Roebuck Lecture 2026

'Revisiting the Paradox of Trust: Disclosure and the Changing Dynamics of Impartiality in International Arbitration'

Dr. Crina Baltag FCIArb

Don MacIntyre: Thank you. First, welcome to this Roebuck lecture delivered by Crina Baltag on the topic of, and I do always say this, can we make it shorter next time? Just guess the length, but I'm going to go with, 'Revisiting the Paradox of Trust, Disclosure, and the Changing Dynamics of Impartiality in International Arbitration.' As said, my name's Don McIntyre, and a warm welcome to all of you joining us in person in London, and many guests, I'm told up to 1,500 online. We are truly delighted by hosting this event in the International Dispute Centre in London, joined by across the world, the global community, which we really appreciate the sign-up. Thank you for all, in person and online.

Now, the largest part of my speech, and I have to take time, several paragraphs introducing Crina. But before I do so, just a little bit on what's going on this evening. Obviously, after Crina's speech, we'll have a short reception, which will be hosted by ourselves, and of course, Kevin Nash will be hosting questions afterwards. But now let me introduce Crina, and this is quite impressive, I must admit. Dr. Crina Baltag is a globally recognised arbitration and dispute resolution practitioner.

She is an international arbitrator, attorney at law, academic with over 20 years' experience in international dispute resolution, private international law, and public international law. She's a member of the Romanian and Bucharest Bar, associate professor in international arbitration and dispute resolution at Queen Mary University of London, and a member of Arbitra. Crina has been appointed as presiding, sole, co-arbitrator in numerous arbitrations under the rules of the ICC, London Court of International Arbitration, Singapore International Arbitration Centre, Arbitration Institute of Stockholm Chamber of Commerce, Dubai International Arbitration Centre, and the Chamber of Commerce Brazil and Canada, among others, as well as ad hoc proceedings under UNCITRAL arbitration rules.

She conducts proceedings in English, Portuguese, and Romanian. More, she has also acted as an expert counsel in a wide range of international commercial investment

arbitration, including proceedings before International Centre for Settlement Investment Disputes and under UNCITRAL rules. Her counsel experience focuses on complex disputes in construction, energy, and natural resources, financial transactions, intellectual property, and foreign investment.

Finally, Crina is a vice chair of the Board of the SCC Arbitration Institute and a council member of the ICC Institute of World Business Law, Director of Ciarb's Global Diploma in International Arbitration. She's also managing editor of Kluwer Arbitration Blog and serves the editorial boards of leading journals and books series in the field. That took me quite a while, Crina, very impressive.

Please join me in providing a very warm welcome to Crina Baltag.

Dr. Crina Baltag FCIArb: Good evening. It is a great privilege and honour to be with you this evening. I would like to begin by expressing my sincere gratitude to the Chartered Institute of Arbitrators. To be invited to deliver the lecture established in the memory of Professor Derek Roebuck, whose scholarship, intellectual curiosity, and dedication to the study of international arbitration and dispute resolution broadly continue to inspire generations of practitioners and academics. This is a profound honour and a humbling experience. I would also like to thank the IDRC, the LCIA, and Arbitra for their support of this distinguished event and for their continued contributions to the advancement of international dispute resolution.

This evening, I would like to reflect on a subject that lies at the very foundation of international arbitration, and indeed of every credible system of dispute resolution: trust. International arbitration depends on trust in a particularly profound way. Unlike domestic courts and permanent judiciaries, arbitration derives much of its authority and legitimacy from the confidence of its users.

Parties voluntarily submit their disputes to private adjudication because they trust the integrity, neutrality, and fairness of the process. At the core of that trust are two fundamental principles, arbitrator independence and arbitrator impartiality. The importance of trust is reflected in arbitration legislations. Article 13 of the Brazilian Arbitration Act, for example, provides that any individual with legal capacity who enjoys the trust of the parties may serve as an arbitrator. Arbitrator independence and impartiality are deeply embedded across international arbitration frameworks.
We see them reflected in instruments such as the UNCITRAL Model Law, Article 12; the ICSID Arbitration Rules, Rule 19, the ICC Arbitration Rules, Article 12, the LCIA Arbitration Rules, Article 5, and countless national arbitration laws. One of the principal mechanisms through which we safeguard these principles is disclosure. Disclosure obligations are designed to protect the parties' right to an independent and impartial tribunal. By disclosing relationships, interests, appointments, or other facts and

circumstances, that may give rise to doubts regarding their independence and impartiality, arbitrators promote transparency and help preserve confidence in the arbitral process.

The importance of these principles extends beyond arbitral procedure itself. In recent years, courts have increasingly linked arbitrator independence and impartiality to fundamental procedural rights. A particular significant example is the European Court of Human Rights decision in *BEG vs. Italy* in 2021, where the Court found a violation of Article 6 of the European Convention on Human Rights because of concerns regarding an arbitrator's lack of impartiality and the failure to disclose relevant professional connections. The decision serves as a powerful reminder that confidence in arbitral tribunals is not merely a matter of institutional legitimacy or procedural efficiency, it is also closely connected to the fundamental right of the parties to have their disputes resolved by an independent and impartial adjudicator.

At least this is how the system is intended to work.

Tonight, I would like to explore what I describe as a growing paradox at the intersection of disclosure and trust in international arbitration.

The paradox is simple. Disclosure is intended to strengthen trust and reinforce the legitimacy of arbitration. Yet increasingly, the very mechanisms designed to build trust may also risk undermining it.

We now live in an era in which information about arbitrators is more accessible, searchable, and permanent than ever before. Within minutes, parties can review arbitrators' publications, prior awards, conference appearances, repeat appointments, social media activity, professional affiliations, institutional statistics, and LinkedIn profiles.

Greater access to information naturally invites greater scrutiny. Greater scrutiny, in turn, generates demands for broader disclosure. More disclosure then produces additional information that may trigger further doubts, investigations, and challenges. At the same time, arbitrators' disclosure obligations are expanding. Arbitrators are increasingly expected not merely to disclose actual conflict of interest, but also any facts or circumstances that might call their independence into question in the eyes of the parties or create reasonable doubts as to their impartiality.

Importantly, parties themselves are no longer viewed as passive recipients of disclosures. They are increasingly expected to investigate for themselves and to fulfil what many have described as a duty of curiosity. As a result, the boundaries of disclosures have become less clear. The line between what ought to be disclosed and what need not be disclosed is increasingly blurred. In this environment, impartiality itself

has become more dynamic, evolving, and at times uncertain. It is no longer assessed solely through established legal standards, but increasingly through shifting expectations of transparency and the reciprocal obligation of participants in the arbitral process. The result is an ever-expanding culture of disclosure, yet greater transparency does not necessarily produce greater confidence.

At times, it may instead generate greater doubt, prompting further scrutiny, additional disclosures, and even more challenges. When confidence in the neutrality of arbitrators is weakened, the legitimacy of arbitral process itself may be called into question. The possibility should concern all of us. So, this evening, I would like to invite you to reflect on several questions that will guide our discussion, and these are at least four.

First, has the contemporary trend toward increasingly expansive disclosure gone too far?

Second, in an age of near unlimited information, what do independence and impartiality truly mean?

