SESSION 1: PRACTICE ANDPROCEDURE

1. Do we spend too much time on practice and procedure and too little on substance?

2. What was the most recent really innovative procedural step taken by a Tribunal? Was it self-generated or proposed by a party? Was it a good or a bad thing in practice?

3. Should the arbitration industry undertake to offset its carbon emissions, particularly for conferences? What role should the institutions play in this?

4. How frequently are orders made for security for the claim under Article 25.1(a) of the LCIA Rules? Is this becoming more common? When is it appropriate for a Tribunal to make such an order prior to determining the final merits of the dispute and to what extent must the Tribunal be satisfied that the Claimant will succeed on the merits before doing so without unfairly pre-judging the merits (e.g. ‘reasonable possibility’ as per article 17.A of the Model Law)?

5. Leaving aside the possibility to award costs against the party who has obstructed and has constantly delayed and obstructed the proceedings. Should there be other instruments available to the arbitrators to impose sanctions to parties that use guerrilla tactics?

6. Parties from the developing world constantly complain about the high costs of international arbitration. Are there any new suggestions towards reducing the cost of arbitration? Will mediation become the preferred alternative?

7. Could the institutions provide a standard template as guidance in claiming (and estimating) fees? It need not be mandatory but could assist in providing the right type and amount of information but not too much.

8. To what extent should the arbitrator(s) grant an application (e.g. for an extension/postponement) where [a] it would cause significant delay, but [b] it is strongly and jointly urged by the parties?

9. How should arbitrators approach a Respondent’s early application for a 4 weeks extension of time to file Defence under Article 15.3 of the LCIA Rules, where the application is based on "pre-existing periods of unavailability" of the Respondent’s counsel?
10. If the arbitration community is genuinely intent on minimising delay, reducing costs and improving efficiency why are we so often using several rounds of memorials?

11. Is the current emphasis on expediting proceedings, including fee reductions for arbitrators who fail to meet deadlines, detrimental to the process by which arbitrators reach decisions?

12. Should there be changes to the timing and extensions on pleadings?

13. Who’s afraid of costs budgeting? Lawyers whose fees and disbursements are funded by liability insurers or legal costs insurers have been used to compiling budgets for arbitration proceedings for many years. The newer third-party funders and After The Event insurers likewise require budgets. Costs estimates are fundamental to security for costs applications. The London Maritime Arbitrators Association (LMAA) Terms require parties to provide costs estimates for the proceedings at the directions/case management stage and they expressly allow tribunals to take these estimates into account when exercising their discretion as to liability for costs and in assessing costs. Will arbitrations under institutional rules catch up?

14. Is the CIArb Protocol for the Use of Party-Appointed Experts a more effective procedure for adducing expert evidence than the traditional exchange of first round reports, second round reports, meetings, and statements of agreement/disagreement?

15. Tiered dispute resolution clauses: is a failure to comply with a necessary pre-condition to commencing arbitration absolutely fatal to a tribunal’s jurisdiction? Can (and should) a tribunal attempt to rescue the arbitration?

16. Have we now reached the point where more institutions should consider allowing ex parte applications in emergency arbitration?

17. Will the Singapore Mediation Convention change any arbitration practice?

18. What is the prediction of the trajectory for third party finance of actions and should there be revised regulations?

19. What are the expectations of independence from expert witnesses?
20. Should a Tribunal be entitled in certain circumstances to draw adverse inferences from a party’s failure to produce particular documents or call evidence from certain witnesses, even where there has been no order by the Tribunal for disclosure of those documents or for testimony from those witnesses?

21. What directions may the arbitral tribunal give to legal counsel from different legal traditions with respect to meeting with and preparing witnesses for hearing? A US counsel may arguably be professionally negligent if he or she fails to prepare a witness for cross-examination by going through a mock cross-examination, suggesting questions that may be asked and even testing possible answers the witness may give. A UK counsel would likely find that conduct unacceptable. In any event, what authority does the tribunal have to tell a legal representative how to act? Procedural fairness would seem to require that witnesses testifying before the tribunal should be prepared in a comparable manner.

22. What would the panel see as the benefits and pitfalls of using a tribunal appointed expert?

23. A joint expert report indicating areas where opposing experts have agreed or disagreed assists an arbitral tribunal to identify the disputed issues. How then does the tribunal determine which expert is correct? Should the arbitral tribunal appoint its own expert, thus increasing the costs to the parties?

24. Should expert reports always be exchanged sequentially?

25. Can experts be criticised for accepting instructions on matters that they could give expert opinion on?

26. Are tribunal-appointed experts an underused resource – for example, in cases that present complex quantum issues?

27. Why and how we should use more tribunal appointed experts – many cases have complex expert issues involved. For a tribunal that is not expert in those areas it can sometimes be hard to break down competing arguments to determine what is the correct approach. Having an expert that they can talk to can help enormously in this. However, even where the ability to appoint exists, tribunal appointed experts are often avoided because of the potential risks seen of delegating the decision or appointing a fourth arbitrator and seeking to avoid additional costs. These are valid concerns but can be avoided or limited by judicious terms of reference and possibly enhanced institutional provision to be clear such use of a tribunal expert will be seen as reasonable. Allowing limited expert use to explain key areas or to carry out calculations on behalf of the tribunal or otherwise review the financial elements of its award to ensure there are no errors could be beneficial and I believe should be encouraged but do others agree and if so, how do we best achieve that?
28. We sometimes talk of arbitrators being taught by experts so they understand the subject matter better. However, would it help more if arbitrators had more sessions with experts to make clear what helps them and what doesn’t?

29. Should institutional rules assist arbitrators in providing greater direction to expert evidence in a case and avoiding “ships passing in the night” by e.g. making clear the arbitrators right to set out topics experts need to opine on?

30. Any thoughts on the appropriateness of witness statements in light of recent scientific insight into how the human mind works?

31. Are the benefits of oral evidence really justified by the cost? Witness statements are often lengthy, over-lawyered recitations of available documentary evidence, mixed with submissions and argument, rather than concise statements of the witnesses’ oral evidence in their own words. Cross-examination may be good theatre but is of questionable value in helping arbitrators arrive at the truth. Because of the way memory works witnesses’ evidence is inherently unreliable anyway. In the electronic age evidence is recorded in emails, texts, WhatsApp messages in a way that was not the case when our tradition of oral evidence was developed. Is there an argument for severely curtailing oral evidence in arbitration, or abandoning it altogether like most civil systems in Europe?

