1. One of the common concerns about arbitration is delay. This can be because the tribunal takes many, many months to render its award. This is a particular concern in investment treaty arbitration. What can be done to resolve this issue? Should institutions play a more proactive role – should tribunals be fined in the event that an award is not rendered by a certain date? Would this result in less reasoned decisions and more challenges?

2. Should an express time limit be imposed on arbitrators for rendering their awards under the LCIA Rules? Would an express time limit really be more effective in encouraging arbitrators to render their awards rapidly than the rules in place (cf. Art. 15.10 LCIA Rules)?

3. Should the LCIA follow other institutions and set a deadline for arbitral awards (e.g. six months after the last submission or hearing date, whichever is later)? [Art. 15.10, LCIA Rules 2014]

4. Do arbitral institutions need to be more robust in penalising arbitrators for delays in rendering awards (e.g. material deductions to their fees)?

5. What criteria should a Tribunal consider in drawing up a shortlist of candidates for Chairman? When, if at all, is it appropriate for a party to inform its party-appointed arbitrator that the shortlist of candidates for Chairman should not include candidates with certain characteristics? And when, if at all, should a party-appointed arbitrator accommodate such a request to avoid candidates with certain characteristics?

6. Interim award of fees against non-paying party. The problem of non-paying parties seems to be increasingly common in international arbitrations. Some institutions and arbitral tribunals have begun issuing interim award for fees against the non-paying party. Does anyone have experience with such applications? If so, how was it received? If not, setting aside the issues of enforcement of interim awards, what are people’s reactions to the concept?

7. How important is it to appoint an arbitrator with a geographical connection to the region of the disputing parties?
8. The LCIA Rules require prospective arbitrators to confirm that they will be able to devote sufficient “time, diligence and industry to ensure the efficient and expeditious conduct of the arbitration” (Article 5.4). The LCIA Rules also oblige arbitrators to adopt suitable proceedings that will ensure a “fair, efficient and expeditious” means for the resolution of the parties’ dispute (Article 14.4(ii)). Notwithstanding these provisions, arbitral proceedings are often delayed because the arbitral tribunal has very limited availability for hearings. Should the LCIA Rules (and other institutional rules) go further in policing the amount of time that arbitrators must devote to an arbitration – for example, by requiring arbitrators to be available for a certain number of days every month?

9. The Tribunal, the parties and the institution – What role should each of these entities play in cases where there is strong evidence of bribery and corruption?

10. To what extent is it an arbitrator’s duty to identify potential corruption with regard to the underlying dispute, for example the means by which a contract/investment was obtained?

11. Should legal representatives also have disclosure obligations in relation to arbitrator appointments (and potential conflicts)?

12. Do parties have a duty to investigate as to an arbitrator’s potential conflict of interest? The Swiss Supreme Court has held that parties may not rely on the arbitrator’s disclosure, but have a duty to conduct their own investigation regarding the arbitrator’s professional and personal background. Where a party fails to do so, it forfeits its right to challenge the arbitrator at a later stage based on facts it should have known at the outset as a result of a diligent investigation.

13. In a decision of 1 February 2018 (Case No. 1320/17.0YRLSB-8), the Lisbon Court of Appeal dismissed a parties’ challenge of an arbitrator who had previously been nominated 11 times in similar cases by counsel to the opposing party. How many nominations is too many? In this context: how do you decide whether to put forward your "go to" arbitrator for a specific dispute or to "save" him or her for another, more significant case? Do such strategic considerations by counsel deny a client in a "less significant" case the benefit of the potentially most suitable candidate?

14. How does a Tribunal balance the duty to show fairness to each of the parties? How should a Tribunal seek to strike a balance between accommodating the procedural requests of one party (eg extensions of time, vacation of hearings etc) as against prejudicing the other party (eg due to undue delays, incursion of costs etc)?
15. Is the option of appointing an emergency arbitrator (under, e.g., the LCIA Rules) one that has been useful in practice? Does this option still have real benefits for proceedings seated in jurisdictions where the courts have the powers to issue ancillary orders in support of arbitration?

