitrator after he confirmed that he “[considered] there to be no conflict of interest. Our system worldwide does not show a client with the name [Mr B]. Further I have checked against [Company X] entities again. Out of not many past and present matters involving [Company X] in one way or another, the majority are matters where we act against [Company X] entities’ interests in financing arrangements where my firm acts for financial institutions.”

1.8 On 7 April 2015, the Respondent forwarded to the LCIA two letters showing that the Munich office of the Sole Arbitrator’s law firm represented Mr B in 2006, in relation to the holdings of two companies, and requested the LCIA Court to reconsider the appointment of the Sole Arbitrator.

1.9 On 10 April 2015, the LCIA notified the parties that the LCIA Court had appointed the Sole Arbitrator.

1.10 On 4 March 2016, the Respondent challenged the Sole Arbitrator based on the Sole Arbitrator’s decisions to reject a series of procedural requests by the Respondent, namely, a renewed document request, a request to postpone the deadline for the submission of the Rejoinder by 14 days (originally due on 3 March 2016) and a request to adjourn the hearing, originally scheduled to commence on 14 March 2016 (the “4 March Challenge”). The Respondent also alleged that the Sole Arbitrator lacked independence and impartiality by way of his law firm’s representation of Mr B and another individual (“Mr C”) and his companies, and his law firm’s representation against Mr C, alleged to be relevant to the disputes in this arbitration.

1.11 On 5 March 2016, the Claimant objected to the challenge of 4 March 2016.

1.12 On 6 March 2016, which was the renewed deadline for the Rejoinder set by the Sole Arbitrator, offering an extension of two days as opposed to 14 days as requested by the Respondent, the Respondent submitted its Rejoinder under objection to the Sole Arbitrator’s procedural decisions. In the Rejoinder, the Respondent requested that two independent experts be appointed, one to determine the chances of success of the Respondent’s claim in the High Court Case and the other to render a report on Swiss law.
1.13 On 7 March 2016, the Sole Arbitrator organised a pre-hearing conference in which the Respondent renewed its request to adjourn the hearing for three new reasons: (i) the attendance of Mr A, one of the Claimant’s witnesses, to the hearing, only via video, (ii) the requested appointment of two independent experts, and (iii) the 4 March Challenge.

1.14 On 9 March 2016, the Sole Arbitrator, after hearing the Claimant’s position, dismissed the Respondent’s requests to adjourn the hearing and to appoint independent experts. The Sole Arbitrator advised the parties that his law firm had no client relationship with another company (“Company Y”) as inquired by the Respondent in the 4 March Challenge.

1.15 On 10 March 2016, the Respondent submitted its complaint on the Sole Arbitrator’s procedural decisions of 9 March 2016 and informed him that “neither [the Respondent] nor its counsel and witness” would attend the hearing due to the alleged violations of due process and the pending 4 March Challenge.

1.16 On 14 March 2016, in the absence of the Respondent, the Sole Arbitrator proceeded with the one day evidentiary hearing as originally scheduled in the First Procedural Order.

1.17 On 14 March 2016, the Respondent submitted its procedural objections to the Sole Arbitrator as to, among other things, his conduct of the hearing, advising him that the Respondent would not file a post-hearing brief due to “the numerous procedural deficiencies that [have] irreversibly tainted this arbitration”.

1.18 On 21 March 2016, in response to the 4 March Challenge, the Claimant submitted its response to the Respondent’s challenge to the Sole Arbitrator and sought a cost order in the Claimant’s favour.

1.19 On 21 March 2016, the Respondent filed a second challenge on the basis of the Sole Arbitrator’s decision of 9 March 2016.

1.20 On 22 March 2016, in response to the 4 March Challenge, the Sole Arbitrator submitted a letter to the LCIA Court in which the Sole Arbitrator confirmed that neither his law firm nor he had ever acted for, inter alia, Mr C.

1.21 On 1 April 2016, the LCIA notified the parties that, pursuant to Article 10.4 of the LCIA Rules, and paragraph D.3(b) of the Constitution of the LCIA Court, the LCIA Court had appointed a former Vice President of the LCIA Court to determine the challenge.

1.22 The parties and the Sole Arbitrator made further submissions on the challenge following directions by the former Vice President.

1.23 On 26 May 2016, the former Vice President rendered her decision on the challenge.

2 Decision excerpt

“[...]