32. As counsel would you offer, or as arbitrator would you accept, relevant evidence offered by a party who obtained it by committing a crime?

33. If legal privilege is invoked as a ground for refusing disclosure of certain documents which law governs the issue?

34. Who should have the last word, the claimant or the respondent?

35. Factual witnesses, witness statements and cross-examination: is there scope for arbitral tribunals to improve the current practice and procedure for dealing with factual witnesses?

36. An arbitrator is replaced after a hearing – should the parties be able to request that witnesses or experts be re-examined?
37. Hypothetical: “One party asks the Tribunal to call additional individuals from the other side as witnesses at the hearing. The theory for the request is that these individuals have relevant and material testimony and should have been called by the other side, and the reason that they were not called was that they would have provided harmful testimony to the other side.” What standard should the Tribunal apply in assessing such requests? Should these type of requests be routinely granted if the testimony is relevant and material? Or, alternatively, should their granting be extraordinary because of the parties’ right to present their own cases?

38. Where Counsel for a party without any proper evidential basis, (a) pleads fraud and/or (b) cross-examines a witness alleging fraud, should a Tribunal generally make an adverse costs order on the issue? If asked to assess costs, should the Tribunal disallow Counsel’s fees? If not so asked, or in any event, should it express a view in the award as to whether Counsel should recover their fees? Should the LCIA publish redacted awards and comments of this nature?

39. Are the draft provisions on expedited arbitration produced by UNCITRAL Working Group II on the right lines?

40. Nearly all leading arbitral institutions have adopted rules for expedited arbitration. The LCIA is one of the very few that has not. UNCITRAL’s Working Group II presently is developing rules for expedited arbitration. The LCIA, in response to the recent questionnaire from UNCITRAL on the topic, stated in part, “However, arbitral proceedings may be expedited, as appropriate, in accordance with Article 14.4 of the Rules.” This, however, seems to beg the question: Should the LCIA join the vast majority of other institutions that have specific rules for expedited arbitration, and if so, what are some of the parameters for such rules? If not, why not?

41. Should there be changes to the standards for due process obligations to the parties?

42. There is, amongst many arbitrators it seems, a “due process paranoia” that causes a tribunal not to apply deadlines strictly or to otherwise allow parties to ignore deadlines or applicable rules. This “paranoia” is really overblown but it often results in increased costs and lengthens the arbitration process and results in parties getting away with conduct they would never get away with in other judicial proceedings. Should there be clear guidance and warning within the Rules that a tribunal should strictly apply the deadlines that are set as well as the rules and that the tribunal has the authority to award interim costs or sanctions for violations prior to the conclusion?

43. Should there be revisions between confidentiality of decisions and transparency?

44. Confidentiality. Should the default position on confidentiality be reversed so that, unless the parties agree or the Tribunal orders otherwise, arbitration awards can be published, in the interests of (1) improving the quality of arbitration awards; (2) improving parties’ ability to select arbitrators; and (3) the continuing development of the law?
45. It would seem that obtaining disclosure of documents is not known in many CEE countries the corollary of which is a very rudimentary concept of legal or litigation privilege? How are these issues to be tackled in arbitral proceedings where one or both parties are from CEE countries and discovery of documents is being sought.

46. Parties' requests for disclosure of the original documents in the context of allegations of forged evidence - how far should the arbitral tribunal go?

47. Proposition: “Tribunals are often getting document disclosure wrong, either permitting too much or too little disclosure—or revising the requests in distortive ways—without a proper understanding of the case or the substantive and financial ramifications of their orders on disclosure.” Agree or disagree?

48. Where a party fails to contribute its share of the deposit on account of an arbitration without good reason, may or should the tribunal or the LCIA defer consideration of its procedural applications pending receipt of its share, particularly if those applications result in substantial delay or expense (e.g. a challenge to an arbitrator)?

49. Security for Costs
Where a Claimant has put up a substantial sum, for example in an ICC Arbitration, but is likely to be unable to pay the costs if it loses but ordering security the security will probably stifle the claim to what extent can it be appropriate to start opining on the merits of the claim when it has only relatively recently started?

50. Respondent States rarely succeed with applications for security for costs in investment arbitration and would appear not to have succeeded at all unless their claims were funded by a third party funder. Yet, in a number cases Respondent States have been unsuccessful in enforcing a costs award in their favour against unsuccessful claimants that have been insolvent or even ceased to exist by the time of the award. Is it time to lower the threshold for such applications to succeed?

In a VIAC arbitration seated in Vienna between two corporations from civil law countries Respondent has submitted an Application for Security for Costs. At the First Case Management Conference, the parties agreed to have a second exchange on the Respondent’s Application for Security for Costs. Before the next submission being filed, Respondent has submitted a detailed Document Production Request in support of its Application for Security for Costs.

In this Document Production Request Respondent does not ask for any contractual documents relating to the main dispute but only for corporate finance documents of a very detailed character including accounts etc. Each requested document exceeds what Claimant is obliged to publicize pursuant to the different Austrian Statutes on publication of company records and financial documents applicable to Claimant. Quid?
52. “Security for Costs” is not a sub-species of “Interim Measures of Protection”

53. Do provisions for Interim costs orders work (i.e. deter frivolous applications)? If provisions for interim costs orders exist, do tribunals actually issue such orders, or do most tribunals defer dealing with costs to the final award?

54. Are Tribunals too reluctant to make interim cost orders (e.g. after rejecting a meritless application) as a way of sanctioning, and thereby potentially deterring, bad behaviour?

55. Is it agreed that arbitrators need to penalise parties more often for delaying and obstructive tactics, by interim costs awards? Is it risky to order these costs orders to be paid forthwith?

56. Nearly all arbitration rules now include provisions for joinder and consolidation, however there are some important distinctions between the rules. Some rules such as the ICC and SCC provide for the decision to be made by the institution (Secretariat/Board/Court), while others such as the LCIA provide for the Arbitral Tribunal to make the decision. In both approaches, the decision-maker is invested with considerable discretion, although there are varying requirements relating to consent, timing and the application procedure. In all cases the arbitral tribunal may determine jurisdictional issues. Most institutes have limited procedures for determining detailed factual circumstances involved in making the decision. However, an early decision prior to the constitution of the tribunal has advantages. As arbitrators and party representatives, which approach as to who and when the decision is made is preferred and why?
In practice have you actually seen many requests for joinder or consolidation? Have such decisions been more often granted or denied?
Are there tactical and practical advantages to avoid the joinder/consolidation issue by bringing cases as multiple claimant or multiple respondents?

