

Challenge of Arbitrators - UNCITRAL Arbitration

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The procedure concerning the challenge of arbitrators differs in some respects depending on whether the arbitration is subject to the 1976 Rules or 2010 and 2013 Rules.

UNCITRAL Arbitration Rules (1976)

The UNCITRAL Arbitration Rules of 1976 provide for a proceeding of challenge of arbitrators taking into account the principles of impartiality and independence. First, they require that a prospective arbitrator discloses to those who approach the arbitrator in connection with the possible appointment any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Once appointed, the arbitrator shall disclose such circumstances to the parties unless they have already been informed by the arbitrator of these circumstances.

Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. However, a party may challenge its own appointed arbitrator only for reasons of which it becomes aware after the appointment has been made.

If any party intends to challenge an arbitrator, it shall send notice of its challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the said circumstances of justifiable doubts became known to that party. The challenge should then be notified in writing to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal, stating the reasons for the challenge.

After an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also withdraw from his office after the challenge. In neither case this would imply acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Article 6 or 7 of the UNCITRAL Arbitration Rules shall be used in full to appoint the substitute arbitrator.

If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the appointing authority, whether it has been designated or should be designated in accordance to Article 6 of the UNCITRAL Arbitration Rules.

In case the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 6 to 9 or the appointment should be made by the appointment authority which decided the challenge.

UNCITRAL Arbitration Rules (as revised in 2010 and 2013)

The UNCITRAL Arbitration Rules of 2010 and 2013 provide for a challenge procedure that is rather similar to the one provided by the 1976 Rules with some exceptions. The rules first require, as provided by Article 11, that a prospective arbitrator discloses to those who approach the arbitrator in connection with a possible appointment any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Once appointed, the arbitrator shall disclose such circumstances to the parties without delay (NB: this "without delay" requirement was not in the 1976 Rules) unless they have already been informed by the arbitrator of these circumstances.

Like in the UNCITRAL Arbitration Rules of 1976 any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. However, a party may challenge its own appointed arbitrator only for reasons of which it becomes aware after the appointment has been made.

Furthermore, the 2010 and 2013 Rules provide that in the event that an arbitrator fails to act, or if the arbitrator is de jure or de facto not able to perform the arbitrator functions, the procedure in respect of the challenge of an arbitrator as provided in Article 13 of the applicable UNCITRAL Arbitration Rules shall apply.

If a party intends to challenge an arbitrator, it shall send notice of its challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances of justifiable doubts became known to that party. The challenge should then be notified to all other parties, to the arbitrator who is challenged and to the other members of the tribunal, stating the reasons for the challenge.

After an arbitrator has been challenged by one party, all parties may agree to the challenge. The arbitrator may also withdraw from office after the challenge. Nonetheless, in neither case this would imply acceptance of the validity of the grounds for the challenge.

If within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.