Third, are current disclosure practices strengthening the legitimacy of arbitration, or are they destabilising it?

And fourth, and perhaps more importantly, how can we strike an appropriate balance between transparency and efficiency, one that discourages tactical and frivolous challenges while continuing to safeguard arbitrator independence and impartiality?

These questions matter not only for arbitrators and counsel. They matter for the long-term legitimacy and sustainability of international arbitration itself. Let me begin with what I see as one of the defining features of the era in which we now live, the unprecedented expansion of available information.

Not very long ago, much of an arbitrator's professional life was relatively difficult to access. Today, that is no longer the case. Parties now have access to an extraordinary range of information resources. We have specialised databases such as Global Arbitration Review, Kluwer Arbitration, Jus Mundi. We have various institutional databases. We have LinkedIn profiles. We have professional websites. We have conference recordings. We have webinars. We have podcasts. We have academic articles. We have blog posts. We have published awards. In many aspects, arbitrators now operate in an environment of near constant visibility, and that visibility has fundamentally changed expectations surrounding disclosure. The consequence is not merely that more information exists, rather, scrutiny itself has intensified.

First, the scope of arbitrators' disclosure obligation has expanded considerably. Second, parties are now increasingly expected to exercise the duty of curiosity, and the obligations are no longer one directional. They have become reciprocal.

So let me begin with arbitrators. Modern disclosure obligation extends far beyond the disclosure of actual conflicts of interest. Today, arbitrators are increasingly expected to consider not only whether they are in fact independent and impartial, but also whether their relationship, their conduct or activities might reasonably be perceived as compromising those qualities in the eyes of the parties or the broader arbitration community.

One of the foundational decisions in this area is the 1968 United States Supreme Court decision in *Commonwealth Coatings vs. Continental Casualty*. In that decision, the court held that arbitrators must disclose dealings or relationships that might create an impression of possible bias. The court concluded that failure to disclose such connections could justify setting aside an arbitral award. Significantly, the court's concern was not limited to actual bias, rather it focused on appearance and perception. The emphasis has profound and lasting influence even today on disclosure standards around the world, and over the time, disclosure obligations have continued to broaden. We see this in the evolution of the IBA Guidelines on Conflict of Interest in International Arbitration. The 2024 reiteration includes one of the most significant developments, clarifying and expanding the arbitrator's disclosure obligations. Under this revised framework, arbitrators are expected to disclose circumstances that could reasonably be perceived as affecting their impartiality and independence.

Under those circumstances, unless those circumstances fall under the green list, of course, the practical implications are significant. Arbitrators are now expected to undertake increasingly comprehensive self-assessments. They must consider repeat appointments, prior professional relationship, social media activity, public commentaries, and a wide range of circumstances that may affect perceptions of neutrality.

If arbitrators have doubts regarding their ability to remain impartial or independent, the IBA guidelines advise them to decline the appointment or resign, therefore emphasizing transparency over procedural convenience. The ICSID framework adopts a somehow different formulation. Article 14 of the ICSID Convention requires arbitrators and conciliators to be persons who may be relied upon to exercise independent judgment, and consistent with that requirement, ICSID arbitrators and members of the ad hoc committees are expected to disclose circumstances that might call their independent judgment into question.

French law provides a particularly expansive illustration, in line with the broadening of the disclosure obligations. The French Code of Civil Procedure requires an arbitrator to disclose any circumstance that may affect his or her independence or impartiality. And this provision reflects a long and well-established line of French jurisprudence according to which arbitrators must disclose any circumstance capable of affecting their judgment or give rise to reasonable doubts in the eyes of the parties as to their independence and impartiality.

The English Arbitration Act in the revision of 2025 codifies a mandatory duty to disclose circumstances that might reasonably give rise to justifiable doubts concerning impartiality. Across many frameworks, the prevailing principle is clear: any doubt regarding whether a matter should be disclosed should generally be resolved in favour of disclosure. The IBA Guidelines states that any doubt as to whether an arbitrator should disclose certain facts or circumstances should be, of course, in favour of disclosure, as well as other arbitration rules, including the 2026 newly enacted ICC Arbitration Rules.

While disclosure obligations have expanded, institution and professional bodies have also sought to provide practical guidelines as to how arbitrators should identify potentially disclosable circumstances. The 2024 CPR Guidelines for Arbitrator Disclosure offers a useful example. The guidelines recognise that in conducting conflict checks, arbitrators may generally rely on their memory and recollection rather than undertaking exhaustive investigations. At the same time, they make clear that where an arbitrator has reason to believe that the particular interest or relationship may give rise to potential conflict, the arbitrator should make reasonable and practicable inquiries to verify whether such conflict exists.

I believe that it is important to note that disclosure is no longer viewed as a one-time exercise conducted at the moment of the appointment. It is a continuing obligation that extends throughout the life of the proceedings. Independence and impartiality of arbitrators must not only exist, but it must remain verifiable throughout the arbitration. We see this reflected across numerous institutional rules and national legal system, including the IBA Guidelines and the French Civil Code of Procedure. We see courts reinforcing this approach. The Paris Court of Appeal in at least two cases, *Dommo Energia vs. Enauta Energia* and *Vidatel vs. PT Ventures*, highlighted that arbitrators must disclose circumstances that might cause parties to doubt their independence or impartiality throughout the proceedings. But at the same time, the boundaries between an arbitrator's professional and personal spheres have become increasingly difficult to distinguish. Social media perhaps provides the clearest illustration of this development. Historically, as I said, many aspects of an arbitrator's personal views or activities would've remained relatively private, or at least professionally irrelevant.

Today, however, an arbitrator's online activity can itself become the basis for a challenge. The 2024 IBA Guidelines explicitly recognise this reality by acknowledging that social media activity and online advocacy might create perception of bias. And we have already begun to see this phenomenon emerge in practice. One particular striking example is the case of *Rinat Akhmetov vs. Russia*. In this case, the arbitrator was challenged based on a LinkedIn post supporting fundraising efforts for Ukrainian soldiers following the Russia-Ukraine war. The appointing authority ultimately concluded that the post created a sufficient appearance of bias to warrant disqualification. And what makes the decision particularly noteworthy is that there was no finding of actual bias. Rather, the challenge succeeded because of concerns regarding appearance and perception.

Another important example comes from the French decision in *DIT vs. Port Autonome de Douala.* There, concerns arose after the presiding arbitrators delivered a public eulogy describing counsel for one of the parties as a close personal friend and trusted advisor. The Paris Court of Appeal decided to set aside the award because the arbitrator not only failed to disclose the personal ties, but also concluded that the omission created legitimate doubts regarding the arbitrator's impartiality and therefore undermined the integrity of the arbitral process. Once again, what is significant is not merely the existence of the relationship itself here, but rather the expectations that personal relationship may require disclosure whenever they could give rise to legitimate doubts regarding impartiality.