57. Bifurcation may lead to greater focus on core issues and efficiencies or it may lead to overlapping or redundant evidence, more procedural complexities, facilitate delay and obstruction, and increase costs.
Have the benefits of bifurcation been over-stated?
Is bifurcation an effective but under-used tool?
Should bifurcation be determined in the first case-management conference?
What factors should determine rendering the outcome of a bifurcated decision as a procedural order or a partial award (assuming that the decision is arguably final), apart from the consideration that an award may be subject to annulment and enforcement proceedings? Would or should an arbitrator be guided by the recent case: ZCCM Investments Holdings PLC v Kansanshi Holdings PLC & Anor [2019] EWHC 1285 (Comm)?
Could or should a tribunal use bifurcation to determine issues which could be summarily dismissed when arbitrating under rules that do not contain a specific provision for summary dismissal?
58. In the right circumstances, it may be wise for a tribunal to bifurcate the proceedings and to deal first with a specified subset of the dispute: jurisdiction, or an allegation that the claim is out of time, for instance. What is the proper test for deciding to bifurcate? Is it the degree of likelihood that the point concerned will be successful – but if so how can the tribunal avoid the appearance of prejudging the point when deciding whether to bifurcate or not? Does it matter whether the party objecting to a request for bifurcation is the one that will have to bear the costs if bifurcation is refused and if it later turns out that the point would actually have sufficed to dispose of the case at lesser expenses?

59. Why do we not see a greater level of bifurcation in international arbitration between liability and quantum issues and would it be desirable to do so?

60. Does the English style of reply submissions create an imbalance in favour of the party which goes first (a perception held by a number of lawyers from civil law systems)? Is it better, for example, for both parties simply to close with the claimant closing first and then the respondent?

61. Are there any good reasons why the LCIA Rules should not only permit but also encourage Tribunals to dispose of central issues, for example liability, on a summary basis in appropriate cases? Should the LCIA publish redacted awards of this nature?

62. How often does the Panel consider that Arbitrators depart materially and significantly from the practice of their home jurisdictions when dealing with a reference? Are arbitrators every genuinely innovative?

63. For more than a decade arbitration organisations have been issuing guidance and protocols for the handling of document production, focusing on the cost-effective management of electronic documents as part of the process. Why is it still so common for Tribunals to give no thought to the inclusion of such guidance in procedural orders and to show little interest in pro-actively managing what can be a particularly costly (and occasionally futile) exercise?

64. The requirement of deliberations “as soon as possible”

Article 15.10 of the LCIA rules requires the tribunal (when not a sole arbitrator) to set aside “adequate time for deliberations as soon as possible after the last submission [whether written or oral] and notify the parties of the time it has set aside”. Is this rule often complied with? Is it useful?

65. How often in your experience have adverse inferences been expressly or implicitly drawn? Under what circumstances?
In a Post M&A dispute, the purchaser agreed on employment termination post-closing with some members of the senior management and other key employees of the acquired target company. In the respective bilateral termination agreements, the purchaser imposed a duty of confidentiality on each of them and in this context specifically referred to the arbitration proceedings. In the arbitration, the purchaser then alleged, in the context of substantiating a warranty claim, certain failures of the former members of the management and the other key employees whose employment has been terminated. The purchaser does not introduce the former members of the management and other key employees as witnesses in the arbitration. The sellers then seek to introduce them and when they approach them with a view to conducting a witness interview and submitting witness statement of them, the seller is told by them that they cannot answer any questions due to the confidentiality agreements signed with the purchaser in their termination agreements. Since the purchaser insisted on the confidentiality, the seller approaches the Arbitral Tribunal with a view to ordering the purchaser to withdraw the confidentiality obligation so that the former members of the management and other key employees of the target companies can appear as its witnesses and submit witness statements without fearing any black slash for violating the pertinent confidentiality obligation. In a case management conference, the purchaser offers, as a kind of compromise, to participate in the witness interview. What should an arbitral tribunal do?

The Singapore Court of Appeal in Marty Ltd v Hualon Corporation [2018] SGCA 63 stated (obiter) that it is strongly arguable that the commencement of litigation in breach of an arbitration agreement is prima facie a repudiation of the arbitration agreement. Was the court right to create such a presumption? Will other jurisdictions adopt this approach?

Delay in the issuance of awards remains a top complaint of corporate arbitration users, and the complaint is not limited to investment cases. What are the main causes of this delay, and how can they best be addressed/mitigated?

Early dismissals (summary dispositions or whatever it may be called) in international commercial arbitration: in which cases they might be appropriate and in which cases they should not be used by any means?

Early views and guidance from the tribunals: an anathema or a useful case management tool?

Do ad valorem systems foster abusive applications? I observe that in proceedings administered under ad valorem systems Counsel file a large, sometimes excessive number of unjustified applications, while in arbitrations with arbitrators paid by the hour this is not the case. Is this observation shared?

Can you hurry? Notwithstanding opposition from some quarters towards any form of "ex parte" arbitration proceedings, do the Emergency Arbitrator provisions of the LCIA Rules (notably Article 9B.7) afford an Emergency Arbitrator with sufficient latitude to issue a preliminary order before deciding the claim for emergency relief and before providing the respondent party with an opportunity to deal with its opponent's case for emergency relief?
73. Any experience in using the Prague Rules?

74. In case of parallel arbitrations involving related parties (not identical but related parties, e.g. a buyer and a seller in one proceeding and the seller and the target company in the parallel proceeding), and raising similar issues of facts and law, should the arbitrator seized second stay the proceedings or proceed with the arbitration despite a risk of conflicting decisions on some issues? What is the best way of handling such situations taking into account the duty of the arbitrator to conduct the arbitration expeditiously and efficiently and render an enforceable award?

75. When there are concurrent arbitrations with overlapping issues, how should the tribunal of one arbitration decide whether to stay that arbitration pending the outcome of the other arbitration?

76. Article 15.8 of the LCIA Rules gives the tribunal power to proceed with the arbitration and make an aware where any party fails to avail itself of the opportunity to present its case. When a Respondent fails to participate in the arbitration proceedings, to what length should the tribunal go to make the claimant prove its case?

77. Disputes, do in most cases, lead to that trust and cooperation between two contract parties being hampered. What is LCIA’s view on allowing and maybe even promoting that the parties agreeing on an independent person(s), already in the contract, who will act as the dispute resolution resource that can be called in when there is a potential or actual dispute during the execution of a contract? My idea is that the appointed adjudicator(s) are scheduled to have a dispute resolution session every third or sixth month during the contract period. At these sessions the aim should be to resolve the disputes that have emerged since the last session and thereby try to ensure that only major issues, if any, are referred to a final dispute resolution when the contract is completed. This process should focus on removing obstacles/disputes that might unnecessary delay the completion of a contract.

