Bahrain Chamber for Dispute Resolution
INTERNATIONAL ARBITRATION REVIEW
Published by Kluwer Law International B.V.
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed by
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

ISSN 2352-7374
© 2021, Kluwer Law International

This Journal should be cited as (2019) 6 BCDR, Int. Arb. Rev. 1

The BCDR International Arbitration Review is published twice per year.
Subscription prices for 2019 [Volume 6, Numbers 1 through 2] including postage and handling:
Subscription rate (print): EUR 391.00 / USD 526.00 / GBP 313.00

This journal is also available online at www.kluwerlawonline.com.
Sample copies and other information are available at lrus.wolterskluwer.com
For further information please contact our sales department at +31 (0) 172 641562 or at international-sales@wolterskluwer.com

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BCDR International Arbitration Review is indexed/abstracted in the European Legal Journals Index.

Printed on acid-free paper
# Bahrain Chamber for Dispute Resolution

## INTERNATIONAL ARBITRATION REVIEW

<table>
<thead>
<tr>
<th>Volume 6</th>
<th>June 2019</th>
<th>Number 1</th>
</tr>
</thead>
</table>

## CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION

### PART I

## In Memory of Francisco Orrego Vicuña

Francisco Orrego Vicuña (1942–2018): A Life of Service to International Law and Diplomacy

Nassib G. Ziadé

1

### Articles

<table>
<thead>
<tr>
<th>Article</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adapting Disclosure Obligations to the Realities of Modern Third-Party Funding</td>
<td>Bernardo M. Cremades</td>
<td>5</td>
</tr>
<tr>
<td>Three Approaches to Challenges of ICSID Arbitrators for Manifest Lack of Reliability for Independent Judgment</td>
<td>Antonio R. Parra</td>
<td>27</td>
</tr>
<tr>
<td>The Communication and Publication of Reasons for Decisions on Arbitrator Challenges: Increasing the Transparency of Standards and the Predictability of Decisions</td>
<td>Andrea Carlevaris</td>
<td>47</td>
</tr>
<tr>
<td>Conflicts of Interest in the Code of Best Practices in Arbitration Published by the Spanish Arbitration Club</td>
<td>David Arias &amp; Sofia Jalles</td>
<td>67</td>
</tr>
</tbody>
</table>
Neutrality, Independence and Impartiality of Arbitrators: Uniformity of Definitions, Dissimilarity of Applications

Stefano Azzali

Issue Conflicts: A Net Cast Too Wide?

Francisco González de Cossío

State Courts’ Attitude to Arbitrator Challenge Applications: Rich Tapestry of Arbitrator Bias Standards

Lord Goldsmith QC, PC, Natalie Reid & Maxim Osadchyy

Time after Time: Using Data to Inform the Decision to Disqualify an Arbitrator

Doak Bishop, Lauren Friedman, Ed Bruera & Sara McBrearty

SCC Decisions on Challenges

Annette Magnusson & Christoffer Coello Hedberg

LCIA Approach to Challenges to Arbitrators

Jacomijn van Haersolte-van Hof, Francis Greenway & Anna Cho

Dealing with Corruption in International Arbitration: The Interactions of Conflicts of Interest and Corruption

The Hon. L. Yves Fortier, QC & Laurence Marquis
SCC Decisions on Challenges

Annette MAGNUSSON* & Christoffer COELLO HEDBERG**

ABSTRACT

As one of the leading arbitration institutions globally, the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) has seen a slight increase in the number of challenges against arbitrators over the past decade. This article outlines the procedure and the legal standard applied in challenges at the SCC and provides a brief overview of SCC Board decisions on challenges during the period 2010–2019. In addition, summaries of decisions on challenges made during 2019 are provided. Based on the decisions made during this period, conclusions are drawn regarding the nature of the challenges and the principles applied by the SCC Board in its decisions.