IV Criteria to be applied

28. Since London is the seat of the arbitration, the [former Vice President] examined both the LCIA
Rules and English law.

29. As to the arbitrator’s impartiality and independence the test to be applied under English law is whether a ‘fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased’ (Porter v Magill [2002] AC 357 at [103] per Lord Hope), which is relied on by both parties.

30. The [former Vice President] has also considered the IBA Guidelines on Conflicts of Interest in International Arbitration 2014 (the IBA Guidelines), although not-binding, to which the LCIA Court had referred in previous decisions on challenges and on which both parties also relied. The IBA Guidelines provide that:

‘Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is 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’

‘The arbitrator is in principle considered to bear the identity of his or her law firm, but when considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, or whether disclosure should be made, the activities of an arbitrator’s law firm, if any, and the relationship of the arbitrator with the law firm, should be considered in each individual case’

31. With respect to Article 10.2 of the LCIA Rules the [former Vice President] considered whether the Sole Arbitrator acted in deliberate violation of the Arbitration Agreement (including the LCIA Rules) or did not act fairly and impartially as between the parties or did not conduct or participate in the arbitration proceedings with reasonable diligence, avoiding unnecessary delay or expense.

VI Reasoning

32. The Respondent submitted numerous allegations in the Challenges, which boils down to two issues:

(i) whether the Sole Arbitrator in his conduct of the arbitration proceedings, including his procedural decisions, violated due process, deprived the Respondent of its opportunity to put its case, failed to act fairly and impartially as between the parties, failed to conduct the arbitration proceedings with reasonable diligence and thereby deliberately violated the LCIA Rules (Articles 10.2, 14.1, 19.1, 19.2, 20.4, 32.3); and

(ii) whether circumstances exist that give rise to justifiable doubts as to the Sole Arbitrator’s impartiality and independence because he has allegedly prejudged the merits of the case or because the Sole Arbitrator and his firm acted for and against certain individuals and
33. Because the Respondent referred to the Sole Arbitrator’s conduct of the arbitration proceedings, including his procedural decisions as each being a separate ground for the Challenges under 10.2 and 10.3, the Division herein examined the Challenges by taking each of the following points individually and considering whether these circumstances as a whole collectively give rise to justifiable doubts as to the Sole Arbitrator’s impartiality and independence:

- Rejection of request for extension of the submission of the Rejoinder
- Rejection of request for adjourning the hearing (Mr [A]’s testimony)
- Organisation and handling of the hearing
- The Sole Arbitrator’s failure to investigate the Respondent’s illegality claims
- Alleged prejudgment by the Sole Arbitrator (rejection of a request to produce documents and to appoint independent experts)
- The Sole Arbitrator and his firm’s representation of and against certain individuals and entities

34. Having carefully reviewed each point individually and collectively, the [former Vice President] was not convinced by any of the Respondent’s claims for the reasons below.

Rejection of request for extension of the submission of the Rejoinder

35. The Respondent claimed the Sole Arbitrator’s decision resulted in ‘grave inequality between the parties’ because in this arbitration the Claimant had almost three months for its Reply whereas the Respondent had much less time for its Rejoinder due to multiple battle fronts opened up by the Claimant and the year-end holiday season. The Respondent claimed that the Sole Arbitrator’s decision was, in particular, unfair because the Sole Arbitrator knew the Claimant could obtain an extension of six weeks from the [national court], which it did, for the preparation of the hearing in this arbitration, whereas the Respondent was only given 10 days to file a reply without extension, in the middle of preparing the Rejoinder in this arbitration. The Respondent also claimed that the Sole Arbitrator was ‘blatantly partial’ in granting the Claimant’s request for extension of the deadline for submission of the post-hearing briefs due to the Respondent’s Challenges while rejecting the Respondent’s repeated requests for extensions due to the Claimant’s tactical filing of an ex parte attachment order before the [national court] shortly before the due date of the Rejoinder.

