

**The Role of Arbitrator in Arbitration Process  
Impartiality & Independence**

دور المحكم في العملية التحكيمية  
الحياد والاستقلالية

by

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of the requirements for the degree of  
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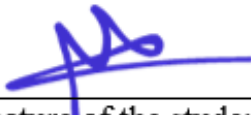
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## **ABSTRACT**

The judiciary is considered one of the pillars of the state's balance, as it achieves justice among members of society through the correct application of the laws and legislation in force in the state, and due to the spread of arbitration as an alternative dispute resolution method, I have chosen in this thesis to shed the light on the role of the arbitrator in the arbitration process and the extent to which this role affects the success of the arbitration process as the arbitrator plays the role of the judge in the arbitration process.

And since there is a great demand for arbitration now as an alternative method for resolving disputes because of its benefits that have been widely accepted by companies and individuals, because it is easier and faster than the judicial authority, in addition to the principle of complete confidentiality during arbitration procedures and the lower costs of arbitration compared to the judicial authority. Therefore, light was shed on the procedures followed by the parties in the event of resorting to arbitration in accordance with international arbitration laws and the laws of the United Arab Emirates, starting with choosing the correct conditions for the arbitration clauses, passing through the selection of the arbitrator or arbitration committee, the text of the arbitration agreement, and the criteria for the final agreement to ensure access to the issuance of a valid final arbitral award is binding on both parties. The focus was on what are the behaviors that the arbitrator must follow during his consideration of the arbitration case.

This thesis included a discussion of the various jurisprudential opinions regarding the erroneous decisions and procedures committed by the arbitrators in the various types of arbitration, which led to the nullification of the arbitral award, the analysis of legal texts that approved the role of the arbitrator, explicitly or implicitly, and the presentation of the relevant judicial decisions.

## ملخص

يعتبر القضاء أحد أركان توازن الدولة، إذ يحقق العدالة بين أفراد المجتمع من خلال التطبيق الصحيح للقوانين والتشريعات السارية في الدولة، وبسبب انتشار التحكيم كطريقة بديلة لتسوية المنازعات، فقد اخترت في هذه الأطروحة أن ألقى الضوء على دور المحكم في عملية التحكيم ومدى تأثير هذا الدور على نجاح عملية التحكيم، حيث أن المحكم يلعب دور القاضى فى العملية التحكيمية.

وبما أن هناك طلب كبير على التحكيم الآن كطريقة بديلة لحل المنازعات بسبب فوائده التي حظيت بقبول واسع من الشركات والأفراد، لأنها أسهل وأسرع من السلطة القضائية، بالإضافة إلى مبدأ السرية التامة أثناء إجراءات التحكيم وانخفاض تكاليف التحكيم مقارنة بالسلطة القضائية. لذلك تم تسليط الضوء على الاجراءات المتبعه من قبل الاطراف فى حال اللجوء الى التحكيم طبقا لقوانين التحكيم الدوليہ وقوانين دولة الامارات العربيہ، بدءا من اختيار الشروط الصحيحة لبنود التحكيم، مرورا باختيار المحكم أو لجنة التحكيم، ونص اتفاق التحكيم، ومعايير الاتفاق النهائي لضمان الوصول إلى صدور قرار تحكيم نهائي صحيح ملزم لكلا الطرفين. وتم التركيز على ما هي السلوكيات الواجب على المحكم اتباعها اثناء نظره للقضية التحكيمية .

وشملت هذه الأطروحة مناقشة مختلف الآراء القضائية المتعلقة بالقرارات والإجراءات الخاطئة التي ارتكبتها المحكمون في مختلف أنواع التحكيم، والتي أدت إلى إبطال قرار التحكيم، وتحليل النصوص القانونية التي وافقت على دور المحكم، صراحة أو ضمنا، وعرض القرارات القضائية ذات الصلة.

## **DEDICATION**

I dedicate this dissertation to all members of my family: first and foremost, my great father and mother, and my dear daughters (Meril and Melina). I especially mention my beloved wife MARIAN who is the backbone of life in our family for her constant support to me, without which, nothing would have been achieved.

## **ACKNOWLEDGEMENTS**

First of all, I would like to thank God Almighty for giving me the strength and endurance to complete this journey of my studies. And special thanks to my supervisor Dr. Abba Kolo for his great support and efforts to guide me through my mission to obtain a master's degree in Construction Law and Dispute Resolution.