1 INTRODUCTION

What started as a local initiative in 1917 at the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) to meet domestic needs for dispute resolution has since grown into a global operation. SCC’s move from the local to the international level coincides with an exponential increase in international trade during a period characterized by tremendous growth of the global economy.1 Today, the SCC is the most important arbitration institution in Sweden, and one of the leading institutions globally.2

As the world economy has grown, and with it the number of international arbitration cases annually around the globe, so has the caseload at the SCC. Over the past ten years the SCC has seen an average of 190 cases every year, of which roughly half are international cases. Most cases handled by the SCC are

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* Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce.
** Legal Counsel, Arbitration Institute of the Stockholm Chamber of Commerce.
commercial arbitration cases. However, since 1993 the SCC has also seen a substantial number of treaty-based investor-state cases on a regular basis.3

The SCC maintains two main sets of rules, the Arbitration Rules, and the Rules for Expedited Arbitrations (together, the “SCC Rules”).4

The organizational structure of the SCC consists of a Secretariat and a Board. The Secretariat provides a trained staff for administration of cases and assists in the Board’s decision making. The Board members, half of whom are non-Swedish nationals, convene monthly and as needed to make decisions in accordance with the applicable rules – including decisions on challenges to arbitrators.

The SCC Rules stipulate – as indeed do most institutional rules – that arbitrators must be impartial and independent. Article 18 of the Arbitration Rules requires that, before being appointed, an arbitrator must disclose any circumstances that may give rise to doubts as to their impartiality or independence. If new circumstances of the same kind arise during the arbitration, then arbitrators must immediately disclose them. A party who considers that the circumstances disclosed – or other circumstances of which the party is aware – give rise to justifiable doubts as to an arbitrator’s independence or impartiality may challenge the arbitrator under Article 19 of the Arbitration Rules. If all other parties agree to the challenge, the arbitrator must resign. In all other cases, the SCC Board decides on the challenge. If the Board sustains the challenge, the arbitrator is released from their appointment under Article 20.

Under Article 20(1)(iii) of the Arbitration Rules, the Board may also release an arbitrator who is “otherwise unable or fails to perform the arbitrator’s functions” – an unusual event. This provision reflects Section 17 of the Swedish Arbitration Act, which states that where an arbitrator has delayed the proceedings, the District Court shall, upon request by a party, release the arbitrator and appoint another arbitrator. Article 20(1)(iii) applies in the event that an arbitrator becomes ill or for other reasons fails to participate in the proceedings.

This article offers a brief overview of SCC Board decisions on challenges to arbitrators during the period 2010–2019. It includes details of decisions on


4 Revised versions of both sets of rules entered into force on 1 January 2017. The provisions related to challenges to arbitrators remain unchanged in the revised rules.
challenges for 2019, with a summary overview of previous years\footnote{For further reading on SCC Board decisions on challenges during the years 2010–2018, see the following articles (all available on the SCC website \url{https://sccinstitute.com/about-the-scc/digital-library/articles/}): Anja Ipp, Rodrigo Caré, Valeryia Dubeshka, SCC Practice Note. SCC Board Decisions on Challenges to Arbitrators 2016–2018 (August 2019); Anja Håvedal Ipp, Elena Burova, SCC Practice Note. SCC Board Decisions on Challenges to Arbitrators 2013–2015 (2016); Felipe Mutis Téllez, Arbitrators’ Independence and Impartiality: A Review of SCC Board Decisions on Challenges to Arbitrators 2010-2012.} and reflections on the major principles and procedures applied.

\section{SCC Practice and Procedures for Deciding Challenges Against Arbitrators}

Under Article 19(3) of the Arbitration Rules, a party who wants to challenge an arbitrator must submit a written statement to the Secretariat setting forth the reasons for the challenge. The challenge must be filed within 15 days from when the circumstances giving rise to the challenge became known to the party. Failure by a party to challenge an arbitrator within the stipulated time constitutes a waiver of the right to issue a challenge, and the SCC Board can dismiss a challenge on this ground even where other grounds exist to sustain the challenge.

A challenge always runs the risk of delaying the proceedings. It is therefore of utmost importance that any challenge against an arbitrator is handled as efficiently as possible, while at the same time safeguarding the principles of due process, giving each party and the arbitrator involved an equal opportunity to submit their comments.

Arbitrators and opposing parties are typically given one week to comment on the challenge. The challenging party may, if necessary, be given a further opportunity to respond. If all parties agree to the challenge, the arbitrator must resign. In all other cases, including those where the arbitrator offers voluntarily to step down but one party objects, the decision is for the Board to make.