16. Transparency and the publication of statistics by institutions

17. The LCIA 2018 Annual Casework Report reveals that in 2018 6% of all arbitrators selected by the parties and 23% of all arbitrators selected by the co-arbitrators were women.

   - What can be done to further promote gender diversity vis-à-vis the parties and the co-arbitrators?
   - In particular, could an official women’s quota stipulated in the LCIA Rules (for example, one arbitrator of a three-persons-tribunal must be female) be a possible way or do informal instruments, such as the Equal Representation in Arbitration Pledge, or internal procedures of arbitral institutions suffice?

18. What options are available to a party if it perceives there to be tribunal bias?

19. What can be done about bad arbitrators? Is the bar for a challenge set too high?

20. It is generally the case that a sole or presiding arbitrator cannot share a nationality with one of the parties. Is this restriction justified? If there was a genuine concern about appearance of neutrality, wouldn’t a restriction have to be more nuanced?

21. Should the involvement of third party funders be disclosed, and if so, when and to whom?

22. What is the definition of a third party funder?

23. Should arbitral institutions ask parties for feedback on arbitrators?

24. How do arbitrators typically approach international sanctions that impact upon performance of a contract?
25. Contrary to the 2017 ICC Rules and the 2018 DIS Rules, the 2014 LCIA Rules (except for Art. 8 and the provisions on joinder and consolidation) do not include any express provisions on multi-contract and multi-party arbitrations.

- Have the members of the audience ever encountered any problems with such arbitrations and the fact that the LCIA Rules to not include any express provisions in this regard?
- Should the LCIA Rules include express provisions in this regard?
- If yes, which approach (for example, the one of the ICC Rules or the one of the DIS Rules) should be adopted?

26. How far is it appropriate for a tribunal to go in ‘making the case’ for the parties?

**Practice and procedure – the conduct of the proceedings**

27. Is it about time that the LCIA followed other arbitral institutions in providing specific provision and/or procedures for expedited arbitration? While Article 14.4 of the LCIA Rules imposes on the Tribunal certain general duties which includes a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, should the LCIA revise its rules to specifically provide for expedited arbitration?

28. What practical experience, if any, do delegates have so far with the Prague Rules?

29. Have any of you had experience with parties or a tribunal choosing to apply the Prague Rules on Taking of Evidence (officially launched in December 2018)?

30. Mediation. I’m frequently asked about the prospects of mediation in international commercial arbitration. Anecdotally, it seems that mediation is gradually being considered more frequently. In addition, mediation has been a topic of conversation, prompted in part by the Prague Rules and the Singapore Convention. Do others sense that as well?

31. With the recent entry into force of the Singapore Convention, is international mediation likely to undermine the primacy of arbitration in resolving international commercial disputes?

32. What can parties do to mitigate the risk of their funder not being able to honour its commitments, for example the funder going bust mid-way through the process?

33. Is a centralised international response required to prevent alleged due process concerns ruining the arbitral process?
34. Would arbitration legislation (in England and Wales and elsewhere) benefit from making it easier to obtain summary dismissal of claims and defences?

35. Are simultaneous submissions ever beneficial in arbitration proceedings?

36. Does having a scheduled document production phase in a procedural timetable encourage parties to make excessive and/or unnecessary document requests?

37. The merits of the Redfern Schedule process in large scale international commercial arbitration.

38. Do we need to be more prescriptive when it comes to setting out what counsel can and cannot do when it comes to preparing witnesses for an arbitration hearing? At present, lawyers from different jurisdictions are subject to different ethical obligations, meaning that witnesses and experts can be prepared to different extents. Does this need to change? Does the Annex to the LCIA Rules need to be amended to set out exactly what counsel can and cannot do?

39. The conduct of the proceedings: is it acceptable for parties to change their case at the last minute (e.g., introduce new/drop existing arguments at the hearing, or just before) and, if not, how can this be avoided?