Now, the expansion of disclosure obligations has also coincided with increasing uncertainty surrounding the standards concerning the set aside of arbitral awards. One notable example comes from the United States Court of Appeals for the Ninth Circuit's decision in *Monster Energy vs. City Beverages* in 2019. There, the arbitrator disclosed that he held an economic interest in JAMS, the arbitral institution administering the case. After the tribunal ruled in favour of Monster Energy, the losing party discovered that JAMS had administered numerous arbitrations involving Monster and requested the set aside of the award. The court decided that the arbitrator's partial ownership interest in JAMS, together with JAMS' substantial relationship with Monster, creating an appearance of partiality, which was sufficient to grant the set aside of the award.

And here, the court relied on the Commonwealth Coatings decision that I mentioned earlier of the U.S. Supreme Court. Taken together, these developments reveal a broader shift in the function of disclosure. Disclosure is no longer concerned merely with identifying actual conflicts of interest. Increasingly, it serves to manage perceptions of impartiality and to preserve confidence in the arbitral process, and the emphasis has therefore moved from actual bias to the appearance of neutrality.

But as mentioned before, disclosure obligation no longer rests solely on arbitrators. Increasingly, parties themselves are expected to investigate potential conflicts. The IBA Guidelines illustrate this shift through the introduction of a reasonable inquiry standard. Under this approach, parties may be deemed aware of information that a reasonable investigation would have uncovered. This moves part of a burden from the arbitrators to the parties themselves. It represents a significant conceptual change.

Historically, parties rely primarily on arbitrators' disclosures. Today, parties are increasingly expected to conduct their own inquiries and identify potential conflicts proactively. And failure to raise these objections may result in waiver. The principle sounds straightforward in theory, but in practice, the boundaries remained uncertain.

How much investigation is enough? Must parties monitor social media platforms on an ongoing basis? Are they expected to search in multiple languages? Must they subscribe to specialised databases and industry publications? Courts have struggled with these questions. *The Sun Yang vs. WADA* case, where the Swiss Federal Tribunal had to decide on the set aside of the award, recognised the existence of a duty of curiosity on the parties, but emphasised that the duty is not unlimited. The court concluded that the parties are not required to conduct exhaustive and continuous internet investigations to discover potential arbitrator bias, particularly when it comes to historical social media activity. Another useful illustration comes from the European Court of Human Rights' already mentioned *BEG vs. Italy* case, where the case concerned an arbitrator who had not disclosed his previous role as a vice chairman and member of the Board of Directors of ENEL, as well as his contemporaneous representation of the same company in separate proceedings. And when the applicant sought to challenge the award, the Italian courts concluded that the applicant was likely aware of those professional connections. But the European Court of Human Rights rejected that approach and emphasised that the presumption of knowledge cannot rest on speculation and must be supported by concrete evidence that the party was actually aware of the relevant circumstances. And the decision illustrates that while the parties may be expected to conduct reasonable inquiries, the burden of investigation is not unlimited and cannot substitute for an arbitrator's disclosure obligations.

By contrast, the Paris Court of Appeal adopted a broader approach in *Delta Dragon vs. BYD*. Following the issue of an ICC award, Delta Dragon sought to challenge the award on the grounds that one of the arbitrators had failed to disclose connections to the automotive industry. The court rejected the challenge and held that an arbitrator's disclosure obligation must be assessed in light of whether the relevant information was already publicly available and readily accessible to the parties. Significantly, the court emphasised that the parties must demonstrate a modicum of curiosity when conducting their own due diligence. And because Delta Dragon had failed to investigate and raise its objection in a timely manner, the court held that it had waived

its right to challenge the award on this basis. The decision is notable because it illustrates the increasing reciprocal nature of disclosure, as I mentioned. Where information is publicly available and reasonably discoverable, courts may expect parties, and not arbitrators, to bear responsibility for identifying possible concerns. And this is an approach that was codified more recently in the 2023 Brazilian Arbitration Committee Guidelines on the arbitrator's duty of disclosure.

All of this raises a broader conceptual question. What does impartiality actually mean in contemporary international arbitration? Traditionally, impartiality was often treated as a relatively stable concept. An arbitrator either had a conflict of interest or did not. But modern arbitration practice no longer operates quite so neatly. Today, impartiality is increasingly dynamic. It is shaped not only by legal rules, but also by evolving professional norms, institutional practices, technological developments, and public perception. In other words, impartiality is no longer assessed solely by asking whether an arbitrator is actually biased.

Increasingly, it is evaluated through the integrity of the process itself. How transparent was the arbitrator? How promptly was relevant information disclosed? Did the parties have a meaningful opportunity to investigate potential concerns? Were challenges addressed fairly and consistently? Did the institution manage the process in a manner that inspired confidence? What we are witnessing, therefore, is a broader shift from static standards towards dynamic practices of legitimacy. And importantly, impartiality has become a shared responsibility. Arbitrators must make their disclosures, parties must assess that disclosure and undertake reasonable inquiries, and institutions must provide guidance, ensure procedural fairness, and maintain an appropriate balance between transparency and efficiency. Legitimacy, in this sense, become increasingly process-based. Trust derives not only from outcomes, but from confidence in the fairness, transparency, and integrity of the process through which those outcomes are reached. And this development raises an even deeper question.

Is impartiality gradually being transformed from a substantive concept into a procedural one? Increasingly, confidence appears to derive not only from whether an arbitrator is in fact impartial, but also from whether the process of disclosure itself is perceived as sufficiently transparent. And in this sense, legitimacy may be shifting from outcomes towards procedures and from actual neutrality towards demonstrable transparency.

This brings us to what I consider the central practical paradox. Paradoxically, increased disclosure does not always produce greater confidence in the arbitral process. Instead, greater transparency often generates more scrutiny, greater suspicion, and ultimately more challenges.

As disclosure obligations expand, parties receive more information about arbitrators than ever before. That information inevitably creates more opportunities for objections. Repeat appointments, professional affiliations, prior collaborations, social media activity, academic commentary, and even conference participation may now become potential ground for challenge. And the statistics suggest that arbitrator challenges are indeed increasing.

The chart on the screen provides an overview of arbitrator challenges activities from 2017 to 2024 across several major arbitration institutions, based, of course, on publicly available institutional data. Although there are fluctuations, including during and immediately after the pandemic, the overall trajectory points upward. Most of these challenges concern allegations that an arbitrator lacks impartiality or independence, or has engaged in some form of misconduct.

Let us take a closer look at the SCC Arbitration Institute, which provides one of the most detailed data sets available. In November 2024, the SCC published a report analysing board decisions on arbitrator challenges between 2020 and 2024. The report confirms that there is a long-term increase in challenges. During the early 2010s, the challenge rate was approximately 3.7%. Between 2016 and 2018, it rose to approximately 8.3%, before stabilising at around 5.1% in recent years, still noticeably higher than in the early part of the decade. The overwhelming majority of the challenges involved allegations that circumstances existed which could give rise to justifiable doubts regarding an arbitrator's impartiality or independence, and more frequently, parties pointed to relationships between arbitrator and one of the parties, their affiliates or their counsel, including prior appointments, professional connections, or former law firm affiliation. The SCC data also demonstrates how increasingly common challenges have become. Between January 2020 and December 2024, the SCC board issued 46 challenge decisions. In several proceedings, multiple challenges were filed against the same arbitrator. In five cases, an arbitrator was challenged twice, and in one case the same arbitrator was challenged three times.

