

# Challenges and Recusal of Arbitrators under the UAE Arbitration Law

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The doctrine of challenge of arbitrators provides the mechanism through which an arbitrator can be recused or disqualified if he/she does not satisfy the necessary requirements, such as impartiality and independence, to orderly perform the arbitral mandate. In this regard, challenging an arbitrator provides the parties with the requisite safeguards in order to ensure that the arbitral award is fair and just and is kept at bay from procedural irregularities which could ultimately affect its enforceability.

This article provides a brief overview of the grounds of challenges and recusal of arbitrators as set out under Federal Law No. 6 of 2018 Concerning Arbitration (“UAE Arbitration Law”). In this article, the authors specifically examine the default statutory provisions, in the event, the parties have not agreed on the application of a procedural framework to challenge an arbitrator, whether through a direct agreement or indirectly, through an agreement to apply institutional arbitration rules.

# Available Grounds for Challenging Arbitrators

The general framework for the grounds for challenging arbitrators has been expressly set out under Article 14 of the UAE Arbitration Law.

Article 14(1) of the UAE Arbitration Law provides that “an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence, or if he/she does not possess the qualifications agreed to by the parties or stipulated by this law.” In this regard, the UAE adopted the approach of the UNCITRAL Model Law on International Commercial Arbitration with respect to the grounds for challenging arbitrators.

Moreover, Article 10(1) of the UAE Arbitration Law sets out the general statutory required qualifications of an arbitrator’s capacity to conduct the arbitral mandate who “shall be a natural person who is not a minor or under court interdiction order or without civil rights by reason of bankruptcy; unless he/she has been discharged, or due to a felony or misdemeanour conviction for a crime involving moral turpitude or breach of trust, even if he/she has been rehabilitated”.

Articles 10(2) and 10(3) of the UAE Arbitration Law respectively set out special statutory required qualifications of an arbitrator who “cannot be on the board of trustees or the administrative body of the Arbitration Institution responsible for administering the arbitration in the State (UAE)” and “need not be of a specific gender or nationality, unless otherwise agreed upon by the parties or provided for by law.”

Furthermore, the UAE Arbitration Law imposes an explicit obligation on arbitrators to disclose any circumstances, which are likely to give rise to “justifiable doubts” on the said arbitrators’ impartiality and independence. In this regard, Article 10(4) of the [UAE Arbitration Law](#) imposes a continuous positive obligation on an arbitrator to “(...) disclose in writing anything likely to give rise to doubts as to his/her impartiality or independence.”

The question as to whether or not the grounds give rise to “justifiable doubts” on the said arbitrators’ impartiality and independence is a matter which usually falls within the remit of the supervisory court pursuant to the law of the seat or, where applicable, the rules of the arbitral institution administering the arbitration.

It is noteworthy that the UAE courts have adopted a relatively consistent approach in determining the standards of what qualifies as circumstances that would give rise to justifiable doubts as to the arbitrators’ impartiality or independence. In this regard, the standard that the UAE courts tend to apply is the objective standard test. Accordingly, the UAE courts will assess whether a reasonable third party would deem the specific circumstances leading to the challenge to give rise to “*justifiable doubts*” as to arbitrator’s impartiality or independence.

## Procedure for Challenging Arbitrators

The UAE Arbitration Law provides, under Article 15, a specific procedure for the challenge of arbitrators that a challenging party must follow unless the parties have agreed to a different procedure, whether through an explicit or implicit (e.g. reference to and application of institutional rules) arrangement.

In accordance with the UAE Arbitration Law, the challenging party shall issue a notice of challenge in writing stating reasons for the challenge within fifteen (15) days after becoming aware of the appointment of the arbitrator or after becoming aware of any circumstances justifying the challenge. A copy of the notice must be served upon the other appointed members of the tribunal as well as the parties to the arbitration.

In case the challenged arbitrator does not withdraw from the mandate or the other party does not agree to the challenge within fifteen days (15) from the date of the notice of challenge, the challenging party may present it to the relevant authority (e.g. the court or where applicable, the arbitral institution) within fifteen (15) days following the first fifteen (15)-day period. Such an authority then has ten (10) days to decide on the challenge and its decision is not subject to any force of appeal.

It is noteworthy to note that in accordance with Article 15(3), the UAE Arbitration Law provides that a challenge to an arbitrator shall not have a suspensive effect (i.e. no stay of the proceedings) and the tribunal, including the challenged arbitrator, may continue the arbitral proceedings and issue an award, even if the relevant authority, has not yet issued its determination on the said challenge. Such a provision is indeed positive as it is likely to deter frivolous challenges the purpose of which would be to disrupt and intentionally delay the arbitral proceedings.

## Effects of the Challenge on the Arbitral Proceedings

The direct effect of a successful challenge is the recusal or the disqualification from an arbitrator from continuing to serve as an arbitrator in the arbitral proceedings. In other words, the disqualified arbitrator specific arbitral mandate in the proceedings would be considered as terminated.

Furthermore, Article 15 (4) of the UAE Arbitration Law provides that in case an arbitrator decides to withdraw from the arbitral mandate (concept of auto-recusal) or if the parties mutually agree to terminate his/her mandate, such withdrawal shall not imply the arbitrator's acceptance of the grounds of challenge.

When agreeing on the termination of the mandate of an arbitrator, the parties are not required to disclose the reasons for terminating the said arbitrator's mandate.

Subsequent to the termination of the arbitrator's mandate following the parties' agreement, which shall take effect ipso facto, the arbitrator shall refrain from taking any further actions in the proceedings. However, any steps already taken by the concerned arbitrator shall be valid and effective unless the parties expressly agree not to recognize such steps and consider them as void.

It is worth highlighting that in addition to the challenge procedure which would lead to the recusal of the arbitrator, and ultimately the termination of the arbitral mandate, the UAE Arbitration Law sets out standalone circumstances where an arbitrator's mandate can be considered as terminated. In accordance with Article 16(1), the arbitrator's mandate can be terminated if the arbitrator is unable to perform the functions or fails to act in a manner that leads to unjustifiable delay in the arbitration proceedings or deliberately fails to act in accordance with the [arbitration agreement](#). Article 16(2) provides that an arbitrator's mandate shall terminate upon the latter's death, incapacity or loss of one of the required qualifications for his appointment given the *intuitu personae* nature which usually commands the arbitral mandate.

## Conclusion

The finality of an arbitral award can be put to test in the event of serious procedural irregularities in the arbitral proceedings, which may affect arbitrators. In this regard, the procedure for challenging arbitrators is aimed at safeguarding the arbitral award and its prospective enforceability. Based on the above overview, following the enactment of the UAE Arbitration Law, it is clear that the grounds for challenge are now brought in line with the international standards. The challenge procedure benefits from a streamlined process aimed at deterring frivolous challenges. The regime for challenging arbitrators as provided under

the UAE Arbitration Law constitutes a welcome basis for the development of the UAE as a leading arbitration hub in the Middle East and beyond.

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