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## **LIST OF ABBREVIATIONS**

|                 |  |
|-----------------|--|
| <b>UAE</b>      | United Arab Emirates                                   |
| <b>DIAC</b>     | Dubai International Arbitration Centre                 |
| <b>UNCITRAL</b> | United Nations Commission On International Trade Law   |
| <b>CIarb</b>    | Chartered Institute of Arbitrators                     |
| <b>ICC</b>      | International Chamber of Commerce                      |
| <b>AAA</b>      | American Arbitration Association                       |
| <b>UAESAC</b>   | UAE Sports Arbitration Center                          |
| <b>ADR</b>      | Alternative Dispute Resolution                         |
| <b>PCA</b>      | Permanent Court of Arbitration                         |
| <b>UNGA</b>     | United Nations General Assembly                        |
| <b>ADCCAC</b>   | Abu Dhabi Commercial Conciliation & Arbitration Center |
| <b>WIPO</b>     | The World Intellectual Property Organization           |

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# CHAPTER 1

## 1.1 Introduction

The nature of the arbitrator's task is to settle the dispute, after applying the law agreed to be applied and following the procedures included in the arbitration agreement, in addition to the mandatory procedures to be followed by law, till the arbitrator issues his decision in the dispute, which, after ratification by the court, becomes an executive document to the winning party in the case. Therefore, the arbitrator performs the work of judges affiliated with the state, and this assumes that the arbitrator is obligated to perform his role in full impartiality and independence and to abide by the principles of justice and fairness like judges, and at the same time the arbitrator is bound to the parties to the dispute with a contract under which a number of obligations are imposed on the arbitrator, and therefore the responsibility of the arbitrator stems from this agreement in addition to the obligations imposed by law on the arbitrators.

So the main research problem is embodied in the search for breaches that the arbitrator may fall into during the arbitral process, which may lead to the failure of the entire process, and all this in light of the laws that define the nature of the arbitrator's role and how he is appointed to settle the dispute, the qualifications and characteristics that he must possess, in addition to the regulatory laws related to the dismissal of the arbitrator or the termination of his appointment as a result of his negligence or breach or his non-compliance with the laws and the arbitration agreement.

## 1.2 Research Aim

The aim of this Research is to clarify the criteria and conditions for selecting the right arbitrator and to evaluate the importance of the qualifications and duties of arbitrators to ensure the success of the arbitral process.

### **1.3 Significance of the research**

The problem of the study on the one hand is that the arbitrator must be carefully selected to be suitable for the capable dispute, as his qualifications and qualities play a key role in the success of the arbitration process, and on the other hand, the extent of the arbitrator's responsibility for his decisions and the results he will reach in a manner that does not conflict with the immunity given to him under the arbitration laws, leading to the issuance of a valid decision binding on the parties to the dispute that cannot be invalidated.

Although the law has imposed a legal obligation on the arbitrator, which is the obligation to disclose any circumstances or facts that may raise reasonable doubt about his impartiality and independence, given that they are the basis of the arbitrator's work<sup>1</sup>, the UAE legislator did not specify cases that show the arbitrator's impartiality or independence, so this issue raises many questions that constitute the whole problem of the study, including, for example but not limited to, what is meant by disclosure? What are the serious circumstances that raise reasonable doubt about the impartiality and independence of the arbitrator? What is the difference between impartiality and independence? What is the liability of the arbitrator in the event of a breach of the principles of impartiality and independence?

### **1.4 Objectives**

- Shedding light on the arbitrator's role in the arbitral process in order to understand the legal nature of the arbitrator's work.
- Develop an understanding of how to appoint the arbitrator and the correct mechanism to be followed when selecting arbitrators.
- Identifying the differences between the arbitrator's powers during the arbitration process and his obligations according to the law to be followed.

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<sup>1</sup> Justin Williams and others, 'Arbitration Procedures and Practice in the UK (England and Wales): Overview' 1.

- Discussing some of the erroneous procedures and violations committed by the arbitrators, which may lead to the invalidation of the arbitral award, through the study of some arbitration cases, especially in the United Arab Emirates.