The SCC Secretariat prepares a memorandum for the Board, which includes the grounds for challenge, comments submitted by the arbitrators and parties, and an analysis of the circumstances based on SCC precedent, legal authorities and the IBA Guidelines on Conflicts of Interest in International Arbitration. The Board discusses the challenge at its next monthly meeting. In urgent situations an extraordinary board meeting may also be convened. The Board usually reaches a decision by consensus, but in difficult cases the decision is made by majority vote.

Since 1 January 2018, the SCC has provided reasons for its decisions on challenges. As a main rule, the reasons provided to the parties are brief, but may be more extensive if warranted.
3 APPLICABLE LEGAL STANDARD

3.1 The SCC Rules

Under Article 19(1) of the Arbitration Rules, a party may challenge an arbitrator “if circumstances exist which give rise to justifiable doubts as to the arbitrator’s impartiality or independence or if he/she does not possess the qualifications agreed by the parties.” The SCC Rules do not define “justifiable doubts” or explain what circumstances may legitimately give rise to such doubts. Therefore, when determining whether a challenge filed under this provision should be sustained, the SCC Board looks to applicable law and best practices in international arbitration for guidance.

3.2 The UNCITRAL Rules

The SCC Board also decides challenges under the 1976 and 2010 UNCITRAL Arbitration Rules, where the parties have designated the SCC as appointing authority. Article 10 of the 1976 Rules and Article 11 of the 2010 Rules stipulate that: “Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.” Like the SCC Rules, the UNCITRAL Rules do not define “justifiable doubts.” Therefore, when determining whether a challenge submitted under the UNCITRAL Rules should be sustained, the SCC Board looks to applicable law and best practices in international arbitration for guidance.

3.3 The Swedish Arbitration Act

Most SCC arbitrations have their legal seat in Sweden, rendering the Swedish Arbitration Act applicable to the proceedings. The same is often true for UNCITRAL arbitrations where the SCC has been designated as the appointing authority.

On 1 March 2019, a revised Arbitration Act entered into force. The 1999 Arbitration Act applies to arbitral proceedings commenced prior to 1 March 2019, with some exceptions.

Most of the decisions taken by the SCC Board during 2010–2019 have thus been governed by the 1999 Arbitration Act. However, in practical terms, the standard applied when assessing arbitrators’ impartiality and independence in SCC arbitrations seated in Sweden has not changed during this time, that is, with the introduction of the revised Arbitration Act on 1 March 2019.
Section 8 of the 1999 Act states that an arbitrator may be discharged “if there exists any circumstance which may diminish confidence in the arbitrator’s impartiality” (emphasis added). This provision did not explicitly require arbitrator independence, but in doctrine and jurisprudence, the “impartiality” requirement was interpreted as including “independence” as spelled out in the UNCITRAL Model Law and the SCC Rules. In the revised Act that came into effect on 1 March 2019, the word “independence” was added to Section 8. Again, however, this has not altered the intended application of the provision.

Section 8 of the Act provides a non-exhaustive list of circumstances that may diminish confidence in an arbitrator’s impartiality or independence. This list, which remains unchanged in the revised legislation, includes: (1) the arbitrator or a person closely associated with the arbitrator may “expect benefit or detriment worth attention, as a result of the outcome of the dispute,” (2) the arbitrator represents a party who may expect such benefit or detriment, and (3) the arbitrator has taken a position in the dispute. Of course, circumstances other than those enumerated in Section 8 may serve as grounds for disqualifying an arbitrator. Nonetheless, this provision of the Act guides the SCC Board’s determination of which situations give rise to “justifiable doubts” under the SCC Rules.

### 3.4 Case Law

The Supreme Court of Sweden has held that because arbitral awards cannot be challenged on the merits, the standard for arbitrators’ impartiality is necessarily a high one. An arbitrator’s impartiality should be assessed objectively: if a situation or a relationship exists that would normally lead to the conclusion that the arbitrator is not impartial, the challenged arbitrator should be dismissed even if there is no reason to assume that he or she will lack impartiality in the specific dispute concerned.

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10 See judgment of the Supreme Court of Sweden in case T 2448-06 of 19 November 2007 (NJA 2007 p. 841). Available at https://www.arbitration.sccinstitute.com/Swedish-Arbitration-Portal/Supreme-
The Svea Court of Appeal has held, and the Supreme Court has affirmed, that the decision on whether to sustain a challenge to an arbitrator should be based on an “overall assessment taking all relevant circumstances into consideration.” In other words, even if one circumstance alone is not sufficient to doubt the challenged arbitrator’s impartiality, several individually rather marginal circumstances may lead the decision-maker to a different conclusion.