78. Is equality between the parties a requirement of the Arbitral proceedings, or a misleading concept?
SESSION 2: TECHNOLOGY IN ARBITRATION

79. If the panel had a magic wand, what piece of technology would they create?

80. If there was a tribunal secretary app, what functions should it have?

81. Use of technology: to look at things negatively, are there any particular uses/applications of technology which practitioners have found unhelpful and/or are there areas of arbitration where technology should not enter?

82. The movement towards e-Arbitration is definitely gathering pace; I am currently working with two institutes to come up with a suitable system that will provide e-Arbitration services. My experience with these activities is that for a really good e-Arbitration platform a thorough analysis of the requirements imposed on such a platform is absolutely mandatory: the devil is in the details. Without such an analysis many details will be missed, and the platform will be at risk of being rejected by its users. What is the LCIA planning to do or doing already in this area?

83. Hackers: Big law firms have strong measures of protection against hackers, but smaller firms or sole practitioners usually do not. Should institutions offer secured and protected platforms for the cases for the parties to use the same security protocols or such responsibility should be left to the parties and the arbitrators? Would the offering of such a platform be a key driver to use the institution services?

84. In the light of recent hacking scandals, what steps should arbitrators take to ensure confidentiality and security of communications in arbitrations? Should Statements of Case be filed only via secure links to encrypted cloud storage bases? Should arbitrators exchange drafts of awards only via similarly secure means?

85. Do advances in technology make the administration of arbitrations by institutions a) a cyber-security hazard and/or b) unnecessary?

86. Who has responsibility for ensuring that reasonable cybersecurity measures are adopted in an arbitration: the parties, the tribunal or the institution?

87. Are the various arbitral institutions coming to agreement on cyber security standards, for example as to the minimal level of cyber security protection that an arbitrator must provide to the parties, their counsel, the institute and his or her fellow arbitrators?
88. How can technology be used to improve confidentiality and protection of personal data in arbitration? Should arbitrators have the duty to order measures to ensure cybersecurity? Should arbitral institutions enact guidelines for arbitrators regarding these issues?

89. What are the status and safeguards for data security in the arbitration process?

90. Arbitrators’ and parties’ approach to GDPR application and compliance varies widely in my experience to date. With a range of opinion ranging from “what is it” to “it’s only a problem for the parties”, via a few very thorough published “privacy statements”, how can we drive development of a best practice approach which is not unduly burdensome on all participants?

91. There currently appears limited consensus and information on the best means for a tribunal to state its position and make directions regarding obligations under GDPR. Currently there are very variable directions being made on GDPR within the market and the same variations arise in privacy statements. Does this reflect valid diverging circumstances or ignorance? Where can a tribunal find strong guidance? Perhaps all will be revealed at ICCA 2020 but in the meantime we have to apply GDPR. Would it not be better to publish guidance now and use ICCA as a discussion point for finalising that guidance?

92. The move towards e-Arbitration will heighten the impact of the EU General Data Protection Regulation on arbitration in general. I am still in the process of analysing this impact; my investigations so far show that the impact on operational/procedural aspects of arbitration proceedings is mostly limited to proper documentation but that sometimes personal data will have to be handled differently - think e.g. of information regarding criminal behaviour that is of importance in arbitration proceedings (Article 10 GDPR). Arbitration institutes are probably well-advised to provide guidance and assistance to their members and arbitrators in this area. And of course any e-Arbitration platform will have its own GDPR-related requirements related to proper protection of data. What is the LCIA planning to do or doing already in this area?

93. Should there be any rules/guidance setting out what technology must not be used in international arbitration (for instance, Google Translate for document translation etc.)?

94. Is it possible for arbitral institutions to develop a standardized protocol for the electronic presentation of submissions and evidence?

95. Using electronic bundles in the hearing prevents a witness from seeing context to documents presented to them. Is that fair?
96. Digital bundles are all the rage but are we thinking carefully enough about what they should contain, when they should be ordered and what, if anything, should still be in hard copy?

97. Cross-examination through video-link: when does it not work? Is it secure?

98. When it comes to document production, should Tribunals engage more in the way searches for documents are actually to be carried out (e.g. requiring the parties to propose search terms in their requests, ordering the use of predictive coding, etc.) in order to try to manage the time and costs being incurred?

99. Are arbitrators able to police e-disclosure, for example where relevant documents is identified by predictive coding?

100. How will the increased use of AI in informing parties’ decision in appointing arbitrators—for example, more comprehensive access to all prior awards—affect arbitration and arbitrator behaviour? Will parties be more successful at identifying arbitrators who will vote in their favour? How will greater transparency into prior awards affect arbitrator behaviour?

101. “Litigation Prediction AI” is being developed with a surprisingly high degree of accuracy (e.g. US Supreme Court (83%) and European Court of Human Rights (79%)). It is widely used in the US. Whilst its development in the UK (and elsewhere) may require the creation of a single centralised digital case-law database, the technology clearly has the potential to inform client and funder strategic decision-making i.e. whether to bring/defend/fund/settle a case or appeal. Will the lack of any systematic publication of arbitral awards and the non-identification of arbitrators inhibit or preclude the development of “Arbitration Prediction AI”?

102. A party is ordered to produce “relevant” documents, it uses AI to identify these documents. Do we trust the result although we do not know the algorithm?
103. It has become the norm in complex arbitrations for counsel to use PowerPoint presentations in its opening submissions. These can run to hundreds of slides.

(a) If the presentation is too long to cover in the time available and counsel skips over several slides leaving the power point presentation (which often effectively becomes a new written submission) on file for the Tribunal to look over after the hearing. What the Tribunal should do and how it should treat the material not walked through during the opening?

(b) Often the Tribunal will direct the parties to exchange “demonstrative material” a few days before the hearing. Typically a procedural order will state that no new evidence shall be presented at the hearing unless permitted by the Tribunal. When a party includes in its presentation:
- New legal authorities
- New legal arguments
- New visual material to support an argument
- Reformulated position in response to the last submission of the opponent
How should the Tribunal proceed?
(i) Should it allow a party to use the presentation during the opening but skip over certain parts which the Tribunal considers fall foul of the procedural order? If so, what should be the status of those skipped slides? Should they be physically removed from the case file after the opening?