Yet here is the critical point.

More challenges do not necessarily result in more disqualification. Across major arbitral institutions, successful challenges remain comparatively rare. The ICC chart here compares the number of challenges filed between 2011 and 2024 with the number ultimately upheld. And while the number of challenges fluctuates from year to year, the number of successful challenges remains low. Over that period, the overall success rate was only 11%. The SCC shows a similar pattern. Among the challenges filed between 2016 and 2025, only a small fraction were upheld. The vast majority were either rejected, dismissed, rendered moot by the arbitral's resignation or withdrawn by the challenging party. Specifically, between January 2020 and December 2024, when the SCC board

has rendered 46 challenge decisions, only 10 challenges were successful. That is roughly 21%, compared to about 78% dismissed.

The LCIA, the data from the past 10 years shows that the vast majority of arbitrator challenges have been unsuccessful as well. Take 2024 as illustration. The LCIA received 10 arbitrator challenges, shown in orange. Seven were rejected, one resulted in the arbitrator's voluntary resignation, and two were suspended, withdrawn, or remain pending. Not a single challenge upheld.

The Singapore International Arbitration Centre tells a similar story, and the same pattern is reflected in the experience of the Hong Kong International Arbitration Centre. So arguably, the experience across institutions reveals an important trend. Expanded disclosure obligations have increased the number of challenges, but they have not produced a corresponding increase in successful disqualifications.

So why does this happen? The answer lies in the distinction between disclosure and disqualification. Disclosure and disqualification are governed by different legal standards. The distinction, therefore, is fundamental. The disclosure standard is intentionally broad and subjective. It asks whether circumstances exist that may, in the eyes of the parties, give rise to doubts about an arbitrator's impartiality and independence. The subjective nature of the disclosure standard creates practical difficulties, no doubt. It can be difficult for arbitrators to know in advance which facts and circumstances might cause parties to question their independence, impartiality, or ability to exercise independent judgment. In practice, arbitrators are often required to consider not only whether a circumstance affects them personally, but also how it might be perceived by the parties. This is not always an easy task, particularly at the beginning of the proceedings when arbitrators know relatively little about parties and their expectations.

The challenge is even greater in international arbitration. Parties frequently come from different countries, legal traditions, and cultural backgrounds. A circumstance may result in a challenging situation for one arbitrator, but not for the other. In many cases, the uncertainty encourages disclosure of a broader range of circumstances, even where the relevance of the circumstances may be open to debate.

By contrast, disqualification generally requires an objective assessment. The inquiry is whether the relevant facts would lead a reasonable and informed third party to conclude that there are justifiable doubts regarding the arbitrator's impartiality or independence. In other words, the scope of disclosure is broader than the grounds for removal.

Parties may challenge arbitrators based on perceived conflicts, and therefore repeat appointments, social media activities may become relevant, but arbitral institutions generally require concrete evidence demonstrating a genuine appearance of bias before removing the arbitrator. Accordingly, disclosure does not in itself establish a conflict of interest, nor does disclosure standing alone justify disqualification. A failure to disclose does not automatically require removal, but depending on the circumstances, disclosure or failure to disclose may be considered as part of the overall assessment of apparent bias.

This balance serves important systemic interests. It promotes openness and confidence in the arbitral process while minimising the risk that challenges become tactical tools for delay or strategic advantage. One of the most influential articulations of the objective standard comes from the House of Lords decision in 2001 in *Porter vs. Magill*. There, the court asked whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias, and the formulation has become one of the defining tests in the modern challenge jurisprudence.

Let me conclude this section by returning to the paradox. The modern system increasingly encourages disclosure. Disclosure does not necessarily generate greater trust. Instead, it generates greater scrutiny. Greater scrutiny generates more challenges, yet more challenges do not necessarily produce more disqualifications. Arguably, users of arbitration today see more, know more, and challenge more. Nevertheless, arbitral institutions continue to apply a demanding, objective standard before concluding that the threshold of apparent bias has been crossed.

So where does this leave us? I do not believe the answer is to abandon disclosure obligation altogether, obviously. Disclosure remains a vital mechanism for promoting transparency and confidence in the arbitral process. But I do believe that we need to think more carefully about recalibration.

Expanded disclosure obligations may not necessarily produce more disqualification, yet they can create systemic risk that over time threaten the effectiveness, credibility, and legitimacy of an international arbitration regime itself.

First, over-disclosure can create noise. If arbitrators disclose every minor interaction, distant acquaintance, or marginal professional connection, parties may struggle to distinguish genuinely material conflicts from trivial ones. Ironically, excessive disclosure may dilute the significance of disclosures that truly matter. Second, over-disclosure may undermine procedural efficiency. Disclosure can be used strategically. Challenges may become tools of delay rather than genuine safeguards of impartiality. And this concern is particularly acute in high-stake disputes where the parties have strong

incentives to exploit procedural mechanisms for tactical advantage. In some cases, parties may even attempt to manufacture conflicts by changing legal representation during proceedings. And we have seen institutional responses to this, including the newly adopted 2026 ICC Arbitration Rules, relying on similar provision of the 2013 IBA Guidelines on party representation in international arbitration.

Third, over-disclosure may generate broader chilling effects. As scrutiny intensifies, arbitrators may become increasingly cautious about public engagement. They may limit academic writing, avoid public commentary, reduce participation in professional events, or curtail their social media presence. Some may even decline appointments altogether, particularly in highly specialised fields where professional overlap is inevitable. And these concerns are amplified by the fact that the duty of disclosure is a continuing obligation that persists throughout the proceedings, and in many cases, until the arbitral process is formally concluded.

So how should we move forward? I suggest several guiding principles.

First, we should clarify the purpose of disclosure. Disclosure is not intended to eliminate every conceivable doubt, nor is intended to achieve perfection. Its purpose is to foster reasonable confidence in the fairness, integrity, and impartiality of the arbitral process.

Second, we should move toward more contextual and proportional disclosure standards. Not all relationships carry the same significance. Timing matters. The nature of the relationship matters. Its frequency matters. Context matters. A more nuanced approach allows parties to focus on genuinely meaningful concerns rather than treating every disclosure as equally significant.

Third, materiality should remain at the centre of the analysis. If every connection becomes challenge-worthy, the concept of conflict itself risks becoming diluted. Distinguishing between material and trivial connections is essential to preserving the integrity of the process. Over-inclusive disclosure risks creating noise that obscures genuinely significant conflicts.

Finally, institutions and tribunals should continue to discourage tactical challenges. Parties must always retain the right to raise legitimate concerns regarding arbitrator independence and impartiality, but disclosure should not become a weapon for delay, obstruction, or procedural gamesmanship. Ultimately, the objective is balance. We need sufficient transparency to inspire confidence in the arbitral process, but not so much that the system becomes overwhelmed by suspicion.

Let me close with one final thought.

International arbitration today is more transparent, more data-driven, more exposed to public scrutiny than at any point in its history. In many respects, of course, this is a welcome development. Transparency promotes accountability, it strengthens confidence in the process, and it helps safeguard the legitimacy of the arbitral system. But over-disclosure also has limits. More visibility does not automatically produce more trust. Sometimes it produces more questions, sometimes it produces more suspicion, and that is the paradox we now face. The challenge for international arbitration today is not to maximise disclosure at all costs, but the challenge is to preserve meaningful trust in a world where nearly everything is visible.