36. The [former Vice President], while [she] somewhat understands the Respondent’s frustration towards the time pressure created by the Claimant, particularly after accommodating the Claimant’s request for extension of the deadline for its Reply, found nothing to suggest that the Sole Arbitrator’s decisions not to extend the deadline for the Rejoinder had been unreasonable or had violated the Respondent’s right to due process or right to be heard in these proceedings. While it is true that the Claimant’s filing of an ex parte attachment application placed time pressure on the Respondent, it is equally true that the Respondent was given about two and a half months to prepare for the Rejoinder from 17 December 2015 when the Respondent received
the Reply. Creating multiple fronts to put pressure on an opposing party is, unfortunately, not uncommon in international arbitration and does not always warrant extension of submissions. Moreover, the arbitral tribunal has the widest discretion to decide whether to grant an extension taking into account the totality of the circumstances, in accordance with the LCIA Rules and applicable law. The [former Vice President] concurs with the Sole Arbitrator that the rejection of the Respondent’s extension request did not deprive the Respondent of a reasonable opportunity of putting its case, while the extension, if granted, would have resulted in an unjustifiable delay and substantial and unnecessary additional cost. The Sole Arbitrator’s decision to reject the request did not violate the Respondent’s right to due process or right to present its case. While the [former Vice President] believes that its task is not to second guess the Sole Arbitrator’s decision, the Sole Arbitrator did grant a two-day extension to give some leeway to the Respondent, which was a reasonable extension given that the hearing was scheduled to commence in one week.

37. The [former Vice President] considers that fairness and partiality, as a matter of course, are not judged by the mere fact of whether the Sole Arbitrator rejected or granted each party’s request for extension but by taking into account all the circumstances, in particular, the consequence of extension or non-extension with respect to the entire proceedings. The impact of the two requests for extension on the entire proceedings, if granted, is totally different. Unlike the Respondent’s request, there was no possibility that the Claimant’s request for extension of submission of post-hearing briefs would cause any substantial delay or unnecessary additional costs. As such, the mere fact that the Sole Arbitrator rejected the Respondent’s request for extension, which was triggered by the Claimant’s ex parte application, while granting the Claimant’s request for extension, which was, according to the Claimant, triggered by the 21 March Challenge, does not demonstrate any unfairness or partiality on the part of the Sole Arbitrator. Accordingly, the [former Vice President] did not find that the Sole Arbitrator had failed to act fairly or impartially or in a manner otherwise inconsistent with the LCIA Rules and Article 33(1)(a) of Arbitration Act 1996.

Rejection of Request for Adjourning the Hearing (Mr [A]’s testimony)

38. The [former Vice President] found nothing to suggest that the Sole Arbitrator’s decision not to adjourn the hearing was unreasonable or violated the Respondent’s right to due process or right to be heard, in spite of the various reasons put forward by the Respondent on multiple occasions. First, at the outset, the arbitral tribunal has the power to proceed with arbitration proceedings in spite of the Challenges in accordance with the LCIA Rules. Second, Mr [A] was available for the Respondent to cross-examine via video, which does not justify the Respondent’s attempt to boycott the hearing. The Respondent is correct that, in principle, the parties must make their witnesses available for examination in person at the hearing. However, examination through video can be a substitute for examination in person when witnesses are unavailable to attend the hearing in person for legitimate reasons, such as visa problems (as in the present case), which is a common practice in international arbitration involving parties from different jurisdictions. While it is not necessarily clear to [me] from the record as to why Mr [A]’s visa application was rejected, Mr [A] was, after all, a witness for the Claimant to put its case, and any disadvantages arising out of his availability only via video at the hearing are primarily those of the Claimant. Third, the Sole Arbitrator’s decisions to reject the Respondent’s request for the
appointment of the two independent experts were reasonable as discussed below. Fourth, the alleged lack of sufficient time for preparing for the hearing may not be grounds for adjournment given that the Respondent had agreed to schedule the hearing 10 days after the submission of the Rejoinder. Even taking into account the time pressure on the Respondent caused by the Claimant’s ex parte attachment application at the [national court], on balance, the cost and time that would have been wasted by the adjournment of the hearing would not have been justified. Accordingly, none of the reasons put forward by the Respondent, either individually or collectively, in the [former Vice President]’s view, warrant the adjournment of the hearing, and, therefore, the Sole Arbitrator’s rejection of the Respondent’s request for the adjournment of the hearing cannot be grounds for the Challenge. For the same reasons the [former Vice President] did not find that the Sole Arbitrator had failed to act fairly and impartially or in a manner otherwise inconsistent with the LCIA Rules and Article 33(1)(a) of Arbitration Act 1996.