(ii) Should the Tribunal disallow a party to use the presentation and/or direct for the offending slides to be removed prior to the opening submissions?

(iii) Should the Tribunal permit a party to use all/some of the new material but give the other side an opportunity to respond (whether in closing or post-hearing submissions)?

104. What is the proper length of a power-point presentation at opening and closing? How do you as an arbitrator use the slides in deliberations and/or drafting the award?

105. How often, in the experience of the panel, are arbitrators prepared to dispense with paper and deal with a reference entirely electronically? How good are arbitrators at making excuses for not doing so?

106. If some practitioners can’t get their heads round low tech assistance, what hope is there for high tech?

107. Is it fair to say that many arbitration practitioners are not on top of existing technology, never mind worrying about adopting new technology?

108. When you act as a single arbitrator, is LCIA open for providing a secretary to the arbitrator or allowing that the arbitrator brings his own secretary?

109. As an effect of the ground won by AI, what is LCIA’s view on providing or promoting web-based arbitration alternative for minor disputes?
SESSION 3: APPOINTMENTS, DISCLOSURE AND CHALLENGES

110. Should the standards (whatever they may be) be different where international investment arbitration is concerned?

111. What should be done if, following an arbitral tribunal's formation, it transpires that one of the co-arbitrators is not really fluent in the language of the arbitration?

112. What level of language proficiency is required for a chair or a sole arbitrator? Is it acceptable that the award is drafted by the chair in his/her native language, then translated by the secretary to the language of the arbitration and later scrutinized by the chair?

113. In bilingual arbitrations, is it proper for the arbitral institution to confirm/appoint an arbitrator nominated by a party who does not speak one of the languages of the proceedings in the absence of a challenge by the other party?

114. Diversity is still an issue in international arbitration? Although arbitral institutions are weighing in to address the gender and geographical imbalances, how does one persuade parties and international counsel to address this issue?

115. Diversity of age, experiences and professional backgrounds within a tribunal – how desirable is it?

116. Age diversity: What can counsels and co-arbitrators do and what are they limits (client’s demands, generation gap, etc.) to propose younger arbitrators and promote age diversity?

117. Do data analytics platforms (e.g. Arbitrator Intelligence, ArbiLex, GAR's Arbitrator Research Tool), with their focus on arbitrators with track records, risk undermining a) efforts to improve diversity in arbitral appointments and b) the networks of trust on which international arbitration depends?

118. Will efforts to improve diversity help to avoid situations such as in Halliburton v Chubb arising?

119. If institutions were to appoint Tribunals would we see fewer challenges? Would this also lead to greater diversity in arbitral appointments?
Selection and appointment of arbitrators, as well as selection of counsel, continues to be essentially “round up the usual suspects” (to use the famous line from the movie Casablanca). What can affirmatively be done to increase gender and geographic diversity in arbitrator appointments and to encourage parties to select more diverse counsel? How can the LCIA lead in these endeavours? Should the LCIA impose a requirement of some sort for gender or geographic diversity in every arbitral panel in order to address this issue?

Many arbitration users criticize both (1) how long it often takes Tribunals to issue their final awards; and (2) the fact that the same arbitrators tend to get repeat appointments, while younger and more diverse candidates often struggle for appointments. Should the international arbitration bar develop a set of norms – perhaps through IBA guidelines – encouraging arbitrators to limit the number of appointments (or at least the number of chair appointments) that they take at one time? If so, what should such norms/guidelines look like?

Under most institutional rules, party-appointed arbitrators are required to be independent and unbiased. If a party-appointed arbitrator is aware of the identity of the party which appointed him/her, can he or she truly remain unbiased? Are there alternative selection procedures that would make the party-appointed arbitrator less biased, at least in terms of his or her perspective?

What specific criteria does the LCIA apply in appointing arbitrators?

What specific criteria does the LCIA use in setting the hourly fee for arbitrators? Is it fixed on the same basis for all arbitrators on the tribunal with regards to amount and currency?

Does having an "informed arbitrator" promote efficiency?

If, as is generally accepted, the parties are taken to want “informed and impartial” arbitrators, how, if at all, should the “informed” factor be taken into account for the purpose of LCIA Rule 10.1(iii) where the test refers only to the “impartial” factor; viz “circumstances exist that give rise to justifiable doubts as to that arbitrator’s impartibility or independence”?

Could a party-appointed arbitrator or a chairperson be challenged for the lack of knowledge of the applicable substantive law?

Is an arbitrator’s subject-matter expertise a benefit, or a burden? How long, really, does it take diligent non-expert arbitrators to catch up and understand the key issues? And, is there a risk that the expert arbitrator will rely on facts or opinions not in the arbitral record?
125. Should there be changes to consumer agreements to arbitrate?

126. Standards for disqualification: Is the experience among participants that some (or many or even most) arbitral institutions apply two different standards for disqualification depending on the stage of the arbitration?

127. Can an arbitrator’s non-disclosure on the basis of ‘privileged information’ be an excuse and a successful defense to a challenge?

128. How many degrees of separation are required for an arbitrator to declare independence and impartiality? Would the following disclosures be considered proper grounds for disqualification:
   • acting for local subsidiaries of international leviathans that may be parties to an arbitration (e.g. Canadian subsidiaries of US companies)?
   • acting for a joint venture where an international subsidiary of a party to the arbitration holds a small minority (say less than 10% of the shares), non-active interest in the joint venture?

   Related questions:
   • How much time is sufficient for an arbitrator to declare independence from former firm clients? Does it matter that former members of firms have no access to former firm records?
   • Should an adverse inference be drawn where an arbitrator nominee fails to make a disclosure when it is subsequently determined he/she should have done so?
   • If arbitrators have sat on a number of different matters, must that be disclosed and, if so, of what significance is it?

129. Since inside information and knowledge may be a “legitimate concern” in overlapping arbitrations involving a common arbitrator but only one common party, should the appointment of common arbitrators be permitted in such circumstances only with the consent of all parties?

130. Is it really acceptable for the Tribunal Chair’s daughter or son to be appointed as Tribunal Secretary?

131. Is there an arbitral dispute so complex or so disturbing that you would decline serving as counsel or as arbitrator?
132. Most jurisdictions have introduced or are in the process of introducing UBO (ultimate beneficial ownership) registers. Are prospective arbitrators now expected as a matter of good practice to run their conflict checks and to make disclosures, if appropriate, against all the names that appear in these UBO registers in relation to the parties? Should they regularly check these registers for possible updates?