### 3.5 The IBA Guidelines on Conflicts of Interest

The IBA Guidelines on Conflicts of Interest in International Arbitration have gained wide acceptance within the international arbitration community since their first issuance in 2004. Arbitrators commonly rely on the Guidelines when making decisions about prospective appointments and necessary disclosures, and the Guidelines are frequently cited in challenges. The SCC Board also routinely consults the Guidelines when deciding challenges under the SCC Rules and the UNCITRAL Rules. Furthermore, the Supreme Court has noted that there may be reason to consider applying the IBA Guidelines when deciding on challenges to arbitrators under the provisions of the Arbitration Act. Similarly, the Svea Court of Appeal has noted that it may consider the IBA Guidelines – especially in cases involving non-Swedish parties – in making decisions on challenges to arbitrators under the provisions of the Arbitration Act.

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 a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.” In other words, even the appearance of bias, as well as actual bias, may trigger dismissal of an arbitrator.

The SCC Board routinely references IBA Guidelines lists when assessing whether a circumstance, relationship or situation invoked as a ground for challenge...
gives rise to “justifiable doubts” as stipulated by the SCC Rules. The Board may, however, choose to deviate from the Guidelines when its own analysis warrants a different outcome.

4 SUMMARY OF DECISIONS ON CHALLENGES

The SCC has previously published articles containing summaries of decisions on challenges reported at the SCC between 2010 and 2018.17

The section below contains summaries of seven decisions on challenges reported at the SCC during 2019. Some of the background facts have been slightly altered for reasons of confidentiality. In some cases, the reasons have been omitted, in full or in part, also to preserve confidentiality.

4.1 2019/027

The respondent challenged the arbitrator appointed by the claimant based on the assertion that the arbitrator had publicly expressed opinions related to a fundamental issue on which the tribunal was to decide, which favoured the claimant’s position.

The claimant stated that the grounds invoked by the respondent did not fall under the red or orange list of the IBA Guidelines on Conflicts of Interest in International Arbitration, and that the arbitrator’s general theoretical views were not directed at the case at hand. The arbitrator commented that the grounds raised by the respondent fell under the green list of the Guidelines.

The SCC Board dismissed the challenge and provided the following reasons for its decision:

Under Article 19(3), a challenge must be made in writing to the Secretariat within 15 days from the date the circumstances giving rise to the challenge became known to the party. The Board is able to examine the timeliness of the challenge irrespective of whether this has been raised by one of the parties. In the present case, the SCC Board notes that the articles referred to are readily available in the public domain since many years but that there is no evidence as to when Respondent learned of [the arbitrator’s] publications. The SCC Board also notes that Claimant did not object to the timeliness of the challenge. Therefore, the Board decides not to dismiss the challenge on timeliness grounds and proceeds to consider the challenge on the merits.

The SCC Board considers that an opinion on an issue of law does not per se give rise to justifiable doubts to the impartiality and independence of arbitrators. The SCC Board notes that the opinions expressed by [the arbitrator] in his previous publications are neither related to the present dispute nor to its parties.

17 See previous articles published by the SCC, supra note 5.
Therefore, SCC Board holds that the invoked facts do not constitute ground for his release from the appointment.

4.2 2019/126

The respondent challenged the arbitrator appointed by the claimant based on the fact that the arbitrator and one of claimant’s counsel had been partners at different offices of the same law firm for six years and had acted as co-counsel in at least one dispute during that time.

The respondent asserted that “a close personal relationship” as referred to in Article 3.3.6 of the IBA Guideline’s Orange List existed between the two lawyers. The respondent also referred to Article 3.3.3 of the IBA Guideline’s Orange list, i.e. that the arbitrator was, “within the past three years, a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the arbitration.”

The claimant’s counsel and arbitrator had both left the law firm. The arbitrator had left one month short of three years before being appointed in the case before the arbitral tribunal.

The claimant submitted that the lawyers did not work at the same office of the firm, that they did not cooperate on any other matter than the one mentioned by the respondent, and that no evidence had been provided in support of the close personal relationship alleged by the respondent.

The arbitrator stated that he had not worked with the claimant’s counsel other than on the case referred to by the respondent and that the disclosures did not impair his impartiality or independence.