## **1.5 Methodology**

There are two parts that form the outline of the research methodology. The first part is a literature review of previous articles, books, and research on the role of the arbitrator in general, then how the impartiality and independence of the arbitrator affect the whole arbitration process. Since the subject of this dissertation is related to practical aspects, therefore, the subject was also discussed through judicial cases related to the same subject, especially those rulings issued by the courts of the United Arab Emirates to better prove the importance of the subject. This study adopted the doctrinal research methodology as the information was gathered from legal resources, namely law provisions, court judgments, legal journals and reviews books, and articles to support the subject of the dissertation.

The second part is a survey extracted from the literature review as a predefined set of closed-ended questions was prepared to collect information from various players in the Arbitration field such as Arbitrators, parties in old arbitration cases, and arbitration practitioners, to achieve the objectives and aims through critical quantitative analysis.

## **1.6 Structure**

This section will set out an overview of the chapters that organize the research topic. The research consists of Seven chapters. The first chapter is the beginning of the research which includes the introduction/justification of the research topic, the aims/objectives of the research, and defining the research methodology. The second chapter talks in general about what arbitration is, why the demand for it, and what is the arbitration law in general and in the United Arab Emirates in particular. The third chapter explains the basis upon which the entire arbitral process rests, which is the arbitration agreement and the in-depth collection of data from the literature review of the subject of the research, determining the forms and conditions for the validity of the arbitration agreement, and the common mistakes that the

parties make when concluding the arbitration agreement. Chapter 4 will review what an arbitrator is, how he is appointed by the parties to the dispute, and the difference between an arbitrator and an expert. The Fifth chapter studies in detail the role of the arbitrator in the arbitral process, starting with the arbitrator's responsibilities and duties, the qualities that must be available in the arbitrator, in addition to the characteristics that the arbitrator must possess and the way in which he must deal in terms of impartiality and independence, and searching through previous cases for the reasons that led to the invalidity of the arbitral award or the plea for the invalidity of the arbitral award as a result of the arbitrator's lack of integrity or his unfair dealings with the parties during the arbitration. The sixth chapter will analyze the results collected from the questionnaire that was circulated to a number of arbitrators and individuals working in the field of arbitration. Last Chapter which is no 7 will discuss the conclusion of this research, the limitations that the researcher faced during the journey and make a recommendation for future research. At the end of the research, all references used in conducting this research from the literature review will be mentioned and it will include the appendix of the detailed survey form.



## CHAPTER 2: ARBITRATION

### 2.1 Introduction

At the outset, it must be clarified what is meant by arbitration because it represents the content and essence of the arbitrator's work. Arbitration is very old method of dispute resolution, as arbitration was used to resolve disputes before the judiciary, where some believe that the first arbitration story known to history when a dispute arose between Cain and Abel over the marriage of their twins, and Adam ruled between them, so he was the first arbitrator in history<sup>2</sup>.

Arbitration did not remain confined to any temporal right, but rather, as it accompanied all eras until the present time, the importance of resorting to it was not less, but it was increasing more and more until arbitration now plays an important role in wide fields in the current era, especially in the field of internal and external trade. The Arbitration goes through three basic stages:

- The first stage is by agreeing between the parties on arbitration and referring the existing dispute or which may arise later to arbitration.
- The second stage is the procedures followed during the adjudication of the dispute.
- The third stage is how to enforce the final award issued by the tribunal.

Where arbitration is preferred at the local and international levels, due to the advantages of arbitration which prompt parties to resort to such a route on account of the fact that the proceedings are confidential, less formal, and presumably, less costly than court proceedings.

The importance of arbitration as an integrated entity has made countries work periodically to try to establish laws that converge with the goal on which this method is based and preserve the free will of the parties to the conflict, which is its main pillar to this path in a codified and organized manner, and here we find that everyone gathers that for the establishment of the arbitration system requires people to follow a certain path based on the

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<sup>2</sup> (N. Al- Jily, Arbitration before Islam, Modern University Office, Sana'a University - Yemen 2006, p. 4)

arbitration contract or agreement, which carries with it the express expression of the free will of its parties to set what they deem appropriate of rules and procedures commensurate with their desires<sup>3</sup>, including this is to determine the arbitral body that is in charge of resolving the existing or potential dispute in the future, and which takes upon itself the task of finding an appropriate judgment that is satisfactory to the parties to the dispute<sup>4</sup>.