133. Following Chubb v Halliburton one of the issues raised has been “the problem of inside knowledge” in related arbitrations. Inside knowledge can certainly operate unfairly in arbitration. However, are greater obligations of disclosure on arbitrators going to solve the problem? Asymmetric knowledge is an inevitable feature and risk of litigation. The confidential nature of arbitration is a further potential source of unfairness yet it is coveted and protected in all arbitration systems. A better answer for dealing with arbitrations involving related facts and/or a common party would be greater flexibility on concurrent hearings (including common tribunals and sharing of evidence) so as to ensure that information is properly shared across related arbitrations. This would avoid “the problem of inside knowledge” and ensure more streamlined (and transparent) procedures and consistent outcomes. Existing LCIA rules allow one party to stop this happening without good reason other than a preference for fragmenting the process. There is room to learn more from rules applying to shipping and commodities arbitration where flexible provisions giving power to direct concurrent hearings have been long established as coherent, workable and commercially attractive.

134. A potential arbitrator cannot obtain a client's consent to disclose a potential conflict – what can he or she do?

135. Does a president need to disclose that he or she is currently sitting with another arbitrator on the panel?

136. How far does the search for potential conflicts go? Should it for example include companies having a business relationship with a company on the board of which a potential arbitrator sits as an independent non-executive director?

137. There have been a handful of arbitration cases in which – after a Tribunal is already constituted – new counsel joins the proceedings, and in doing so causes an actual or potential conflict of interest to arise with one of the arbitrators. In one recent example, the new counsel employed the child of one of the Tribunal members in its international arbitration group (although not, of course, on the case at hand). What is the best practice for dealing with this type of situation? Should the normal arbitrator challenge process apply, or is there a legitimate mechanism for disqualifying the new counsel in order to preserve the integrity of the proceedings?

138. The IBA Guidelines require disclosure if the arbitrator has in the past three years been appointed at least two times by the same party or at least three time by same law firm. Is the distinction sound—is there a greater appearance of bias with respect to parties than with respect to counsel?
139. In the LCIA practice, how much emphasis is put on making the relationship between counsel and party-appointed arbitrator transparent for all involved? For example, does an arbitrator need to disclose that other members of his team/practice group/boutique firm/office regularly sit as arbitrators appointed by the counsel who has nominated the arbitrator?

140. A counsel, partner in one law firm, representing one party in an arbitration intends to join the law firm of that party’s appointed arbitrator late in the proceeding – what should happen?

141. Are an arbitrator’s disclosure requirements the same before and after appointment, i.e. are they the same for a prospective arbitrator and for a sitting arbitrator? It seems that the practice of prospective arbitrators is to err on the side of an excess of disclosure and to mention all circumstances which might perhaps be seen as relevant; the same practice is not observed in the case of sitting arbitrators. Is this right, in theory and in practice?

142. Is it proper for an arbitrator to disclose to the parties to an ongoing arbitration that he or she has been approached with a view to being appointed in another case and that he or she considers that this new appointment can be accepted? Does that not put the parties in front of a very uncomfortable dilemma, because they cannot disagree without running the risk of badly annoying that arbitrator?

143. Would you disclose the fact that the counsel for the party appointing you is your opposing counsel in an ongoing unrelated litigation? If yes, why? The situation is not mentioned in IBA Guidelines.

144. When a sitting arbitrator makes a disclosure in an ongoing arbitration (e.g. about his or her appointment in another case involving one of the parties to the ongoing arbitration, or about a party to another case in which he or she sits having announced a merger with one of the parties to the ongoing arbitration), what should he or she do if a party then objects? Can he or she still take the view that there are no sufficient reasons to refuse the new appointment or to resign – but if so what was the point of the disclosure in the first place?

145. Based on my experience as a General Counsel and in-house counsel for a number of multinational companies, I wonder if you agree, if not already is a standard procedure, that it is beneficial and thereby raises the interest to use LCIA’s arbitration service and underline that there is a broad choice of arbitrators, to promote and appoint also former General Counsels as the industrial expert arbitrator within an arbitration tribunal, which will enhance the tribunal’s commercial and international competence? Even if I am biased, I can, from my own experience as General Counsel and in-house counsel, see a clear advantage if one of the arbitrators have an in-house counsel background when handling inflamed relation or other sensitive issues in e.g. cases regarding cross-border joint ventures or other cooperation, business development agreements, long term projects as well as M&A issues.
146. The “power” of arbitrators to exclude counsel

In Hrvatska v Slovakia (ICSID Case No. ARB/05/24A), an arbitrator was a door tenant in the same chambers as a barrister for a party whose involvement wasn’t disclosed until 2 weeks before the hearing. Upon application for exclusion of counsel, the tribunal found that “fundamental principles”, such as that parties may seek representation as they see fit, must give way to “overriding exceptions” – in that case, “the immutability of properly constituted tribunals” – and prohibited the barrister’s participation as “inappropriate and improper”.

In Rompetrol v Romania (ICSID Case No. ARB/06/03), the tribunal refused to exclude new counsel who, until about 6 months before, had for many years been a member of the same firm as an arbitrator. The tribunal commented – “assuming it had power to “control a party’s choice of counsel” -- that “the Hrvatska Decision might better be seen as an ad hoc sanction for the failure to make proper disclosure in good time than as a holding of more general scope”.

The LCIA revised it rules to require tribunal approval for a party’s change or addition to its legal representatives to take effect (18.3), which approval may be withheld when the change or addition “could compromise the composition of the Arbitral Tribunal or finality of the any award (on the grounds of possible conflict or other like impediment)” (18.4).

The following provision is from a procedural order in a recent ad hoc treaty-based arbitration: “Change by a party of its representatives or of the contact details of any of its representatives ... shall only take effect if the Tribunal does not object for reasons of conflict of interest”.

When do “conflicts of interest” vis a vis counsel and arbitrators arise? Does “double hatting” give rise to such conflicts of interest (for example, when one co-panellist appears as counsel before another in a new matter)? When there is no party agreement on a tribunal’s power to remove counsel, does the tribunal have power to do so?

147. On March 14, 2019, the Swiss Supreme Court rendered a decision in relation to conflicts which could have devastating effects if it were to be transposed to international arbitration (1B_510/2018).