40. Statistical and anecdotal evidence suggests cases that are subject to arbitration proceedings settle amicably less frequently than comparable cases that are litigated in common law courts. Should arbitral tribunals do more to address this settlement deficit and if so, what procedures should it adopt?

41. Can the Iura Novit Curia principle really be applied in international arbitration? (See Article 7 of the Prague Rules)
   Have any of you had an arbitral tribunal invoke this principle when reaching its decision?

42. Can justice truly be achieved without an appeal process?

43. Arbitration lacks rigour. Discuss.
44. Post-hearing briefs are often inefficient, costly and an unwelcome post-hearing annoyance for counsel. Should this practice be discontinued?

45. Is it procedurally fair that a Claimant should be permitted three substantive pleadings in the proceedings - Statement of Case, Statement of Reply and Defence to Counterclaim and Statement of Rejoinder to Counterclaim – but the Respondent should be limited to just two – the Statement of Defence and Counterclaim and Statement of Rejoinder and Reply to Counterclaim? If not, what is the solution?

Orders, Awards and enforcement

46. Is the current arrangement as to the non-publication of awards without prior written consent of all parties and the Arbitral Tribunal (Art. 30.3 LCIA Rules) still appropriate in light of the quest for more transparency? Should the (anonymous) publication of arbitral awards be encouraged more?

47. Should more arbitral awards be published?

48. What might the effect of the Hague Convention and Singapore Convention be on arbitration, given that the enforceability of awards in NYC countries was a unique (and important) advantage in international arbitration?

49. In contrast to the 2017 ICC Rules and the 2018 DIS Rules, the 2014 LCIA Rules do not provide for the scrutiny of awards.

• Would the members of the audience prefer a scrutiny procedure also under the LCIA Rules?
• If yes, how should such a scrutiny procedure look like, in particular, should its outcome be mandatory for the arbitral tribunal

50. The current trend of challenges under s68 of the Arbitration Act 1996

51. The decision in ZCCM Investments Holdings PLC v Kansanshi Holdings PLC & Anor [2019] EWHC 1285 (Comm)

52. Should we be calling for reform of national arbitration laws to specifically provide for enforcement of emergency arbitrator decisions?

53. How effective and efficient is the process for enforcing awards before the English courts (eg where judgment debtors launch defensive challenges to awards) and how could this be improved?
Questions of evidence

54. Independence of expert witnesses – myth or reality?

55. The merits of joint statements from party-appointed experts.

56. Is the use of joint signatory expert reports a useful tool for providing junior experts with the opportunity to get their name on the ticket? What are the foreseeable issues with the approach?

57. Are joint expert reports an effective form of evidence in international arbitration (e.g., as a method of providing more comprehensive evidence of industry practice)? Should the experts always have responsibility for discrete sections or aspects of the reports, or is it acceptable for reports to be authored jointly?

58. Is the independence of party-appointed expert witnesses a myth or a reality? Should the LCIA encourage more experts to be appointed by the Arbitral Tribunal? [Art.21, LCIA Rules 2014]

59. Why aren’t tribunal appointed experts used more often?

60. Is privilege in international arbitration an issue in practice? If so, why is the ICDR-AAA the only one of the key arbitral institutions to have tackled it and did they do a good job?

61. Is there merit in the arbitral tribunal appointing an expert, rather than each party appointing its own?

62. Witness statements are now frequently lengthy, and creatures of the legal teams representing the parties for whom the statements are given in support. With such a heavy focus (at least in common law jurisdictions) on the value of oral testimony, are witness statements in their current conventional form still fit for purpose, and how might they improved both in terms of time/cost efficiency and utility to the tribunal?

63. The role of the tribunal in the taking of evidence, focusing on the distinction between adversarial and inquisitorial approaches, and generally the interplay and influence of common law and civil law traditions in this area of arbitral practice.
Investment disputes

64. Is a judicialised two-tier multilateral investment court system a viable alternative to investor-state arbitration as we know it?

65. Should the UK (abandon current initiatives to dismantle the current system of investment treaty arbitration and) embrace ISDS post-Brexit?