## **2.2 Arbitration in the modern Era**

International arbitration in the modern era has witnessed a qualitative leap, as countries have seriously sought to establish an international arbitration court through The Hague Convention of 1899, where many efforts have been made to establish a fixed structure and special texts for the peaceful settlement of international disputes through mediation and arbitration, and the Permanent Court of Arbitration was established. Then, after World War II, countries sought to establish the United Nations in order to achieve security and peace, and on the date of April 28, 1949, the United Nations General Assembly was established and the General Charter of Arbitration was reconsidered, so that it could adapt to the new international situations, and this proposal was accepted by The General Assembly, which recommended all member states to join the new amended formula in the General Charter of Arbitration, and these efforts continued until, during the United Nations Diplomatic Conference on June 10, 1958, the establishment of the rules of arbitration procedures, and the Convention on the Recognition of International Arbitral Awards, which was called the Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as the New York Convention<sup>5</sup>. This convention requires that the courts of the countries that concluded this convention recognizes the activation of the special agreements for arbitration and the recognition and enforcement of arbitration decisions issued in the other contracting countries of this convention<sup>6</sup>.

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<sup>3</sup> E Al Tamimi, *Practical Guide to Litigation and Arbitration in the United Arab Emirates*. (2003).

<sup>4</sup> D Chappell & Others, *Building Contract Dictionary* (3rd edn, 2001) P33.

<sup>5</sup> Reinmar Wolff, 'New York Convention - Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 - Article by Article Commentary'.

<sup>6</sup> Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (Sixth edit, Oxford University Press 2015) <<https://buid.on.worldcat.org/oclc/922847161>>.

Subsequently, UNCITRAL was established by the United Nations General Assembly in 1966, the UNCITRAL's official mandate is to "promote the progressive harmonization and standardization of international trade law" through agreements, model laws, and other instruments that address key areas of trade, from the purchase and sale of goods to dispute settlement. In 1985 the United Nations Commission adopted the UNCITRAL Model Law on International Commercial Arbitration, as this law plays an important role in assisting countries to reform and update their laws related to arbitration procedures and to form a unified legal framework that assists legislators in drafting arbitration laws<sup>7</sup>.

### **2.3 Why Arbitration**

The arbitration system has several advantages that push many parties, especially with regard to commercial transactions, to prefer it over the national judiciary, as arbitration depends on the principle of willpower adopted by the law<sup>8</sup>, which is manifested in three things:

- 1- The free will of the parties to choose arbitration as a method to settle the dispute rather than the judiciary.
- 2- The desire of the parties to choose the arbitral tribunal that will rule on the subject matter of the dispute<sup>9</sup>.
- 3- The free will of the parties to choose the substantive and procedural law applicable to the dispute.

In order for the arbitration process to succeed, there are basic guarantees that must be respected during the settlement of the dispute through arbitration, the most important of which is respect for the right of defense of all litigants, and equality between litigants in their defense, in addition to that, Maintaining the confidentiality of arbitration, as the principle of confidentiality in arbitration is a great motive behind the preference of many for arbitration over the judiciary<sup>10</sup>. The demand for arbitration in contracts in which the contracting parties are of different nationalities is increasing, since, with the foreign party's and lack of

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<sup>7</sup> Clyde Croft, Christopher Kee and Jeff Waincymer, *A Guide to the UNCITRAL Arbitration Rules* (2013).

<sup>8</sup> Albert Fiadjoe, *Alternative Dispute Resolution* (Cavendish Publishing Limited 2004).

<sup>9</sup> Matthew Deluca, 'Clarifying The Role of Dispositive Motions in Arbitration' (2018) 73 *Dispute Resolution Journal*.

<sup>10</sup> Pamela K Bookman and others, 'The Arbitration-Litigation Paradox' 1119.

confidence in the impartiality of the national judge<sup>11</sup>, it was necessary to seek another means of resolving such disputes in the shortest possible time, in the least amount of publicity and publication, and in simplified procedures that would allow the dispute to be contained in the narrowest manner.