The SCC Board dismissed the challenge and provided the following reasons for its decision:

The SCC Board notes that the referenced fact, as disclosed, fall under Art. 3.3.3 of the Orange List of the IBA Guidelines.

The Orange List is a non-exhaustive list of specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator’s impartiality or independence, which provides examples of circumstances that an arbitrator should disclose; the existence of such circumstances does not necessarily warrant the dismissal of a challenged arbitrator. It is uncontested that [the arbitrator] and [claimant’s counsel] used to work for [same law firm] and as co-counsel in one case.

The SCC Board notes that [the arbitrator] was working in [office x of the law firm] and [claimant’s counsel] in [office y of the law firm], that the dispute in question was settled in [date] and that [the arbitrator] and [claimant’s counsel] have not worked together since.

The SCC Board further notes that both [the arbitrator] and [claimant’s counsel] left [the law firm] in [date] – a month short of three years before [the arbitrator] was
appointed in this arbitration – and have pursued their respective careers with other law firms in different countries.

The Respondent has also argued that such close personal friendship as referred to in Art. 3.4-3.6 of the IBA Guidelines’ Orange List, exists between [the arbitrator] and [claimant’s counsel]. This argument is denied by both [the arbitrator] and [claimant’s counsel]. The Respondent has not submitted any evidence to support the allegation, other than referring to the circumstance that they were colleagues within the same law firm.

In light of the mentioned circumstances, the SCC Board finds that neither the circumstance that the two lawyers worked together on the same case [x] years ago, nor that they remained partners in different offices of the same law firm for a few further years until that professional relationship ceased three years ago, [can] be considered giving rise to justifiable doubts as to [the arbitrator’s] impartiality and independence.

4.3 2018/021

In this case, the arbitration agreement prescribed that “no person having [nationality of claimants] or [nationality of respondents] nationality, legal qualifications or residency shall be appointed as an arbitrator.”

The claimants challenged the arbitrator appointed by the respondents on two grounds. First, the claimants alleged that the appointment of the arbitrator – which due to the resignation of the previous arbitrator was done close to the hearing in the case – was part of delaying tactics by the respondents, since the respondents were fully aware that the newly appointed arbitrator would not be available for the hearing. Second, the claimants asserted that that the fact that the arbitrator was sitting as an international judge at a special court based in the respondent’s country, but separate from that country’s domestic courts, meant that the arbitrator’s relationship with that country was in violation of the arbitration agreement and caused justifiable doubts as to the impartiality and independence of the arbitrator.

The respondents opposed the claimants’ allegation that the appointment was a delaying tactic. The respondents submitted that the arbitrator was appointed based on her qualifications, expertise and experience and that it was unsurprising that it was difficult to find a suitable candidate with immediate availability given the proximity and duration of the hearing. Regarding the claimants’ second ground, the respondents submitted that the appointment did not meet any of the prohibited criteria in the arbitration agreement or give rise to doubts as to the arbitrator’s impartiality or independence.

The arbitrator commented inter alia that she was a citizen in another country than the countries of the parties and that the special court was separate from domestic courts.
The SCC Board dismissed the challenge and provided the following reasons for its decision.

Non-availability

The SCC Board notes that the fact that [the arbitrator] is unavailable to participate in a lengthy hearing on such short notice is hardly surprising and does not mean she is unavailable to serve as an arbitrator in the proceeding. Indeed, [the arbitrator] has confirmed her ability to serve. The SCC Board therefore concludes that, on the basis of the circumstances disclosed to date, [the arbitrator] does not lack availability to serve as an arbitrator in this proceeding.

Position of justice of [the special court]

It is uncontested that [the arbitrator] is a [x] national without residency neither in [claimant's country], nor in [respondent's country]. [The arbitrator] has submitted that she has no legal qualification to practice in [claimant's country] or [respondent's country], but that she sits as an international judge in [the special court]. The claimants' challenge is, inter alia, based on the possibility that [the respondent] itself and/or any of the claimants might be parties in a future case before [the special court]. The mere possibility that a conflict of interest situation could arise in the future is not relevant for the question at hand.

It is clear from the arguments submitted by the Parties that the circumstance that an arbitrator also serves as a judge in [the special court] does not in itself qualify her as having legal qualification or residency in [respondent's country].