The Swiss Supreme Court first recalled that a conflict also has an impact on the partners of the conflicted lawyer, the conflict extending to the entire law firm. It then considered that an associate’s knowledge of a file when previously working for another law firm was decisive when deciding on the existence of a conflict. According to the Swiss Supreme Court, Chinese walls which could be put up in the new law firm were improper to prevent a conflict because it was impossible to prevent exchanges, for example oral, between lawyers of a same law firm. In the case at hand, the Court found that the new lawyers in charge of the case were conflicted on the following grounds:
- The associate who had joined the firm now in charge of the case had knowledge of the file as she had been working on it when working for another lawyer firm. The associate had moreover met the indicted in person;
- The associate had integrated the labor law department of the new firm in charge of the case. The department could however be called upon to intervene in the case since theft of data belonging to the employer of the indicted was at stake;
- The proceedings against the indicted were still pending;
- The criminal character of the case justified protecting the trust of the indicted in his former lawyer.

It is to be hoped that this decision is limited to the specific circumstances of the case, especially its criminal nature, and will not be applied in the context of international arbitration, at the risk of making any appointment impossible.

148. Should the standards be revised for arbitrator disclosure requirements and perceptions of bias?
149. The slippery slope of disclosures: the more you disclose, the more you are expected to disclose the next time around? Do we have a judicially/arbitrally manageable standard to determine what must/should be disclosed?

150. Is a requirement to disclose “everything” a good way to ensure that the Tribunal has no ability to understand or resolve a reference?

151. Is the pro-disclosure principle often exploited by parties for the purposes of challenging arbitrators and are the arbitral institutions robust enough in the way they handle such challenges?

152. Is there an appetite for more transparency by institutions over time taken by arbitrators in producing awards, or will confidentiality and party autonomy preclude this?

153. Does disclosure in itself create unnecessary issues? If an arbitrator feels a need to disclose, because someone else might perceive a conflict, does that in effect imply there is a conflict? If a party accepts a disclosure and doesn’t ask the arbitrator to step aside, they have lost the point altogether, so is there a tendency for disclosure to become the same as admitting a conflict?

154. To what extent can an arbitrator remain unaffected by the disclosure that a Claimant has obtained third party funding?

155. If an arbitrator has in an earlier award resolved a legal issue that is on all fours with a legal issue in the present arbitration, should this be a basis for disqualifying her in the present arbitration?

156. Should there be a duty on an arbitrator to make a disclosure if he or she has rendered previous awards on the same (novel) legal points as arise in a new reference even where the parties are different due to the risk that an arbitrator may be unlikely to be persuaded to reach a different conclusion? E.g. where a terrorist attack or a natural or man-made disaster give rise to the same legal question as to the number of events or occurrences for the purposes of multiple different insurance claims, or as to whether frustration has occurred in a shipping or sale of goods contract.

157. Disclosure of documents: could we please start with the presumption that there will not be Redfern Schedules, rather than that there will be?

158. Shouldn’t it be mandatory to always disclose the identity of the third-party? Otherwise, how can a conflict of interests be prevented?
159. When a disclosure from an appointed arbitrator clearly implicates only one party, how can a challenge by that party be handled in a way that does not prejudice the party if the challenge is denied and the challenged appointee is confirmed?

160. Should proceedings regarding the lifting of confidentiality in respect of an arbitration be heard in private?

161. Do “Issue conflicts” risk blighting the development of new ideas and approaches in commercial arbitration?

162. Challenges over alleged conflicts are incrementally increasing, and are often tactical and without merit. Should institutions penalise parties over unmeritorious challenges, from advances paid?

163. Is a challenged arbitrator allowed the opportunity in that procedure to address (and possibly correct) the facts alleged by a challenging party in an LCIA administered arbitration?

164. Does the LCIA provide any support, insurance or advice to an arbitrator(s) in an LCIA arbitration who are sued in court for damages by a disgruntled party?

165. In case of a successful challenge of one member of the arbitral tribunal in the course of the arbitration, and the replacement of that member with a new arbitrator, should the previous procedural steps and decision(s) taken by the arbitral tribunal in its previous composition (i.e. before the removal of the arbitrator) be considered as null or voidable? Should a difference be made whether the removal concerns a party-appointed arbitrator or a chairperson or depending on the ground for challenge?

166. Should institutional rules be changed to allow the levying of the costs of an unsuccessful challenge at the time the challenge fails?

167. Does the LCIA have a clearly defined process for handling arbitrator challenges? If so, what is that procedure?

168. Do mega firms and mega mergers create mega problems for appointments and disclosures and a ripe field for challenges?
SESSION 4: ORDERS, AWARDS AND ENFORCEMENT

168. Orders and awards: Is there a clear distinction? What about a “decision”? What about “partial” and “interim” awards? And enforceability?

169. What are the various forms of enforcement of an order? Can an order be characterized as an award and how?

170. When certain Tribunal’s orders are not rendered unanimously would it be preferable that the procedural order states the views of the dissenting arbitrator?

171. It now appears unavoidable that the United Kingdom will leave the European Union on October 31st without a deal that covers the type of services provided by the LCIA and its arbitrators. What will the impact of this be on the ability of arbitrators to adjudicate disputes coming before the LCIA?

172. Will Brexit make London/England more or less attractive as a seat for international arbitration, or make no significant difference either way?

173. Is the London arbitration community effectively "pulling together" to address the challenges that a "hard Brexit" poses for us?

174. Will BREXIT hamper the enforcement of orders and awards in Europe?

175. Will Brexit have any impact upon the enforcement within the EU of London based arbitral awards?

176. Looking beyond 31 October 2019, a general election and food shortages – will arbitration remain ring fenced from EU rules and how would London outside the EU be affected? The Recast Brussels I Regulation will come up for amendment following a report due in 2022. The London lobby worked to avoid extended EU competence last time but will probably not be sitting at the negotiating table this time. Consumers and interest groups may benefit from EU regulation but what gains and risks are there for the rest of us? EU arbitration centres may gain at least some advantages – will London want equivalence, a new model or something like Singapore or Geneva?

177. Arbitrators always try to do a really good job. How can we do better? More or less flexibility on time limits? Longer hearings or shorter? Should we be more forthcoming with provisional views on the merits? Tell us what have you found lacking recently. Take our award. Of course we want to ensure it is enforceable and withstands challenge. But you want it quickly and cost efficiency is important. Are our awards too long or too short? More detail and reasoning or less?
178. Should institutions issue template awards (perhaps with details of the parties/the tribunal/the process already filled in)?

179. What is best practice for writing a consent award – how much detail about the arbitration should be included?

180. What is the best form (format? Wording?) for a revised final award that is issued to correct an arithmetic mistake in the award amount after a Final Award has been issued (pursuant to a post-award motion by a party)?