Organisation and Handling of the Hearing

39. The Respondent argued, among other things, that the Sole Arbitrator failed to (i) decide how to organise the hearing and inform the parties of the same in advance of the hearing, (ii) ensure Mr [A]’s testimony through video did not compromise the integrity of the proceedings and (iii) test the Claimant case during the hearing organised in the absence of the Respondent.

40. The [former Vice President] did not find a lack of reasonable diligence on the part of the Sole Arbitrator in organising and conducting the hearing. On the contrary, the record shows that the Sole Arbitrator was consistently mindful of the absence of the Respondent at the hearing and tried to ensure the integrity of the proceedings, including the arrangement of the [Owner of Company X]’s testimony at an independent law firm. The Sole Arbitrator, at the outset of the hearing, instructed the Claimant to inform the Respondent of the timing of Mr [A]’s testimony to ensure the Respondent’s opportunity to cross-examine Mr [A], whom the Respondent claimed to be its key witness, if the Respondent reconsidered its decision not to attend the hearing. The Sole Arbitrator also ensured the transcript of the hearing would be shared with the Respondent on the same date, which is in fact evidenced by the Respondent’s letter of the same date to the Sole Arbitrator criticising his handling of the hearing.

41. The [former Vice President] does not entertain the Respondent’s claim that its rights to prepare for the hearing and present its case were gravely prejudiced when, as a matter of fact, the record shows that the Respondent, after submitting its requests for adjournment of the hearing, chose not to engage with the Sole Arbitrator or the Claimant in preparation for the hearing and ultimately elected not to participate in the hearing once the adjournment request was rejected. The Sole Arbitrator did issue an order on the organisation of the hearing and inform the parties of the same in his email of 9 March 2016 and encouraged the parties to agree on logistical arrangements. In his 11 March 2016 email, the Sole Arbitrator continued to encourage the Respondent to comment on the organisation of the hearing proposed by the Claimant even after the Respondent informed the Sole Arbitrator and the Claimant that neither the Respondent nor its counsel and witness would attend the hearing. The Respondent, in its email of 13 March 2016, refused to comment and continued to insist that the hearing be adjourned.

42. The Sole Arbitrator tested the Claimant’s witnesses, as he stated at the outset of the hearing in referring to the ‘Guidelines for Arbitrators on Proceeding and Making Awards in Default of Party
Participation’ issued by the Chartered Institute for Arbitrators. To what extent the Sole Arbitrator test the Claimant witnesses is in his discretion and judgement. The transcript does demonstrate that the Sole Arbitrator tested the Claimant witnesses and never took the Claimant’s case for granted as claimed by the Respondent. The Respondent could have attended the hearing and put its case at the hearing instead of being absent from the hearing and criticising the Sole Arbitrator for not questioning the points that the Respondent itself wanted to question.

43. The Respondent further claimed that the Sole Arbitrator’s questions during the hearing revealed his bias, partisanship, lack of adequate preparation. The [former Vice President] disagrees. The comments and questions raised by the Sole Arbitrator were legitimate and within his discretion and the [former Vice President] will not go into each and every point.

44. Accordingly, the [former Vice President] was not convinced by the Respondent’s allegations that its right to prepare for the hearing and present its case were gravely prejudiced and that the Sole Arbitrator lacked reasonable diligence in the conduct of the proceedings and failed to act fairly and impartially.

Sole Arbitrator’s failure to investigate the Respondent’s illegality claims

45. It is the Respondent’s case that the Claimant funded the [Other Arbitration] and the [High Court Case] using funds from illegal sources and that any funds paid by the Claimant could not be considered as performance under the Agreement since the Respondent would be obligated to return these funds to their true owner. The Respondent claimed that the Sole Arbitrator failed to investigate the Respondent’s illegality claims by rejecting the Respondent document production requests and failing to examine the Claimant witnesses sufficiently on these claims, which jeopardises the enforceability of the award (Article 32.2 of the LCIA Rules) and thereby amounts to a deliberate violation of the LCIA Rules (Article 10.2 of the LCIA Rules).

46. In the [former Vice President]’s view the Sole Arbitrator did investigate the Respondent’s illegality claims as he deemed fit. The Sole Arbitrator had received from both parties multiple submissions together with factual evidence and legal authorities on the Respondent’s illegality claims. The Sole Arbitrator, at the end of the hearing, requested the Claimant to respond to the Respondent’s illegality defence in its post-hearing brief as part of the Sole Arbitrator’s investigation on the very issue. Accordingly, the [former Vice President] was not convinced by the Respondent’s claim.