Achieving that objective requires balance, enough transparency to inspire confidence, enough restraint to preserve efficiency and finality, and enough nuance to distinguish genuinely material concerns from mere appearances amplified by the modern information environment. Ultimately, the legitimacy of international arbitration will depend not simply on how much information is disclosed. It will depend on whether the system continues to inspire confidence that disputes are being resolved fairly, thoughtfully, independently, and impartially. Because trust is not created by disclosure alone. It's created when transparency is accompanied by sound judgment, proportionality, and fairness. And that, I suggest, is the challenge, but also the opportunity for the next generation in international arbitration.

Thank you.

Kevin Nash: Good evening, everyone. Can we bring up the LCIA statistics for 2022 again? I just want to see and make sure that there were zero challenges. And actually, LCIA has only had one successful challenge in the last six years, which really does go to a robust disclosure process. And I think this balance between disclosure and then eventual challenges is an important one.

So, what I will be doing tonight is I will be exercising my duty of curiosity, and I'll be filling the role of a curious observer. And it is hard to think of a person that is better equipped to bring some order to these issues, which are increasingly relevant. And I said I was going to have some surprises for Crina, and I will give you one off the top.

So I worked with Crina as an arbitrator at LCIA, also at SIAC. And Crina may not know this because I don't think that I've told you before. So I actually got to observe what it is like when an arbitrator receives a very high-value and complex appointment. So, as it happened, we had appointed Crina as a sole arbitrator, and we were approaching her while we were sitting in UNCITRAL, completely coincidental. And so, I saw the email go out for the prospective appointment, and I got to watch what it looks like when an elite arbitrator receives an appointment. And so, as it turns out, completely cool about it. I saw, acknowledging I knew that you had read it. So that's what it looks like. It's very rare

that you get to have that lived experience. Thanks to CIArb, Arbitra and IDRC. It is hard to think of a better place on planet Earth to have this discussion or to have a hearing when the sun is shining in London. So we are very privileged to be here.

Let me just set some sort of rules of the road as I see them based on the institutional perspective. I think the challenge, again, is the sort of this dichotomy or the duality of disclosure and challenges, because if you have an in effect challenge process prior to the formal appointment of an arbitrator, it is going to delay the constitution of the tribunal. So should we be applying the same standard? Should we be applying the same standard from a doctrinal standpoint for a party nominee, versus an institutional appointment? And also, given that there's now sort of a constructive obligation under the English Arbitration Act where it could be facts where the arbitrator ought reasonably to have been aware, how far does that duty go? How much is it informed by or what the conflict checks that are being provided by the institution? So how far does that go?

So that is the frame of how I'm going to be asking these questions tonight. So maybe let's start.

I think I would clarify because it is challenging, of course, to gather statistics on challenges of arbitrators and their nuances. One important note or footnote is that the number of appointment of arbitrators in one year doesn't necessarily match the number of challenges. The challenges can come for arbitrators appointed in the previous year. So in absolute numbers, I would say that perhaps the SCC gets closer to a proportion between the number of appointed arbitrators, the number of challenged arbitrators in one year.

So that's the first footnote. The second, as you said, we have across institutions different mechanisms of appointing or confirming arbitrators. The SCC, for example, is an institution where the parties are making their appointments. The board of the SCC doesn't interfere in this, whereas the LCIA, the ICC, we know very well that there is that intermediary step, even with ICC even more because you see the numbers are quite different. So across institutions. And the other point is that probably is not captured in the graphics is that in some institutions, the challenge is free of charge. The SCC. The LCIA comes at the price, SIAC as well. So that might be another factor to consider when we're looking at the numbers.

And also, as I mentioned, the cultural aspect. I'm not sure if from the SIAC perspective, as past perspective, but there may be cultures, legal cultures that are taking challenges more seriously. So not as a procedural tool. So that does give good context to those 2022 figures. Because at a certain point, if an arbitration becomes consequential enough, there may be a challenge. Like this is just something that's going to happen.

I can actually remember a squabble at the disclosure stage. One of the funniest ones that I've ever seen, and it's over 10 years old, so I think I can discuss it, is I really watched the dissolution of a friendship, because counsel for the claimant said that the arbitrator ought to have disclosed the very close friendship that they had and the arbitrator responded by saying that 'I actually don't consider us friends…we are professional acquaintances at best'. Counsel for the claimant, undeterred, then said that he would be happy to provide pictures from a recent party. I think it was a bachelor party. So, I watched that friendship dissolve.

But let's go to one of the big questions that I touched on. So, this distinction from the broad standard for disclosure and the more demanding objective standard for disqualification. Do we, as an arbitration community, do we sufficiently understand this at this point? And for anyone who has missed this lecture, is this something that is properly understood?

Dr. Crina Baltag FCIArb: I would say no. What the 2024 IBA Guidelines have tried to spell it out clearly, including in the commentary to the guidelines - that these are two separate standards and should be treated as such. One is subjective, the disclosure. One is objective, the assessment of the challenge. I would say courts got this right. I gave the example of, well, obviously the English courts, but also the Swedish courts, and the Swiss Federal Tribunal that are actually looking at the IBA Guidelines as a guidance and rely on them quite heavily, in distinguishing between the subjective and objective standard. And if we look at national legislation, this is quite clearly captured in the arbitration laws.

But I think when it comes to the practice, the arbitrators themselves, I think there is a nuance because of the varying culture of disclosure. If you look at the US, on the US Supreme Court, on the Commonwealth Coatings, that's very broad. And if you look, for example, ICDR AAA disclosure of arbitrators It's virtually every single thing, including any attendance of every single conference ever. So not speaking in the same panel, but every single thing that matters, because that's very broad. So the nuances in the subjective standard, I think it varies. There is an understanding, but it varies across jurisdictions.

Now, to that point, if we're ever named on the same tribunal, I have to disclose…is this a disclosable fact? Now, the fact that the two of us are sitting here, would that be green list? I think it's green list, though, but still ought to be disclosed. We can do a show of hands to see who paid attention. Or staying with that, is there a problem of over-disclosure? You referred to it as noise, where arbitrators sort of in the exercise of abundant caution are disclosing everything because I think we have to remember there is going to be an opportunity for the parties to comment.

And sometimes there's going to be multiple opportunities for them to comment. Is there too much disclosure? I think it depends. Again, it depends. If I would be sitting in an ICDR AAA arbitration, probably I would be disclosing everything, including the fact that we'll have drinks outside after the lecture with every single person in the audience. Whereas, for example, if I would be in Sweden where the Swedish Supreme Court looks at the overall circumstances, so not at the singularity of one situation, probably I'll not mention the drinks because obviously we're over 100 people in the room. But doubt should be resolved in favour of disclosure.

Kevin Nash: But have you ever had that one fact that you've sort of stared at, wondering if this is something that should be disclosed, and has that got easier or more difficult over the course of your arbitrator career?