181. Can an award, or a procedural order, be signed electronically rather than in handwriting? In the European Union, the Electronic Identification and Trust Services (eIDAS) Regulation 910/2014 provides that “a qualified electronic signature shall have the equivalent legal effect of a handwritten signature” (Art. 25(2)). Electronic signatures can be extremely convenient, in particular when three arbitrators are in different locations.

182. Has there been a recent tendency for parties to seek corrections to Awards for no obvious purpose save perhaps to show they have diligently studied the punctuation? Is this a tendency which should be discouraged?

183. In international investment arbitration, interlocutory decisions on jurisdiction and admissibility are not awards. How far is it permissible and appropriate for tribunals to reopen their affirmative decisions, especially where the respondent asserts that the decision was fundamentally wrong?

184. Further to repeated claims that arbitration is stifling the development of the law, does the LCIA have any plans to start publishing anonymised awards in line with the ICC’s recent announcement to do likewise?

185. To what extent should an arbitrator compromise his/her conclusion about a claim in order to achieve unanimity or a majority decision with the rest of the tribunal?

186. Should arbitrators be more willing to grant anti-suit awards to protect arbitrations from interference? Are anti-suit awards useful or do parties need to go to the court to get court anti-suit injunctions?

187. Many national laws provide expressly that an arbitral tribunal has the power to make partial awards, absent contrary agreement. Institutional rules also generally provide for such possibility. Does that imply the authority to issue a partial award without consulting the parties?
188. The US Supreme Court will decide in 2020 (GE Energy v. Outokumpu) whether the New York Convention’s writing requirement forbids a non-signatory from compelling arbitration. What is the right answer under the New York Convention? How have other domestic courts resolved this issue?

189. Imagine an international tribunal seated in an arbitration-friendly country somewhere in Europe for a case involving a State as respondent. Suppose that the arbitral tribunal decides to dismiss the respondent government’s jurisdictional objection and issues an award on the merits in favour of claimant, but that the national court at the place of arbitration later determines that the arbitral tribunal lacked jurisdiction. Consider then that the arbitral award on the merits is consequently set aside. Should a judge in a New York Convention country subsequently be able to enforce the set-aside award if she or he believed that the arbitral tribunal was correct about jurisdiction, i.e. believed that the national court got it wrong? Should it make a difference for the New York Convention judge if the seat of the arbitration was in the same country as the respondent government and the award was set aside by the national courts of the respondent government?

190. Suspension of enforcement by court at the seat

Recently, the Svea Court of Appeal (Sweden) has granted requests to suspend the enforcement of an Award. Given the finality of an Award and the pro-enforcement approach of the New York Convention, as well as the ongoing discussions about the respective supervisory role of the courts at the seat and at enforcement, when should a court at the seat make such an exceptional decision? When should an enforcing court give effect to such a decision under NY Con V 1 (e) and VI? Should suspension of enforcement be linked to a public interest?

191. Should emergency arbitrator awards be treated as enforceable (because they finally dispose of a particular issue – whether the claimant is entitled to the relief requested until such time as a tribunal is constituted), or are they the equivalent of interim orders and thus should not be subject to enforcement? Is there a developing standard among New York Convention countries on this question?

192. More applications for security for costs are being made, especially in arbitrations where one party is using third-party funding. What role (if any) should the presence of a funder play in the analysis; and what should the remedy for non-compliance be? (Compare RSM v. St. Lucia, Decision on Annulment, 199-200 (29 April 2019), www.italaw.com/cases/documents/7404)?

193. Interest on awards – is it time to set some more specific guidelines on what rates should be used when and how?

194. When parties make request for payment of interest, but do not provide detailed guidance on the legal basis and how to calculate it, what is your practice to determine them? Do you refer to the law of the seat or the substantive law? How do you determine the interest rate?
195. Has anyone been involved in a case where a tribunal exercised its power to make a provisional award under s.39 of the 1996 Act? What were the circumstances?

196. Is the current form of arbitral awards – in which the recitation of the procedural history and the parties’ arguments sometimes dwarfs the reasoning in support of the result – harming the perceived legitimacy of the system, in investment cases or more widely?

197. In some jurisdictions, third parties - e.g. the lessee in a financial lease - may avail themselves of an arbitration clause contained in a related contract (e.g. in the purchase contract between the manufacturer and the lessor). The tribunal finds that it has jurisdiction and renders an award in an arbitration lessee vs manufacturer. Which law should govern the enforceability of the award?

198. How does one distinguish a ruling from an award? Does English law distinguish them in a rational and satisfactory way? [see ZCCM Investments Holdings Plc v Kansanshi Holdings Plc, Kansanshi Mining Plc [2019] EWHC 1285 (Comm)]

199. Is the decision in Minister of Finance and another v International Petroleum Investment Company and another [2019] EWHC 1151 (Comm) likely to be the last word on the extent and exercise of the case management powers of the English Court?

200. Set aside applications and time bar:

   Under what circumstances, if any, may the 3-month time bar for an application to set aside under Article 34(3) of the UNCITRAL Model Law on International Commercial Arbitration be extended? May the time bar be extended when the arbitral award was procured by fraud that was concealed until after the 3 months had passed?

201. How should the wings deal with a distinguished but obviously overcommitted chair who unduly delays the drafting of orders and the award?

202. The English courts have the power to make third party costs orders. In the notorious Excalibur litigation the claimant’s funders were ordered to pay indemnity costs. Christopher Clarke LJ criticised the funders for failing to take 'rigorous steps short of champerty', including 'rigorous analysis of law, facts and witnesses, consideration of proportionality and review at appropriate intervals'. For Tomlinson LJ in the Court of Appeal in 2016, 'rather than interfering with the due administration of justice, if anything such activities promote the due administration of justice.' What orders can arbitral tribunals make during proceedings and/or in awards to compel third-party funders to take an active interest in the case and to keep a close eye on the claimant’s lawyers' conduct of the proceedings and on costs?

203. What is the silliest reason the panel has come across for not enforcing an Award?
Does the Great Leap Forward in new Arbitration laws and attitudes augur well for the future of arbitration in the Middle East region?

204. In the post-Achmea world tribunals consistently appear to have upheld jurisdiction in intra-EU investment claims. Respondent EU Member States will unlikely comply voluntarily with any award ordering them to pay damages. Will / should enforcement proceedings succeed? Does it make a difference whether the case was an ICSID case or a non-ICSID case? Does it make a difference whether the case was under a BIT or the ECT?

205. Should there be changes to the standard of review for appeals?