Accordingly, the appointment of [the arbitrator] is not inconsistent with the qualifications agreed by the Parties under the [arbitration agreement].

Section 3.4.5 of the Orange List in the IBA Guidelines, addresses similar circumstances where the judge has heard a “significant case involving one of the parties, or an affiliate of the parties” within the past three years. Claimants have not presented any evidence to support that [the arbitrator] has heard a case which would fall into this category. The possibility that it might happen in the future does not give reason to doubt [the arbitrator’s] impartiality and independence in the present arbitration. In light of the mentioned circumstances, the SCC Board finds that the appointment of [the arbitrator] does not constitute a breach of the [arbitration agreement] and that [the arbitrator’s] position as Justice of [the special court] does not constitute justifiable doubts as to [the arbitrator’s] impartiality and independence.

4.4 2017/060

In this investment arbitration case, the respondent challenged the arbitrator appointed by the claimant. The grounds for the challenge were i) that the arbitrator was acting as counsel in another arbitration under the same treaty and ii) that the arbitrator had recently rendered a dissenting opinion in a final award in a separate arbitration which included issues of fact and law which overlapped with the present arbitration.
The claimant objected to the challenge and argued that the mere fact that the arbitrator was counsel in an unrelated arbitration did not constitute justifiable doubts as to his impartiality and independence, and that the separate arbitration was similar but not identical to the present arbitration. The arbitrator commented and maintained his impartiality and independence. The SCC board upheld the challenge on the second ground of the challenge.

4.5 2018/114

Two challenges occurred in this case. First, the claimant challenged the arbitrator appointed by the respondent based on the arbitrator’s connection to the state which was the ultimate owner of the respondent company. According to the claimant, the arbitrator, who was a professor at a state-owned university, was closely connected with the highest public bodies of said state. The claimant also argued that the arbitrator had been working in different governmental bodies, that a close family member of the arbitrator was a long-term employee of a public authority in said state and that the arbitrator was a member of a certain legislative committee together with a member of the supervisory board of one of the respondent’s parent companies.

The respondent objected to the challenge. The arbitrator also commented on the challenge.

The SCC board dismissed the challenge and provided the following reasons for its decision:

Claimant grounds its challenge on the alleged close connection between [the arbitrator] and [Respondent’s ultimate owner]. Having considered the challenge application and Respondent’s commentaries, the SCC Board notes the following.

While the SCC Board agrees that a doubt in arbitrator’s impartiality and independence may arise, if there is a relationship between an arbitrator and the party, such relationship requires certain degree of proximity and relation to the proceedings in question. The SCC Board notes that none of the facts, referenced by claimant, involves the state entity in question, either directly or indirectly.

Honorary academic service on legislative committees and teaching at a state educational institution is typical for arbitration specialists with academic background. As such, the employments and civil services referenced by claimant are not sufficient proof of the arbitrator’s dependence or of a close connection to the state, yet less so to the dispute at hand.

Regarding arbitrator’s involvement in the [legislative committee] together with a member of the Supervisory Board of Respondent’s parent company, the SCC Board holds that it has too remote, if any, relation to the present dispute, and, hence, do not raise doubts in the arbitrator’s impartiality and independence.
Second, the respondent challenged the arbitrator appointed by the claimant and invoked the following circumstances as grounds for the challenge.

1. Relationship between the arbitrator and the claimant; the claimant was a member in a business and industry organization in which the arbitrator held an honorary board position.
2. Relationship between the arbitrator and the claimant's counsel; the arbitrator and the claimant's counsel participated in the same charity organizations and conferences.
3. Within the past three years the arbitrator's law firm had provided legal services to the parent company of the claimant.
4. The arbitrator and representatives from the claimant's counsel's law firm and a law firm representing the claimant's interests in parallel proceedings had participated in international conferences, some of which were sponsored by claimant's counsel's law firm.

The claimant objected to the challenge. The arbitrator also commented on the challenge.

The SCC board dismissed the challenge and provided the following reasons for its decision.

Challenge must be made in writing to the Secretariat within 15 days from the date the circumstances giving rise to the challenge became known to the party. The Board is able to examine the timeliness of the challenge irrespective of whether this has been raised by one of the parties.

