

SCC PRACTICE: CHALLENGES TO ARBITRATORS SCC Board decisions 2005-2007

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Introduction

Under the Swedish Arbitration Act (“SAA”) and the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC Rules”), the arbitrators must be impartial and independent.¹ If the parties to the arbitration have grounds on which to question the independence and/or impartiality of appointed arbitrators, they may initiate a challenge to one or more arbitrators. When an arbitration is conducted pursuant to the SCC Rules, any challenge to an arbitrator is brought to the SCC Board for final determination. This article will review the recent challenges which have been made in SCC arbitrations.

The grounds for a challenge vary from case to case. In the past three years the challenges under the SCC Rules have often addressed the contacts between an arbitrator and his or her law firm with one of the parties to the arbitration. Other notable grounds have included the following situations: a party not receiving proper notice for appointing an arbitrator; an arbitrator giving an expert opinion in a previous case involving one of the parties; an arbitrator participated in the decision on a challenge of an arbitrator in another arbitration involving one of the parties.

Although the potential grounds for challenging an arbitrator are numerous, the actual number of challenges to arbitrators has been low in comparison to the number of arbitrations. From January 2005 through December 2007, there were 411 arbitral proceedings initiated at the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”). In those proceedings, there were a total of 22 challenges to arbitrators. Ten of those challenges led to the removal of an arbitrator.² The challenges were made under the SCC Rules, the SCC Rules for Expedited Arbitrations and in ad hoc proceedings under the UNCITRAL Arbitration Rules where the SCC acted as appointing authority.

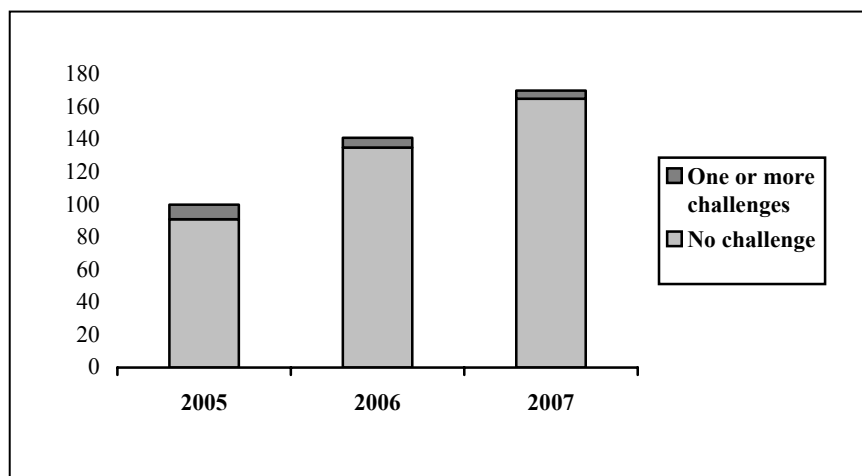
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¹ There is no term equivalent to the word “independence” in the SAA. But according to the legislative history, in those cases where a circumstance exists such that the independence of an arbitrator might justifiably be doubted, his impartiality can *also* be called into question. See Govt. Bill 1998/99:35, p. 82.

² The statistics do not include instances in which a challenged arbitrator chose to resign from a case. In such instances, the SCC does not make a decision on the challenge.

The number of challenges does not seem to follow the number of initiated proceedings. In 2005, there were 100 cases initiated at the SCC and 11 challenges to arbitrators. In 2006 there were 141 cases initiated and six challenges. In 2007, the SCC experienced the highest number of cases in its history with 170 cases, yet there were only five challenges. Even if one considers that some of the challenges originated from the same cases or cases handled in parallel by the same arbitrator, there appears to be no clear relationship between the caseload and the number of challenges.

Diagram Part of initiated cases where one or more challenges were made



As the SAA is applicable to most arbitrations which are administered by the SCC, an account of the relevant section of the SAA will follow. Thereafter the challenge procedure under the SCC Rules is described, followed by a presentation of six of the recent cases from the SCC. As the SCC promotes a homogenous international standard it uses the International Bar Association's guidelines ("IBA Guidelines") as a tool when judging conflicts of interest in international arbitration. A reference is made to the applicable section, if any, of the IBA Guidelines, in relation to each of the described cases.