Dr. Crina Baltag FCIArb: I had several situations. One more recent was when I was invited to speak at the conference, and on the same panel, there were two counsels from two different arbitrations appearing before me, and I thought either I disclose in two different arbitrations or I speak at the next conference. So, I preferred to waive the privilege of being in that panel at the conference.

It occurs to me, and I suppose that one of the advantages of you sitting as arbitrator under the auspices of so many different institutions, because the tradition at the institution, and sometimes actually the standard for disqualification, is going to be different because sometimes you will see a lack of disclosure based on an insufficient understanding of the approach in that jurisdiction or under those sets of institutional rules. So you're very well equipped. That is something without a question mark at the end. That is more of a statement by me as interviewer. Let's talk about social media. So I have a grand total of 13 months of experience on LinkedIn. So I kind of consider myself a bit of an expert. So social media, reputational inflation, does this challenge material, should we be avoiding this? Is it unrealistic? Do we need clearer standards on social media conduct, and where should this be emanating from?

I think this is one important point. The New York Bar Association has guidelines for conduct of arbitrators on social media. Unfortunately, it refers mainly to how to make friends on Facebook or connections on LinkedIn nor how to like/love posts. I don't know if there is a dislike button on LinkedIn. So this is something that we should do, we should have, but at the end of the day is the reasonable standard.

Now, the English courts have dealt with the fundamental question of what weight have different social media outlets when it comes to conflicts of interest, and this was in the litigation setup, not arbitration. And interestingly enough, Facebook is where we're friends because we are called friends on Facebook, and LinkedIn is for professional

connections because we are called connections on LinkedIn. So fundamentally, the English courts have distinguished between different social media outlets.

Now, in the 2024 revision of the IBA Guidelines, and I was chair of one of the subgroups of the task force, not of the social media one though, the fundamental question was should we take a closer, more regulated approach to social media? And the discussion has started very interestingly from what social media outlets do you know? And I had no idea of half of what my colleagues were saying. Snapchat, that I know you're using. I use Snapchat. TikTok, I banned it to my kids. Of course, social media is banned to under 16 starting next year in the UK. And it was very interesting because the core problem, which is what is social media, could not be determined in one single statement clear enough and to hold the time - because the guidelines are revised every 10 years - to be inserted in the guidelines.

So what conduct to have on social media, I think whatever is reasonable. I can confirm that the number of challenges based on social media statements is increasing. And starting from actual statements, I gave two examples, to the button reactions, and believe me or not, there are so many button reactions options on LinkedIn that I was also not aware of. You can love, you can celebrate, you can like, and whatever weight are you going to give to every single form of reaction to a post we share. If you're a part of a law firm, you automatically like whatever your law firm says. So there are certain nuances in the way we're behaving on social media. Perhaps regulation is needed, perhaps common sense. If you're an arbitrator, and you want to avoid any future challenges, you should exercise restraint.

Kevin Nash: I should say that Crina did not believe that I had Snapchat, so I actually had to show it to her. The two friends I have on Snapchat are my niece and nephew, and if anyone knows how you can change the settings so it doesn't automatically show a picture of you as soon as you open it, I would appreciate it. So if we could discuss that at drinks. And we're going to make sure to have time for questions from the audience, because this is a very chunky subject.

I wanted to try to see if I could make a connection of your paradox, because we all have the benefit of Toby Landau's LIDW 2026 paradox of visibility, the shift from ability to visibility. So is this two faces of the same legitimacy problem? Can we make a connection there from two of our leading thinkers?

Dr. Crina Baltag FCIArb: Well, with the caveat that I was not present in Milan nor at LIDW, and I read on Global Arbitration Review, I think there is indeed one of the great challenges that we face, because in particular, when it comes to diversity in all forms, including age, we have to acknowledge that the new generation of arbitration practitioners, counsel, arbitrators, third-party funders, are using a different language or

a different channel to communicate. And that is through social media, through media in general. So in a way, if we're prohibiting actions, reactions of arbitrators in the public space, will probably have an impact on, in particular, institutions of how you come to know the future arbitration practitioners. Of course, there is always a nuance, and I think Toby would agree with this, is that it depends what you say, how you market yourself, in what context, and so on and so forth.

But as I said, timing matters, context matters, relationship matters, like, dislike, love button also matters. So there are different nuances in the approach. I suppose with social media, it's not just like, love, and audience reaction, because it could potentially give rise to issue conflict as well, because you could have something in the comments that you would almost immediately just react to, where you're not thinking about the consequences of that. And it did. So again, it is the reality of today because we tend to approach the information on different devices. And in fact, this was of extensive debate among some practitioners some time ago, that actually what you see on your mobile phone is slightly different than what you see on your laptop or on your iPad. And it may be that what prompts you to like a post on LinkedIn when you're looking at that on the laptop, it might not be as tempting as it should.

So, as I said, there are nuances, but at the same time, one should exercise caution and not automatically be inclined to react immediately, to reshare, or to agree with something that was not fully read as we should, as lawyers.

Kevin Nash: We should give an opportunity for all of you in attendance, in person and online. I see lots of LCA arbitrators and LCA counsel. Are there any questions that immediately occur? We have a roving microphone, and I see an early hand up.

Speaker one: Thank you, Crina, for the most insightful and thoughtful lecture. You mentioned the challenge in the Akhmetov case, which had to do with the liking a fundraiser benefiting Ukrainian soldiers. And, I'm also aware of a trend in Russian court decisions where enforcement of foreign-seated arbitral awards has been refused on public policy grounds because Russian courts presumed that arbitrators from so-called unfriendly states to Russia, there's a list of 49 officially unfriendly states, they are presumed automatically not to be impartial towards Russian parties. So my question is, to what extent this recent rise in challenges might be partly fuelled by recent geopolitical tensions and how arbitral institutions should be dealing with such challenges, bearing in mind the desire to maximize the enforceability of potential awards.

Dr. Crina Baltag FCIArb: I think Kevin probably has more insight in the institutional aspect. I can say from a SCC perspective, that there are challenges based on, in general, statements made in the public space, which may or may not be related to geopolitical

events as happening. But the number is not striking. One thing that I would mention is that certain challenges that we see in the public space, in particular in investment arbitration cases, are decided not in a unitary manner. And in particular, the UNCITRAL cases, when we know that we have an appointing authority, we might have an institution, LCIA might be the appointing institution, the SCC may be the appointing institution, or you have a person that is designated as the appointing authority that will decide the challenge. And if you look at similar circumstances, going back to your question, if we understand the standards in the same way, there might be different outcomes. Even with the ICSID compared to UNCITRAL cases, there is probably a distinction to be made as well.

I suppose that would be a reaction to a disclosure, if there was a disclosure. I don't think that there's anything statistically significant based on appointing arbitrators in cases involving Russian parties for parties from unfriendly jurisdictions. And I think that there is quite a bit of precision on the institutional side in terms of in what cases would you be appointing an arbitrator from a jurisdiction that has not been classified as unfriendly. I think because LCIA has a fairly large portfolio of cases involving Russian parties, we do see, in fact, that Russian parties not infrequently would be nominating their own arbitrators from the UK or the EU. So that would be unlikely to end up or being a factor that you could then rely on for a challenge if you had in fact nominated your own arbitrator from an unfriendly jurisdiction.