Alleged Prejudgement - Rejection of request to appoint independent experts

47. The Sole Arbitrator rejected the request because it was made too late (less than two weeks before the hearing) and in an unacceptable form (as part of its claims in the Rejoinder) and was unnecessary in substance. The Sole Arbitrator’s decision, in the [former Vice President]’s view, is entirely reasonable. A request to appoint an independent expert must be communicated to the arbitral tribunal ideally at a procedural conference at the outset of the arbitration proceedings as it affects the entire process of the arbitration proceedings, including the parties’ pleadings. Even if the Respondent had come to realise the necessity of independent experts after examining the Claimant’s Reply, the Respondent could have communicated such request to the tribunal and the Claimant much sooner, rather than waiting for the submission of the Rejoinder.

The arbitral tribunal has discretion whether to appoint an independent expert, taking into
account the totality of circumstances, including the timing within the proceedings and the manner of and reasons for the request communicated to the tribunal. The [former Vice President] found nothing to suggest that the Sole Arbitrator’s decision to reject the appointment of independent experts was unreasonable.

48. The Respondent claimed that the Sole Arbitrator prejudged the issues on the merits and was therefore biased because the Sole Arbitrator dismissed the request, stating that it was ‘in any event unnecessary on substance.’ The [former Vice President] disagrees. The arbitral tribunal has discretion whether to appoint an independent expert, taking into account the totality of circumstances, including the timing within the proceedings and the manner of and reasons for the request communicated to the tribunal. The fact that the Sole Arbitrator found the independent experts unnecessary does not automatically mean the Sole Arbitrator had already made a decision on the Respondent’s claim and defence. After all, it is the Sole Arbitrator who decides those issues (not an independent expert) as well as whether he finds it necessary to have an independent expert for his decision on the merits. Accordingly, the [former Vice President] was not convinced by the Respondent’s claim that the Sole Arbitrator prejudged issues on the merits and was biased.

Alleged Prejudgment - Rejection of Document Production Requests

49. The Sole Arbitrator rejected the Respondent’s document production requests relating to the ownership of the Claimant and the source of its funds because the documents requested are ‘irrelevant and immaterial to the issues that need to be decided in this arbitration’ and some of the requests were overly broad and amounted to a ‘fishing expedition’.

50. The Respondent claimed that the Sole Arbitrator prejudged the issue of the Respondent’s defence because he would not have so decided unless he had already decided to dismiss the Respondent’s defence that the Claimant funds used in the [Other Arbitration] and the [High Court Case] were from illegal sources and therefore the Respondent was not required to repay the funds to the Claimant. The [former Vice President] was not convinced.

51. The First Procedural Order in this arbitration provided that the document production requests should be made in the form of the Redfern Schedule in compliance with the IBA Rules on the Taking of Evidence 2010, and that the arbitral tribunal was to decide disputed requests guided by the IBA Evidence Rules. This means that the arbitral tribunal has authority to decide whether the requested documents are relevant and material to the outcome of the case in deciding disputed document production requests. Accordingly, to the extent the Sole Arbitrator disclosed his views on the issues, if any, in accordance with the First Procedural Order, and no more, the Sole Arbitrator should not be regarded as biased because he did not express his views ‘in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind’ (Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. [2000] Q.B. 451), as put forward by the Respondent as the threshold in determining prohibited prejudgment under English law. Indeed, the Sole Arbitrator merely decided the disputed document production requests under the guidance of the IBA Evidence Rules and such decision does not justify the Challenges.

Representation of and against certain individuals and entities by the Sole Arbitrator and his firm

52. It is the Respondent’s case that under the Frame Agreement between Mr [A] and Mr [B], Mr [A]
agreed to finance three litigation projects: (i) […] the [Other Arbitration] and the [High Court Case] [the First Litigation Project]; (ii) [the Second Litigation Project]; and (iii) [the Third Litigation Project].

53. The Respondent further claimed that because different offices of [the Sole Arbitrator’s law firm], the Sole Arbitrator’s law firm, represented Mr [B] and Mr [C], the alleged ultimate beneficial owner of [two of the companies involved as Respondents in the Second Litigation Project], and Mr [C]’s companies, and the Sole Arbitrator himself represented a party against Mr [C], [the Sole Arbitrator’s law firm] ‘became privy to details of’ the Frame Agreement and may have confidential information on the Frame Agreement, including whether or not the [First Litigation Project] is covered by the Frame Agreement, one of the issues in this arbitration, and the Sole Arbitrator gained substantial confidential information on Mr [C]’s corporate vehicles. The Respondent, for these reasons, claimed that a fair minded and informed observer would have concluded that there was a real possibility that the Sole Arbitrator was biased.