Swedish Arbitration Act (SAA)

The SAA is applicable to arbitrations that take place in Sweden. The Swedish Act invests parties with the right to freely choose their arbitrators and allows that any person who possesses full legal capacity in regard to his actions and his property may act as an arbitrator. However, the SAA requires that an arbitrator shall be impartial. If a party so requests, an arbitrator shall be removed if there exists any circumstance, which may

diminish confidence in the arbitrator's impartiality. Unlike many national arbitration laws, the SCC sets out a non-exhaustive list of circumstances that are deemed to constitute grounds for challenge. These are:

1. Where the arbitrator or a person closely associated with him is a party, or otherwise may expect a benefit or detriment worth attention, as a result of the outcome of the dispute;
2. Where the arbitrator or a person closely associated with him is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect a benefit or detriment worth attention as a result of the outcome of the dispute;
3. Where the arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in the preparation or conduct of his case in the dispute; or
4. Where the arbitrator has received or demanded compensation in violation of section 39, second paragraph.

It is important to note that the above quoted section is not exhaustive, but merely gives examples of when an arbitrator is disqualified. Thus, an arbitrator may be considered partial due to other circumstances than the ones enumerated in the SAA. The section does, however, serve as an important guideline as regards which situations may give rise to justifiable doubts to the arbitrator's impartiality.

The SAA provides that the parties may decide that an arbitration institution shall finally determine a challenge. According to the SCC Rules, the SCC Board decides on a challenge. The SCC decision is final. When an arbitration is not administered by the SCC or another institution, then the SAA provides that the challenge shall be decided by the arbitral tribunal and this decision may be reviewed by the District Court.

Challenges under the SCC Rules

The SCC has no pre-established list from which arbitrators must be selected. The parties may appoint any person of any nationality and profession as arbitrator, so long as he or she is impartial and independent. A person asked to accept an appointment as arbitrator must disclose any circumstance likely to give rise to justifiable doubts as to his or her impartiality and independence. If he or she is appointed even though there was something to disclose, he or she shall immediately, in a written statement, make the same disclosure to the parties and the other arbitrators.

In order to facilitate the disclosure process, the SCC provides each arbitrator, whether party-appointed or appointed by the SCC, with a Confirmation of Acceptance form, i.e. a standard form to be completed and signed by the arbitrator. The form gives the arbitrator an opportunity to, besides declaring his or her independence and impartiality, disclose any other circumstances he or she finds appropriate. When completed and signed, the Confirmation of Acceptance form is returned to the SCC, which forwards it to the parties and the other arbitrators. If the Confirmation of Acceptance contains a disclosure it is for the parties to assess its content and, if so deemed motivated, act accordingly. The SCC does not take any action *ex officio* where a form contains a disclosure. Furthermore, an arbitrator, who in the course of the proceedings becomes aware of any circumstances, which may disqualify him or her, must immediately, in writing, inform the parties and the co-arbitrators thereof.

Pursuant to the SCC Rules, a party who wishes to challenge an arbitrator shall send a written statement to the SCC setting forth the reasons for such challenge. Notification of the challenge must be made within 15 days from the date on which the allegedly disqualifying circumstance became known to the party. Failure by a party to notify the SCC within the time stipulated will be considered a waiver of the right to initiate a challenge.

If the SCC receives a challenge of an arbitrator, the parties and the arbitrators are provided an opportunity to comment on the challenge before a decision is made. Generally, the parties and the arbitrators are given a time limit of one week to submit comments. When the time limit has passed, the SCC Board will decide upon the challenge. If the Board finds an arbitrator disqualified, the arbitrator is released.

Should the SCC decide to release the arbitrator, the SCC shall, if the SCC has appointed the released arbitrator, appoint another arbitrator, replacing the person being released. If the released arbitrator was party-appointed, the appointing party will be given an opportunity to appoint a new arbitrator, unless otherwise deemed appropriate by the Board.