Kevin Nash: For everyone online, no shortage of questions and hands going up.

Speaker two: My name is Berat Can Okcu. I'm an LLM student at Queen Mary University of London. Thank you for the inspirational lecture. It has been very insightful. My question is in the context of third-party funding. As disclosure is a very commonly debated topic in the field, with many arbitral institutions adopting a pro-disclosure approach, what risks do you think the party disclosure of third-party funding arrangements may generate with regard to arbitrator impartiality, and what should be the approach of the arbitral institutions to mitigate those risks?

Dr. Crina Baltag FCIArb: Thank you very much, Berat. And by the way, I have not provided a question. Or I'll use SIAC as an example. So there was a guidance note on the approach to external funding. Ultimately, the mischief there and what you want to avoid, which is never a problem, is an arbitrator that has a senior role at a funder not disclosing that and if the funder is involved. But I think based on the disclosure regimes, we have some homework to do, I think, for the institutions that are operating in the UK. But that is something that an arbitrator would disclose as a matter of course.

Speaker three: The disproportion between the amount of disclosures and the number of successful challenges, quite dramatic, really. How do we discourage all these

challenges? What springs to my mind is that you don't see these sorts of challenges with regard to judges in the courts. And it just occurs to me that if you make a challenge to a judge, there's a cost consequence. If you're in adversarial litigation, particularly in this country, and you start making objections to the partiality of the judge, cost consequences can dissuade you from making that challenge. Do you think that might be something that we might see in arbitration, or we just don't have that as an incentive to dissuade people from making some of the challenges, which are frivolous?

Dr. Crina Baltag FCIArb: It's a fine distinction, but we're in a more difficult position with regard to arbitration than litigation before the judges. This is a discussion that Kevin and I had in Singapore some years ago when discussing challenges comparatively between the SCC and SIAC. And I think that year was actually zero challenges at SIC and probably more than 15 at the SCC. And one thing that I put forward, as I mentioned, is that at SIC, you pay. At the SCC, you don't pay. But there is a fundamental distinction when it comes to the numbers as well, that you have to match the cost element of a challenge with the mechanism of appointment of arbitrators. Where you have the confirmation of the arbitrators or nomination appointment, probably the chances of challenging, of raising a challenge would go down. Whereas in institutions where the parties appoint the arbitrators without the intervention of the institution, there is likely more potential to challenges because the institution had no say in that appointment.

And that's what we see at the SCCs, where, as a matter of policy, has always been for the SCC to allow the party autonomy for the parties to select their arbitrator. There is no cost in challenging because that's the mechanism that ensures the independence and impartiality because the institution has not intervened. I don't know if that captures, in a way, our discussion back then.

Kevin Nash: Well, I think it takes a very brave institution to not allow a challenge on the basis of an inability to pay. And most of these challenges, unsurprisingly, will be coming from an intermittently participating respondent, and there could be multiple challenges. We're all aware of the stories in the arbitration ether, where there may be two challenges, five challenges, a second challenge on the basis that our first challenge was so wholly without merit. That the tribunal could not possibly be fair to us because we offended them so much on the first challenge.

So there are a lot of these unmeritorious challenges, and I think we do, as a community, need to figure out a way to resolve them. So certainly having this sound in costs is part of the solution, but you have to be a bit careful about a respondent that is not able to move a challenge when they say that we don't have the money for a challenge, but this arbitrator is surely biased against us.

So it's a complicated issue, which I think is probably going to require a multi-layered, multi-head solution. Now, I'm looking at Mercy, and I think that we do have some questions from the online attendees. Actually, I'm going to ask two at once because they go along the same vein. So one notes that in practice, parties often equate disclosure with bias and non-disclosure with misconduct automatically.

So what can the arbitration community do to preserve the distinction between independence, impartiality, and mere professional familiarity in an increasingly interconnected global arbitration market? And then the other one, which I think is similar, is going back to your point that you've been making about the increasing availability of data on arbitrators, but also law firms and parties. Are there actually ways that arbitration can use this to strengthen the confidence in impartiality without turning every professional pattern or past appointment into grounds for a challenge? Can we take these things and use them in a more beneficial, in a productive way to solve this problem?

Dr. Crina Baltag FCIArb: So I think the problem of disclosure equals conflict of interest, it's pretty obvious. But going back to the IBA Guidelines is one thing that is really spelled out. And again, I encourage everybody to look not only at the IBA Guidelines, but also with the 2024, we have commentary to the IBA Guidelines, which are very helpful, and they reveal really the background of the final product, as well as comparison with the 2014 version.

So, there are nuances here. When you're asking the question, I thought about the Vidatel case again, and the distinction that some jurisdictions take between publicly available information and information that is not readily available to the public. And you see in France, where you have the issue of notorious information as the Vidatel case has strengthened, is something that the parties should not disclose. And automatically means that if it's in the public space, that not necessarily generate or equates conflict of interest. Interestingly, that is a case where information was on Global Arbitration Review, which is behind the paywall.

So the question is, how much access do you actually have to the information, even if it's in a broader space, but not necessarily a public space? For example, in Brazil, the Esho case, the Este Jota despair tribunal has recently, and I think that in 2025, reconfirmed that publicly available information doesn't have to be disclosed. It's something that the parties have access to. And of course, I was mentioning the Switzerland Sunyang case, and consistently, throughout the years, information that is accessible that a reasonable person can access it should not be disclosed. Therefore, there is a potential of concluding that it's reasonable to assume that if it's out there in the public, conflict of interest probably should not exist because the arbitrator has accepted the appointment.

That's another thing that should be highlighted. The IBA Guidelines, and I think any reasonable arbitrator would agree, that if you do have a conflict of interest, you're not going to accept the appointment. And in particular, if you're on the non-waivable red list, that is a no-no. I forgot the second part of the question. Kevin, you take it.

Kevin Nash: What I will say is there is this mythology in arbitration that if you reject an approach by an institution, that they are not going to come back and approach you anytime in the near future, and this is untrue. In fact, we like when arbitrators are being prudent because it's important to remember there are any number of cases where an arbitrator will say that, "Unfortunately, I'm not able to take up this mandate." So by virtue of disclosing, you are saying that I already view myself to be independent and impartial, but I make this disclosure for good order, and then the parties are commenting on it. So there are any number of cases where arbitrator is not able to take it up. It is not true that we will not be circling back to you quickly. We like when arbitrators are taking a prudent approach. Like us.

Speaker four: Hello. Manas Malik from 20 Essex. I'd heard that judges in Singapore weren't allowed to wear shorts in public, which is quite unfair, given the fact that it's very hot. That said, I believe that rule has now changed. It was there during the British times. And I mention this simply because if we are going to place restrictions on arbitrators who are not employed as judges, but in a sense, enter the domain as private judges, my first question is, why the additional standards on us? And second, where are those standards? Where are those universally accepted social media guidelines as to what one should or should not say? And perhaps I just wanted to draw analogy with the IBA. At least we've got a green list and a red list, and orange list. We just don't have that. So I just wanted to really invite your thoughts as to how, and why really, we have those standards for arbitrators, and where are those standards?