The Board notes that the challenged arbitrator answered the request for further disclosure on [date x] in [language x] and on [date y] in [language y]. The challenge to the arbitrator was made on [date].

The Board considers that the Respondent should have become aware of the grounds for challenge on [date x] when it received the arbitrator's disclosure in [language x]. Nonetheless, taking into account that (1) the official language of the proceedings had yet to be determined, (2) the challenge was submitted within 15 days of receipt of the [language y] translation of the disclosure, and (3) the Claimant did not object to the timeliness of the challenge, the Board has decided not to dismiss the challenge on timeliness grounds and to proceed to a consideration of the merits.

With respect to ground 1) the SCC Board observes that membership in business and industry organizations is a typical feature of business activity. Participation in this kind of organizations does not prove either individual relation between its members, or its relevance to the current proceeding. The facts referenced under 1) do not constitute ground for a challenge within the meaning of the Swedish Arbitration Act and the SCC Rules. […].

Similarly, with respect to grounds 2) and 4) the SCC Board considers, that this type of activities do not give rise to justifiable doubts as to the arbitrator's impartiality and independence from the perspective of the Swedish Arbitration Act and the SCC Rules. They also fall within the green list of the IBA Guidelines on Conflicts of Interest in
International Arbitration (IBA Guidelines), which means that no appearance and no actual conflict of interest exists from an objective point of view. The SCC Board therefore dismisses the challenge on these grounds.

In relation to ground number 3), the SCC Board notes that the referenced facts, as disclosed, fall under §3.1.4 of the Orange List of the IBA’s Guidelines and should be examined from the perspective of the nature and scope of the services rendered by the arbitrator’s law firm.

It is uncontested that the disclosed services were unrelated to the dispute at hand and did not involve the challenged arbitrator. The SCC Board also notes that the services were procured by Respondent’s parent company through a bidding process and were limited in scope. Having weighed the arguments of the parties, the SCC Board concludes that the facts relied on are too far removed from the challenged arbitrator and the evidence is insufficient for a third person to consider that the arbitrator would not be impartial in this case.

4.6 2018/121

The respondent challenged the arbitrator appointed by the claimant based on the fact that the arbitrator served on the same two boards as a board member of the claimant. Further, the respondent asserted that according to General Standard 6(b) in the IBA Guidelines on Conflicts of Interest in International Arbitration 2014, the board member of the claimant should be considered to be equivalent to a party to the arbitration since she had a controlling influence in the claimant company.

The claimant objected to the challenge and argued that the connection between the arbitrator and the board member of the claimant company was weak and that a professional relationship with the same third party did not constitute a conflict.

The arbitrator commented that the board member in the claimant company should not be seen as equivalent to a party to the arbitration. According to the arbitrator, there were no circumstances that would jeopardize her independence or impartiality.

The reasons for the SCC Board’s decision were provided in Swedish. Below is a translation of the reasons provided by the Board. For reasons of confidentiality, parts of the reasons have been omitted from the translation:

Considering the circumstances, [the board member of the claimant company] shall be considered to be an equivalent to a party to the arbitration. However, the fact that [the arbitrator] and [the board member of the claimant company] are board members in [company], which is unrelated to the present arbitration, does not give rise to justifiable doubts as to [the arbitrator’s] impartiality or independence in the present arbitration. Nor does the fact that [the arbitrator] serves as a deputy board member and that [the board member of the claimant company] serves as a board member in [company], which is
unrelated to the present arbitration, give rise to justifiable doubts as to [the arbitrator’s] impartiality or independence in the present arbitration.

Against this background, the Board concludes that the challenge put forth by the respondent shall be dismissed.

5 SUMMARY OF DECISIONS ON CHALLENGES 2010–2019

A review of decisions on challenges reported at the SCC between 2010 and 2019 reveals a slight increase in the number of challenges against arbitrators between 2010 and 2018. However, numbers are still relatively low and fewer challenges were made during 2019. This in turn appears to correspond with available international comparisons from other international institutions where the overall number of challenges remains rather limited (as reported in 2017).\textsuperscript{18}

5.1 Statistical Overview

<table>
<thead>
<tr>
<th>Year Range</th>
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</tr>
</thead>
<tbody>
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</tbody>
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An important change in the SCC decision-making process during the period covered by this article is the introduction in 2018 of the practice of communicating reasons for decisions on challenges. This new practice was introduced in response to increased demands for transparency in international arbitration in general, including the decision-making process for challenges to arbitrators.