As a general rule, the SCC does not provide reasons for its decisions concerning challenges of arbitrators regardless of whether a challenge is dismissed or sustained. Therefore you find, in the below description of six recent cases from the SCC, included the correspondence between the parties but excluded any reasons by the SCC. Thereafter brief comments are made on what conclusions might be drawn from the recent practice.

6 Case Studies

CASE 1 SCC Arbitration V (053/2005)

Challenge by the Respondent of the Chairperson appointed by the party-appointed arbitrators

Nationality of the Parties:

Claimant: Swedish
Respondent: Latvian

Place of Arbitration:

Helsinki

Nationality of the Arbitrators:

Chairperson: Finnish
Co-Arbitrator: Swedish
Co-Arbitrator: Latvian

Applicable Rules:

SCC Rules for Expedited Arbitrations

Language:

English

Applicable section in the IBA Guidelines:

The situation described below can be found on the Orange List³, section 3.1.4. The section addresses the situation in which the arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

FACTS

The Claimant and the Respondent entered into a service agreement. The Claimant was to provide the Respondent with legal services. The Respondent failed to pay in full the agreed professional fees to the

³ The Orange List is a non-exhaustive enumeration of specific situations which (depending on the facts of a given case) in the eyes of the parties may give rise to justifiable doubts as to the arbitrator's impartiality or independence. According to the IBA Guidelines the arbitrator has a duty to disclose situations falling under the Orange List. In all these situations, the parties are deemed to have accepted the arbitrator if, after disclosure, no timely objection is made.

Claimant. Pursuant to the parties agreement the Claimant initiated arbitration. According to the arbitration clause applicable as between the parties, the arbitral tribunal was to consist of three arbitrators. The two party-appointed arbitrators were according to the clause instructed to appoint the Chairperson of the tribunal. The Chairperson declared himself impartial and independent but made certain disclosures in his Confirmation of Acceptance form to the SCC. He declared that his law firm had during recent years been given a number of assignments from the Claimant.

CHALLENGE BY RESPONDENT

The Respondent challenged the Chairperson based on the disclosures he made in his Confirmation of Acceptance form. The Respondent argued that since the law firm of the Chairperson had provided services for the Claimant he couldn't be objective and independent in the pending case.

CLAIMANT'S COMMENTS

The Claimant stated that it did not wish to comment on the challenge.

ARBITRATOR APPOINTED BY THE CLAIMANT

The arbitrator appointed by the Claimant submitted that it was his understanding that the law firm of the Chairperson no longer had assignments for the Claimant. He stated that since the Chairperson himself had not had any assignments for the Claimant the present circumstances did not disqualify him as arbitrator in the pending case.

ARBITRATOR APPOINTED BY THE RESPONDENT

The arbitrator appointed by the Respondent stated that he did not know of the relationship between the Chairperson's law firm and the Claimant at the time the Chairperson was appointed. He further stated that he did not see any formal circumstances on which to challenge the Chairperson. He stated that the situation could however give rise to some ethical questions. He stated that he would respect any decision on the challenge as given by the SCC Board.

CHALLENGED ARBITRATOR (Chairperson)

The Chairperson stated that he had himself not worked on any assignments for the Claimant. He further stated that his law firm had had three assignments for the Claimant in 2005. Three companies tied to his law firm had had assignments for the Claimant in 2005. Finally the Chairperson stated that his law firm was not financially dependent on the Claimant.

SCC DECISION

The challenge to the Chairperson was sustained. The arbitrator was released from the appointment.

CASE 2 SCC Arbitration V (078/2005)

Challenge by the Respondent of the sole arbitrator appointed by the SCC Board

Nationality of the Parties:

Claimant: Cypriote
Respondent: Saudi Arabian

Place of Arbitration:

Stockholm

Nationality of the Arbitrator:

Sole Arbitrator: French

Applicable Rules:

SCC Rules

Language:

English

Applicable section in the IBA Guidelines:

The situation described below does not correspond to any of the specific situations described in the guidelines.

FACTS

The Claimant and the Respondent entered into a representation agreement. The Claimant had been appointed to represent the Respondent within a certain geographical area. The Claimant initiated arbitration and claimed that the Respondent had terminated its payments to the Claimant in breach of the agreement. The dispute was to be resolved by a sole arbitrator who was appointed via a list procedure. The Respondent challenged the arbitrator appointed.

