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Case Study

Impact of conflict of interest on Arbitral Awards



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Overview

Arbitration is a private system of alternative disputes resolution whereby the parties agree that their dispute will be heard and decided upon by a sole arbitrator or a panel of arbitrators appointed to issue an arbitral award binding to parties. Notwithstanding the major key dissimilarities occurring between Arbitration and the Judicial Courts system which include but not limited to: the ability of parties to appoint the arbitrators and the absence of such option for disputed litigants, the speedier character of arbitration procedures, and the lower cost of Arbitration proceedings; crucial analogies persist. In view of the fact that the parties in an Arbitration have agreed to be bound by the decision to be rendered by the appointed arbitrator, it is therefore pivotal that the arbitrator is neutral and impartial. That said, both arbitrators and judges are required to demonstrate independence and impartiality toward the subject matter and the parties involved, in order to ensure a fair and just resolution of disputes. The principal of arbitrator independence finds its roots in the absence of any past relationship between the arbitrator and one of the parties or between the arbitrator and one of the parties' legal representative likely to influence his freedom of judgement; Whereas the principal of arbitrator impartiality has its origin in the concept of bias which restrains an arbitrator from having bias for or against any one of the parties or in relation to the subject matter of the dispute.

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The principles of independence and impartiality of arbitrators have been underlined in a verdict rendered by the Dubai Court of Appeal in 2022. Pursuant this judgement, the imperativeness of the latter principles as being essential parts of any arbitrator's decision-making function and being the cornerstone of procedural fairness have been accentuated. It is therefore important to learn how and when a conflict of interest could arise and that it may impact the independence and impartiality of an arbitrator.

Legal Grounds

arbitrator's decision shall be based on an objective assessment of the facts and the law, without regard for personal bias or prejudice. Uniformly with his judicial analogue, an arbitrator is expected to be immune to outside pressures as well as to the parties involved in the dispute. In arbitration, this is particularly important in view of the fact that the parties have appointed the arbitrator or the panel of arbitrators to render a binding arbitral award in their dispute. Complying with such fundamental guideline would contribute to ensuring a fair and just decision-making process for all parties involved. In the United Arab Emirates, the setting aside of an arbitral award due to a conflict of interest on the part of the arbitrator is governed by the Article 53 of Federal Law No. 6 of 2018 on Arbitration ("The Arbitration Law").

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Under Article 53 of the Arbitration Law, an arbitral award may be set aside by the UAE Courts if it is found that the arbitrator or the panel of arbitrators had a conflict of interest that would potentially affects the award. The Article 53 of the Arbitration Law states the following:

“An objection against an arbitral award may not be accepted unless by lodging an action in nullity with the Court or during the examination of the request for recognition of the award, and the applicant for annulment shall provide a proof that:

- The composition of the Arbitral Tribunal or appointment of an arbitrator has been made contrary to the provisions of the present Law or the agreement of the Parties.”

Illustrations from UAE Courts and Arbitration Institutions

In the judgement that we have on hand, the UAE Court of Appeal has explicitly based its ruling on the above-referenced article. Moreover, the Court applied Article 53 and set aside the arbitral award on the grounds of panel of arbitrators’ conflict of interest. The case under study involved a dispute in the domain of sports which was heard by The UAE Sports Arbitration Centre where a conflict of interest has been identified by one of the parties.

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Once the issue has been ascertained, the party challenging the award filed a request for the nullification of the award before the UAE Court of Appeal within the deadline of thirty days provided by law. The Court has ruled on the setting aside of Arbitral Award on the ground of factual and material evidence supporting the failure of two arbitrators to disclose prior relationship with the legal representatives of the parties involved, which could have considerably affected their impartiality and neutrality in the process of issuing the arbitral award. In a similar direction, and after making another reference to the aforementioned Article 53 of the UAE Arbitration Law, indicated expressly that the Arbitration tribunal in the case on hand has proceeded with the issuance of the arbitral award despite all limitations occurring with regard to the formation of the said tribunal. On the basis of the latter grounds, the UAE Court of Appeal has decided upon the nullification and the setting aside of the challenged arbitral award.

Along the same lines, in another case heard by the Dubai International Arbitration Centre (DIAC) in 2017, a party challenged an arbitral award on the grounds that the appointed arbitrator had a conflict of interest. The challenging party argued that the arbitrator had a personal relationship with the opposing party's legal representative, which construed a risk of bias.

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The DIAC upheld the challenge and nullified the award. It has been stated that the relationship between the arbitrator and the opposing party's legal representative was sufficiently close to create an appearance of bias, which undermined the fairness and impartiality of the arbitration.

Additionally, in a case heard by another arbitration institution in Dubai in 2018, one of the parties involved challenged the arbitral award on the grounds that the appointed arbitrator had a financial interest in the outcome of the arbitration. The challenging party argued that the arbitrator was a shareholder in a company that was connected to the opposing party, and that the latter comprises a significant risk of bias likely to disturb the arbitrator's impartiality and neutrality. The challenge was upheld and the award was nullified, underlining the fact that the arbitrator's financial interest in the final outcome of the arbitration illustrated an inadmissible hazard of bias undermining the integrity of the arbitration process.

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Conclusion

The above-referenced cases demonstrate that the UAE Courts and Arbitral Institutions allocate remarkable significance to the issue of conflict of interest through their will to nullify and set aside arbitral awards in the event concrete evidence of potential bias or partiality is underlined by the challenging party. Therefore, an arbitrator has a duty to disclose any bias or existence of prior relationship with the parties or their legal representatives. Nonetheless, in the event the arbitrator fails to disclose the latter, and for the purpose of successfully challenging an award rendered by a partial arbitrator or arbitral tribunal, the burden of proof is high on the challenging party. The challenging party shall provide sufficient evidence to support their claim. It is essential to highlight, investigate and raise the issue of conflict of interest at the earliest convenience in the arbitration process for the purpose of enhancing the prospects of success if a challenge becomes mandatory.

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