Dr. Crina Baltag FCIArb: It's interesting because this is a conversation that Kevin knows in UNCITRAL Working Group III on the code of conduct of arbitrators. This was probably repeated over and over, and we are reminded that arbitrators are not like judges set in a confined environment. You're with a court and you're going to be employed by the court, and therefore, you're going to be dedicated to that position. Arbitrators are undertaking different other endeavours, including as counsel, the double-hatting issue that was raised in UNCITRAL Working Group III, and dealt with. And also the fact that you're in a floating environment. You can be today in an LCI arbitration, tomorrow you can be in an ad hoc arbitration. You might have the supervision of an institution. You might not have a supervision, or maybe you have from one court at the seat. So therefore, the standard, or at least a code of conduct or something that regulates the profession, including how one should keep independence and impartiality. I'm not sure

about shorts in public. I think that's with Kevin. I thought I knew the Singapore rules and regulations better than anyone, and I wasn't aware of that one. But I query whether that's a bad thing to have less shorts in dispute resolution. I think maybe… not having shorts is an okay thing.

Speaker five: Thomas Vale, Vale Dispute Resolution. Thank you, Crina, for the lecture. Listening to it, I was reminded of two phenomena, critiques of the arbitration world in recent years. One, when mentioning the growing disclosure obligations of arbitrators, I was reminded that every arbitration conference I attended a few years ago was about due process paranoia and the increasing duties of arbitrators to deal with more and more applications and addressing every single point, et cetera. And then another phenomenon a few years before that, ultimately relating to the legitimacy of investment treaty arbitration, which we've seen dealt with. I don't think in the intervening years since the due process paranoia point, I've seen anything addressing that, no development. There was a lot of discussion that I think ultimately went nowhere, but I'm happy if anyone wants to correct me on that. So I suppose the question is, I agree with you on the growing number of challenges and it being a new phenomenon. Is it more similar to the due process paranoia, or is it more similar to the investment treaty arbitration question on legitimacy? What is the future going to look like for addressing the challenge problem?

Dr. Crina Baltag FCIArb: I think one could draw an interesting parallel. I was thinking immediately at the approach of courts when it comes to set aside an enforcement of awards on due process and arbitrator, let's say broadly under the New York Convention, a constitution of the arbitral tribunal, that you would have that. And I think that on the arbitrators, one critical element is the issue of waiver that I mentioned earlier. To what extent, and here there are nuances in the arbitration rules, where you have the challenge from the day the party knew of the existence of the circumstance giving rise to the conflict, or ought to have known, and this is where you have the reasonable inquiry standard. And again, you also have the new facts that could justify a set aside or bring in this before the set aside court or enforcement court. Whereas due process, of course, the waiver issue is similar in this case as well. But I think the courts are looking at the tribunals as more of the manager of the process. I think they take the arbitrator issue more seriously because of everything that I said before. This is a tribunal that is constituted, that doesn't sit in a permanent structure, and they will look at this more carefully. Whereas with the due process, of course, if it's the managerial role of the arbitral tribunal, there will be deference to the decision of the tribunal.

Kevin Nash: We can go back online. So this is a question about specialised industries. So in specialised industries such as the shipping profession, the community is relatively small, and experienced arbitrators or experts will often cross paths with the ship owners,

the P&I clubs, law firms, surveyors, and managers in their career. So how do we draw a line in such a context? Because there could be significant impact, if the threshold becomes too strict in industries like these.

Dr. Crina Baltag FCIArb: So I have the IBA Guidelines with me, but now I'm short on time. If you remember, in the 2014 IBA Guidelines, there was a footnote, which qualified the disclosure obligations when it came to specialised industry and was saying that doesn't necessarily
apply, and was listing specific industries. And I think I found it. Or maybe not. Whereas in the 2024 version, it's actually the opposite. It says that in certain types of arbitration, such as maritime, sports, or commodities arbitration, arbitrators may be drawn from a specialised pool of individuals or selected from a mandatory list. Parties active in those fields may be aware of a custom or practice for appointing parties frequently to appoint the same arbitrator in different cases. In that event, while disclosure of multiple appointments may still be desirable, the scope of disclosure and consequences of repeat appointments may differ from those set forth in these guidelines. We are encouraging still the disclosure, even if you are in this repeat appointment environment, meaning that that subjective test has to remain irrespectively. So we
moved from non to encouraging that it is.

Do low upheld challenge rates mean that most arbitrator challenges are tactical and unfounded, or does it suggest that the threshold for proving reasonable doubts about impartiality may be too difficult? So, we put everything in one broad category, which is challenges to arbitrators. But I mentioned at some point that, and especially looking at the statistics, these are various circumstances. There can be issues of connection between arbitrators and the parties, can be connection between, or alleged between the arbitrators and affiliates of the parties, between the arbitrators and their previous law firms. And also you have the procedural conduct of arbitrators that we see. So there are various types of circumstances that are brought in a challenge. Most frequently, at least Kevin can an opinion on this based on the LCIA challenges, but the successful ones will usually be on connections and most often, the past arbitrator's life, partnering a law firm two years ago, but still having connection, receiving payments, handling some of the cases of the law firm, and similar.

Kevin Nash: And for me, I think that we're getting better as a community, and if I can stump a bit for the LCIA's publication of anonymised decisions on challenges. So there are 84 cases that are not just applicable to LCIA arbitrations. They're applicable to any arbitration. It would take the very ambitious challenging party to be able to look at those 84 decisions and still be moving a challenge on the same basis. So it's an increasingly complicated world, but I think that we're also starting to understand it better through the good work done by IBA and other organisations, say, issues on what the relationship is in a barrister's chambers or an arbitrator's chambers. So the hope

would be that ultimately, or doomed challenges wouldn't be remoted, recast, and relitigated in a substantially similar form.

Dr. Crina Baltag FCIArb: I would add to this, and I said the initiative of the arbitration institutions helps the entire arbitration community understand better where we are on disclosure, challenges, conflicts, independence, impartiality, with the publication of reasoned decisions on challenges of arbitrators. LCIA, SIAC as well has published recently. SCC is at the third practice note on challenges. And of course, there are institutions where if one or the parties ask the institution to issue a reasoned decision, the institution will do so. So I believe that more transparency when it comes to the reasoned decision on a challenge will advance more, not only the discussion, but also a better approach. And it really goes to legitimacy as well. Sometimes I think the way some institutions have done it, I think that HKIC publishes, or some of their procedural decisions, because it's not always the publication of a merits award that is really going to move the needle. I will often say that I've done an enormous amount of cases involving Kalimantan steam coal, but these quality disputes need not necessarily be published, and we're not going to get better as a community. But publishing these anonymised. Decisions on challenges really does go to legitimacy.

Kevin Nash: So I think that we are exactly on time. I still see a lot of questions, but of course, the timeliness for me as moderator and as part of the ethos of LCIA, always being on time. And I don't want to stand in the way of drinks outside with the beautiful weather. So maybe all of us, we can decide as a collective that on social media, that we can say that Crina's very careful and thoughtful approach was important. But none of what we say when we compliment Crina for this lecture is going to give rise to any sort of future conflict. So please, would everyone join me in thanking Crina in the usual way.

Thank you.