CHALLENGE BY RESPONDENT

The Respondent asserted that there had been irregularities and improprieties in the proceedings before the SCC and before the arbitrator. The Respondent asserted that the SCC had sent communications to another address than that reported to the SCC by the Respondent, thereby preventing them from exercising their rights in relation to the appointment of the arbitrator. The Respondent further argued that the arbitrator, by failing to examine these issues, had unlawfully seized and assumed jurisdiction. The Respondent requested that the SCC dismiss the arbitrator due to his failure to perform his functions in an adequate manner.

CHALLENGED ARBITRATOR

The arbitrator reverted stating that the letters that the Respondent claimed not to have received were communicated prior to his appointment. Therefore the sending of those letters did not concern the manner in which the arbitrator had conducted the proceedings. The arbitrator further stated that matters concerning the appointment of the arbitrator were not the arbitrator's responsibility.

CLAIMANT'S COMMENTS

The Claimant reverted stating that the Respondent should be stopped from raising the present challenge. The Claimant stated that the Respondent had had opportunity to raise these issues earlier in the proceedings and that the Respondent was trying to avoid providing a reply on the merits of the case. The Claimant requested that the challenge be dismissed without being tried on its merits.

SCC DECISION

The SCC did not find any ground for disqualification of the arbitrator. The challenge was dismissed.

CASE 3 SCC Arbitration V (002/2006)

Challenge by the Respondents of the arbitrator appointed by the Claimant and a challenge by the Claimant of the arbitrator appointed by the Respondents.

Nationality of the Parties:

Claimant: Swedish
Respondents: Swedish

Place of Arbitration:

Stockholm

Nationality of the Arbitrators:

Chairperson: Swedish

Co-arbitrator: Swedish

Co-arbitrator: Swedish

Applicable Rules:

SCC Rules

Language:

Swedish

Applicable section in the IBA Guidelines:

The situations described below can be found on the Orange List, section 3.3.6. The section addresses the situation in which a close personal friendship exists between an arbitrator and a counsel of one party.

FACTS

One of the Respondents had entered into a franchising agreement with the Claimant. The Claimant initiated arbitration against the franchisee company as well as the private person owning and controlling the franchisee company claiming that the franchisee company had violated the agreement by not paying the daily statement and also by burdening the accounting with non business-related expenses. The Claimant appointed its arbitrator in the request for arbitration. The Respondents later jointly appointed their arbitrator. The arbitrator appointed by the Respondents disclosed in his Confirmation of Acceptance form that he had worked for 12 years in the law firm of the Respondents' counsel. He left the firm seven years prior to the commencement of the present arbitration. He further disclosed that he had referred a client to the law firm of the Respondents' counsel in an unrelated matter three years ago. The arbitrator appointed by the Claimant did not make any disclosure. The Claimant challenged the arbitrator appointed by the Respondents. The Respondents challenged the arbitrator appointed by the Claimant.

CHALLENGE BY CLAIMANT (Challenge 1)

The Claimant stated that the fact that the law firm of the Respondents' counsel had employed the arbitrator for 12 years meant that the arbitrator was not untied and free of the parties and their counsel in a way that can be required by an arbitrator. The Claimant therefore requested that the arbitrator be released from appointment in the arbitration.

CHALLENGED ARBITRATOR

The challenged arbitrator commented on the challenge and stated that it is common that judges later become lawyers and that they appear as counsels in courts where they used to work.

The arbitrator also stated that one should assume that counsels appoint arbitrators whose qualifications and capacity are known to them. The Respondents' counsel knew that the arbitrator had attended a seminar on arbitration. The arbitrator attended the seminar during the course of his employment with the law firm of the Respondents' counsel.

SCC DECISION (Challenge 1)

The SCC did not find any ground for disqualification of the arbitrator. The challenge was dismissed.