Building upon the transparency provided by the published summaries of SCC challenge decisions,\textsuperscript{19} in 2017 the SCC Board decided that it was appropriate also to provide parties and arbitrators with reasons at the time of the decision. Explaining the Board’s decision to the parties and to the challenged arbitrator would enhance the parties’ confidence that their objections were taken


\textsuperscript{19} As done in articles referred to in note 5 above.
seriously and would bring greater clarity and predictability to the arbitrator challenge process. This routine has been in place as of 1 January 2018.  

Many of the grounds presented for challenges tend to be of a similar nature. This would include lack of impartiality and independence due to an alleged relationship between a present or past law firm of the arbitrator and one of the parties, or facts stemming directly or indirectly out of an opposing-counsel relationship in separate, and at times parallel, proceedings or other forms of relationship such as membership of organizations. Several examples of such situations are given in previously published articles going into the details of challenge decisions between 2010 and 2018, and in cases 2019/126 and 2018/114 summarized above.

Challenges have also been based on the arbitrator’s alleged relationship with one of the parties to the dispute, other than attorney-client relationships. Examples of such challenges include cases 2018/114 and 2018/121 summarized above. In some rare cases, challenges have been based on procedural decisions by the arbitral tribunal.

A much-debated ground for challenges in recent years, but with few examples in SCC practice, is issue conflict. However, in 2015 the SCC Board had reason to consider the topic in a dispute that arose out of a bilateral investment treaty. A review of the case is available in SCC Decisions on Challenges to Arbitrators 2013–2015, published in 2016. In short, the challenge was sustained. As the issue arose in a very specific context involving a complex investor-state issue, the decision should not be seen to indicate SCC policy for issue conflicts in general. In another case from 2017, described above, the board also sustained a challenge based on issue conflict.

All challenges are decided on a case-by-case basis. In matters involving issue conflict this becomes even more important as circumstances can be highly case-specific.

6 CONCLUSION

This article has offered an overview of SCC practice in challenges to arbitrators between 2010 and 2019, and has summarized a selection of decisions rendered by the SCC Board in 2019.

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22 SCC arbitration 2014/169. For further details, see Anja Håvedal Ipp, Elena Burova, SCC Decisions on Challenges to Arbitrators 2013–2015 (2016), supra note 5.
From this previous practice of the SCC Board, some general guidelines and tendencies can be discerned.

In each challenge, the SCC Board considers applicable law, jurisprudence, and best practices in international arbitration. The IBA Guidelines on Conflicts of Interest are considered, but the Board may also choose to deviate from those Guidelines.

Not only the existence of actual bias in a dispute, but also the appearance of bias, may trigger the removal of arbitrators. A challenge will generally not be sustained if it is based on circumstances or relationships that ceased to exist several years ago. The time frames set out in the IBA Guidelines serve as a reference but are not necessarily decisive.

The SCC Board has consistently held the view that a client of a single office of a law firm is to be treated as a client of the whole firm for the purpose of assessing conflict of interest, however global that firm may be. This is also in line with the IBA Guidelines. Similarly, a lawyer is generally seen to assume the identity of the firm. Thus, a relationship between a party and one of the firm's partners will often, though not always, also be ascribed to the other partners.

A recurring ground or theme for challenges has been where a party alleges that an arbitrator is biased because of an opposing-counsel relationship in separate, and at times parallel, proceedings. This circumstance, on its own, has rarely been considered by the SCC Board as grounds for justifiable doubts as to the arbitrator's impartiality.

Likewise, challenges based solely on an arbitrator's opposing-counsel relationship in other contexts, such as committees or organizations, will very rarely be sustained. Alleged relationships between the arbitrator and one of the parties other than attorney-client relationships will be considered on a case-by-case basis based, for example, on the proximity and relation to the proceedings in question.

When a party presents several grounds for a challenge, the SCC Board will make an overall assessment, taking all relevant circumstances into consideration. It may be that several relationships or circumstances, when viewed in combination, are sufficient to sustain a challenge, even where, seen separately, they would not warrant release of the arbitrator.

And last but not least it is important to take note of the fact that while previous decisions may be indicative of how the Board would rule in the future, the Board considers each challenge on its own merits and in the context of all relevant circumstances.