54. In the [former Vice President]’s view, the Respondent’s claim that the Sole Arbitrator may have access to confidential information is the Respondent’s speculation, rather obscure, and cannot be sustained.

55. In relation to [the Sole Arbitrator’s law firm]’s representation of Mr [B], on 7 April 2015 the Respondent objected to the appointment of [the Sole Arbitrator] on the same ground that was dismissed by the LCIA Court, and the Respondent was time-barred from challenging the Sole Arbitrator on the same ground. To the extent the Respondent argues its new findings thereafter entitle the Respondent to renew its challenge based on [the Sole Arbitrator’s law firm]’s representation of Mr [B], the Sole Arbitrator’s clarification in his email of 5 May 2016 to the LCIA Court is helpful in deciding the challenge on this ground. The Sole Arbitrator stated that ‘apart from numerous arguments on any relevance of me or my firm acting for Mr [B], I confirm that I did not act for him. I joined my firm long after the alleged representation of Mr [B] by [the] Munich office of [the Sole Arbitrator’s law firm] took place. The alleged representation is said to have taken place in 2006. I only joined the firm in 2010. I have also been informed that that representation did not proceed and no further work has ever been done at the time or later and that no file has ever been opened or any fees charged’. Given that [the Sole Arbitrator’s law firm] ceased representing Mr [B] even before the Sole Arbitrator joined [the Sole Arbitrator’s law firm], in the [former Vice President]’s view a fair minded and informed observer would have concluded that the there was no real possibility that the Sole Arbitrator was biased.

56. In relation to Mr [C] the Sole Arbitrator clarified that, in his email of 21 March 2016, [the Sole Arbitrator’s law firm] had never represented Mr [C] or the [two companies involved as Respondents in the Second Litigation Project]. None of Mr [C] or the [two companies involved as Respondents in the Second Litigation Project] is a party to this arbitration, the disputed Agreement or the Frame Agreement. Even assuming the [Second Litigation Project] is covered by the Frame Agreement, the [former Vice President] understands that the dispute in this arbitration involves the [First Litigation Project] and that the [Second Litigation Project] is not even a subject of this arbitration. Accordingly, the [former Vice President] does not see real possibility that the Sole Arbitrator was biased.

Grounds for the Challenges in the Aggregate
57. As the Respondent requested, the [former Vice President] reviewed all the facts in the aggregate to see whether all the facts cumulatively give rise to justifiable doubts as to the Sole Arbitrator’s impartiality and independence even if any of these facts would not give rise to such justifiable doubts individually.

58. In the [former Vice President]’s view, even when considering all the facts asserted by the Respondent cumulatively, a fair minded and informed observer would have concluded that there was no real possibility that the Sole Arbitrator was biased, and that the Sole Arbitrator acted fairly and impartially in conducting the arbitration.

59. All the facts reviewed in the aggregate reveal a Respondent’s strategy after the Respondent became dissatisfied with the Sole Arbitrator’s decisions. That is, rather than put its case in the arbitration, the Respondent opted to cease engaging with the arbitration proceedings and use Challenges as a means to address its substantive claims (instead of submitting a post-hearing brief), as well as to prepare for resisting the enforcement of the upcoming award if the Respondent was not satisfied with it, which all together has substantially disrupted and delayed the arbitration proceedings.

V Decision

60. The [former Vice President] concludes that the Respondent failed to show justifiable grounds for the Challenges, and the Challenges are dismissed.

61. The [former Vice President] found that the Sole Arbitrator was very patient with the Respondent, who appears to have switched its strategy from not engaging with the arbitration proceedings to disrupting them by unleashing a series of allegations against the Sole Arbitrator, including the two unsustainable Challenges, once its requests for the extensions and document production were rejected.

62. For the above reasons, the [former Vice President] concludes that the Challenges to the Sole Arbitrator should be dismissed and declares that all costs for the Challenges, including the LCIA costs, and the Claimant’s counsel fees related thereto should be fixed by the Arbitral Tribunal and borne entirely by the Respondent.”