CHALLENGE BY RESPONDENTS (Challenge 2)

The Respondents challenged the arbitrator on the grounds that the arbitrator had for four years been a partner of the law firm where the Claimant's counsel worked and that they assumed there would be a deep and long going friendship between the arbitrator and the Claimant's counsel. The Respondents cited a Swedish appellate court ruling⁴ to support that the facts would be enough to constitute bias if the relationship would be between the Claimant and the arbitrator.

CHALLENGED ARBITRATOR

On a request by the Respondents the arbitrator answered specific questions put forward by the Respondents. The content of the answers disclosed that the arbitrator had received assignments from the law firm of the Claimant's counsel during the time in which he was a partner of the law firm. The content further disclosed that the arbitrator had experience with franchise agreements.

The arbitrator submitted further comments on the challenge. He stated that at the time he left the law firm of the Claimant's counsel, the counsel was not yet working at the firm. He denied that there was a deep and long going friendship between himself and the Claimant's counsel. To his knowledge, they had never met. He finally stated that in the court case cited by the Respondents the arbitrator was the legal representative for one of the parties to the dispute as well as a shareholder in the party. The arbitrator stated that he was neither the legal representative for the Claimant nor a shareholder in the Claimant.

⁴ RH 1991:15

CLAIMANT'S COMMENTS

The Claimant confirmed that the Claimant's counsel and the arbitrator had never met. The Claimant stated that the challenge lacked connection with reality and should be viewed as an unfounded procedural challenge. The Claimant further did not understand the relevance of the court case cited by the Respondents. The Respondents had not even claimed that facts similar to the court case were present in this case.

SCC DECISION (Challenge 2)

The SCC did not find any ground for disqualification of the arbitrator. The challenge was dismissed.

CASE 4 SCC Arbitration V (019/2006)

Challenge by the Respondent of the arbitrator appointed by the Claimant

Nationality of the Parties:

Claimant: Swedish
Respondent: Swedish

Place of Arbitration:

Stockholm

Nationality of the Arbitrators:

Chairperson: Swedish
Co-Arbitrator: Swedish
Co-Arbitrator: Swedish

Applicable Rules:

SCC Rules

Language:

Swedish

Applicable section in the IBA Guidelines:

The situation described below does not correspond to any of the specific situations described in the guidelines.

FACTS

The Claimant had developed a support system for the Respondent. The system was designed to package products. The Claimant also did work to

integrate the developed system with the Respondent's business system. The Claimant initiated arbitration pursuant to the Respondent's failure to provide full payment for the system and the work done. The Claimant appointed its arbitrator in the request for arbitration. The Respondent challenged the arbitrator appointed by the Claimant ("the arbitrator").

CHALLENGE BY RESPONDENT

The Respondent challenged the arbitrator on the ground that the arbitrator worked for a company that on several occasions had performed work for the Respondent. It was therefore likely that the arbitrator had knowledge about the workings within the Respondent company and the Respondent company's systems that might affect his impartiality and assessment of the case. The Respondent therefore requested that the arbitrator be released from appointment.

CHALLENGED ARBITRATOR

The arbitrator claimed that the challenge lacked basis. He recognized that the Respondent had been a client of the company in which he was employed. He further stated that he did not have knowledge about the workings within the Respondent company nor knowledge about their systems which could affect his impartiality. He stated that he did not have any knowledge about the workings of the Respondent company and let alone anything connected to this dispute. As far as he knew, the company in which he was employed did not possess any information remotely connected to this dispute.

CLAIMANT'S COMMENTS

The Claimant stated that the reservations that the Respondent had raised against the arbitrator seemed to be based solely on the fact that the company in which the arbitrator was employed had at one or a few occasions been a supplier for the Respondent. The Claimant further argued that the Respondent had not claimed that the arbitrator had had any actual involvement in the relations between his company of employment and the Respondent Company. The Respondent had not claimed that the arbitrator in any other way had gained actual knowledge about the Respondent Company nor the dispute that could affect his impartiality as arbitrator. The Claimant stated that the challenge therefore lacked basis.

SCC DECISION

The SCC did not find any ground for disqualification of the arbitrator. The challenge was dismissed.

CASE 5 SCC Arbitration V (046/2007)

Challenge by the Respondent of the arbitrator appointed by the Claimant

Nationality of the Parties:

Claimant: Icelandic
Respondent: Swedish

Seat of Arbitration:

Stockholm

Nationality of the Arbitrators:

Chairperson: Swedish
Co-Arbitrator: Swedish
Co-Arbitrator: Swedish

Applicable Rules:

SCC Rules

Language:

English

Applicable section in the IBA Guidelines:

The situation described below can be found on the Orange List, section 3.1.1. The section addresses the situation in which the arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.⁵

⁵ In the case described it is not the party making the appointment that has had the described relationship but instead the other party.

FACTS

The parties had entered into a shareholders agreement. The Claimant initiated arbitration and claimed that the Respondent by transferring the ownership of its holdings in the company to a third party had breached the shareholders agreement. The Claimant appointed its arbitrator in the request for arbitration. The arbitrator disclosed, in his Confirmation of Acceptance form, that he had given a legal opinion in a pending arbitration between the Respondent and a group company of the Respondent, on behalf of the group company. The Respondent challenged the arbitrator appointed by the Claimant (“the arbitrator”).

CHALLENGE BY RESPONDENT

The Respondent challenged the arbitrator on the grounds disclosed by the arbitrator in his Confirmation of Acceptance form. The Respondent argued that it would be unfortunate and unsuitable if one of the arbitrators in the present arbitration were engaged as a legal expert for any of the two group companies engaged in the other arbitration. Clearly, the Respondent could not have appointed the arbitrator (or any other of the legal experts appearing for one or the other of the group companies in the other arbitration) in the present arbitration. The unsuitableness of the arbitrator remained even though it was the Claimant who appointed the arbitrator. The Respondent stated that it was therefore obliged to challenge the appointment of the arbitrator and requested that the SCC Board decide the issue. The Respondent pointed out that it was not suggesting any actual bias on the part of the arbitrator.

CHALLENGED ARBITRATOR

The arbitrator stated that he did not wish to comment on the challenge.

CLAIMANT’S COMMENTS

The Claimant contested the challenge on the ground that the other pending arbitration was completely unrelated to the present arbitration both with regard to factual and legal circumstances. The Claimant argued that any bias had to consist of actual or specific circumstances giving rise to reasonable doubt of the prospective arbitrator’s objectiveness and not just some sort of abstract or theoretical bias based on principles. The arbitrator had stated that he had delivered a legal opinion as an expert but not acted as counsel to a party in any way involved in the present matter.

The Claimant also pointed out that a person suggested as arbitrator had previously not been considered biased or impartial if such person prior to his appointment had made his position clear regarding certain legal matters in literature or journals.

The Claimant further expressed lack of understanding for the argument made by the Respondent that the Respondent could not have appointed the arbitrator.

The Claimant also stated that the fact that the Respondent had expressly stated that it did not suggest any actual bias on the part of the arbitrator should be sufficient to determine that there were no circumstances that hindered the appointment of the arbitrator.

The Claimant also disclosed, since the Respondent had raised the issue regarding the arbitrator's impartiality, that according to the arbitrator, the arbitrator during the first six months in 2004 had assisted one of the counsels in the other pending arbitration. Since this professional relationship ended three years prior to the commencement of this arbitration the arbitrator had not viewed it as relevant for his participation as arbitrator in this arbitration.

SCC DECISION

The challenge to the arbitrator was sustained. The arbitrator was released from the appointment.

CASE 6 SCC Arbitration V (081/2007)

Challenge by the Claimant of the arbitrator appointed by the Respondent

Nationality of the Parties:

Claimant: American

Respondent: Russian

Nationality of the Arbitrators:

Chairperson: Swedish

Co-Arbitrator: Russian

Co-Arbitrator: Russian

Applicable Rules:

UNCITRAL Arbitration Rules

Language:

English

Applicable section in the IBA Guidelines:

The situation described below does not correspond to any of the specific situations described in the guidelines.

FACTS

The SCC served as appointing authority in accordance with the UNCITRAL Arbitration Rules. The Claimant challenged the arbitrator appointed by the Respondent (“the arbitrator”).

CHALLENGE BY CLAIMANT

The Claimant was a party to an arbitral proceeding administered by the International Commercial Arbitration Court of the Russian Federation (ICACRF). The arbitrator appointed by the Claimant in that proceeding was challenged because he acted as an expert for the Claimant in the present UNCITRAL proceeding.

According to the ICACRF Rules a challenge of an arbitrator shall be considered and resolved by the other members of the arbitral tribunal. If the arbitrators cannot reach an agreement the issue shall be decided by the Presidium of the ICACRF. The Presidium of the ICACRF examined the challenge and found that the challenge was already considered and resolved by the other members of the arbitral tribunal. The co-arbitrators had rejected the challenge. The Presidium therefore found that it lacked jurisdiction to decide over the issue.

At the same time, the Russian Arbitration Act entitles a party, whose challenge has been rejected, to apply to the president of the Russian Federation Chamber of Commerce and Industry (RFCCI) with a request to decide on the challenge. The challenging party applied to the abovementioned president. The president decided to satisfy the challenge and released the arbitrator.

The Claimant argued that the president’s decision was made on the instruction of the Presidium of the ICACRF. The Claimant alleged that the president of the RFCCI solicited the views of the Presidium of the ICACRF. The Presidium of the ICACRF allegedly decided, despite of its earlier decision that it lacked jurisdiction on the matter, that the arbitrator should be released and communicated that decision to the president of the RFCCI. As the arbitrator appointed by the Respondent is a member of the Presidium of the ICACRF he may not be considered impartial in the present UNCITRAL proceeding.

CHALLENGED ARBITRATOR

The arbitrator reverted and stated that after the decision was made that the ICACRF lacked jurisdiction to decide on the challenge there was a regular meeting of the ICACRF’s Presidium. After the regular meeting some members of the Presidium expressed their views on the challenge. Their opinion on the challenge was given to the president of the RFCCI as

arbitration specialists expressing their personal opinion. They stated their personal opinion on the request by the president of the RFCCI. The request was addressed not to the ICACRF Presidium but to its members individually.

The arbitrator stated that he neither took part in the discussion nor expressed any views on the matter due to a conflict of interest. No decision was taken on behalf of the Presidium, nor even put on ballot.

RESPONDENT'S COMMENTS

The Respondent stated that the challenge was without merit. The mere disagreement of the Claimant with the merits of a procedural decision in a different matter in which the arbitrator had no involvement could in no way serve as a basis for removing the arbitrator in the present arbitration.

CLAIMANT'S REPLY

The Claimant maintained that the request from the president of the RFCCI was addressed to the Presidium of the ICACRF and not to its members individually. The discussion on the challenge was noted in the minutes of the meeting of the ICACRF and even if the arbitrator did not take part in the discussion on the challenge it did not limit his responsibility for the legal consequences the decision by the Presidium had caused the Claimant.

SCC DECISION

The SCC did not find any ground for disqualification of the arbitrator. The challenge was dismissed.

Brief comments

One should be cautious to draw far-reaching conclusions based on the few challenges made during the examined time period. But a reason for the relatively high number of challenges, in relation to the caseload, in 2005 compared to 2006 and 2007 may be that three of the challenges during 2005 originated from the same case and an additional four originated from the same arbitrator and the same ground for challenge in four cases handled in parallel. It is therefore possible to view it as though the effective number of challenges during 2005 were six instead of 11.

Even taking into consideration the abovementioned the number of challenges, in relation to the caseload, has been decreasing. A part of the reason for fewer challenges in the latest years appear to be that there were fewer challenges made which were aimed at obstructing the proceedings. In

2007 there was no such challenge. This can be compared to 2006 when two such challenges were made and 2005 when five such challenges were made.

It can further be noted that when it comes to the most common ground for a challenge, namely that the arbitrator or the arbitrator's law firm have had previous contact with one of the parties, the decisions by the SCC reflect a rather strict view, strongly influenced by the standards in the IBA Guidelines. If an arbitrator or the arbitrator's law firm had previous contact with one of the parties within the past three years and the arbitrator is challenged, the SCC tend to sustain the challenge and dismiss the arbitrator, even if no actual bias has been shown.