In brief, we will discuss the advantages of arbitration that constitute the motive behind many resorting to it as a means of settling the dispute as follows:

- 1- The speed of arbitration procedures in settling disputes that arise between the parties to the dispute compared to the time period that the judiciary takes to end the case procedures and issue a final and binding judgment<sup>12</sup>, given that the arbitrators are fully dedicated to the dispute before them and are obligated to issue their decision within a specific period specified by the parties to the dispute in the arbitration agreement or the seat law (e.g. article 42(1) UAE Arbitration Law 2018), where Arbitration procedures are conducted directly, characterized by simplicity and uncomplicatedness in the course of the arbitration process.
- 2- Arbitration is characterized by simplicity of procedures; Where we find that the arbitral tribunal enjoys broader freedom and more than the judiciary with regard to litigation procedures, where the procedures followed in the arbitral process are more simple than those procedures that are often, before the judiciary, long and tedious, and their use is only to adhere to the professionalism of special legal texts procedures, at the expense of the subject and substance of the dispute. The natural result of this is that the arbitration decision is issued within a significantly shorter time if the same dispute was submitted to the judiciary.
- 3- Confidentiality of the entire arbitration process, as arbitration takes place without publicity, and hearings are held in secret, attended only by the parties and their representatives. Given that the publication of the arbitral award to the parties' competitors may harm them, therefore, the arbitration rulings may not be published except with the consent of the parties to preserve the confidentiality of their dealings

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<sup>11</sup> Eric De Brabandere, '(Re)Calibration, Standard-Setting and the Shaping of Investment Law and Arbitration' (2018) 59 Boston College Law Review.

<sup>12</sup> Paul Levin, *Construction Contract Claims, Changes, and Dispute Resolution* (3rd edn, 2016) p372.

or contracts. Therefore, it is said that arbitration represents a step towards mitigating the intensity of the dispute, as the dispute parties are keen to continue their working relations, unlike the judiciary, which is characterized by the publicity of the procedures, and the publicity of the judgment.

- 4- Few in expenses when compared with the time and cost it takes to resort to the judiciary<sup>13</sup>.
- 5- The method of selecting the arbitral tribunal and the role that the parties to the dispute play in this are among the advantages of arbitration. The parties or their representatives have the first and greatest opportunity to choose the arbitrators, whether directly or indirectly in accordance with the rules of justice and fairness. This gives the parties a kind of safety and psychological comfort, as the party contributes to choosing his judge who will consider the dispute, and this is in contrast to resorting to the national judiciary, where we find that the court is composed from official judges in the state, the parties have no role in appointing them or any of them, and in many cases, the parties or some of them are strangers to that national judicial system.
- 6- Arbitration achieves a balance between the public authority and the will of individuals and companies to choose a specialized arbitrator with accurate technical experience in the field of activity related to the dispute, and thus this system opens doors to attract investment capital and restore confidence to businessmen and investors<sup>14</sup>.

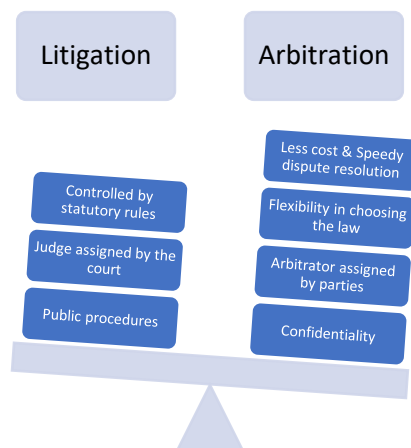


Figure 1: Why Arbitration

<sup>13</sup> John Murdoch and Will Hughes, *Construction Contracts - Law and Management* (3rd edn, Taylor & Francis e-Library) p362.

<sup>14</sup> Gail S Kelley, *CONSTRUCTION LAW: AN INTRODUCTION FOR ENGINEERS, ARCHITECTS, AND CONTRACTORS* (John Wiley & Sons, Inc 2013) p257.

## 2.4 Arbitration in UAE

The United Arab Emirates is one of the most important incubator countries for arbitration and a pioneer in this field as a business hub at the local and international levels. The arbitration centers in the country topped the list of the best arbitration centers in the world, especially the Dubai International Arbitration Center (DIAC) which is the largest arbitration center in the Middle East and was selected among the top 10 international arbitration centers in the world (*According to the annual survey, which was published in cooperation between Queen Mary University of London and "White and Case" law firm*), as it gives all parties (individuals and companies) an opportunity to settle disputes outside the judicial courts in an efficient and impartial administration of disputes<sup>15</sup>. According to the statistics of the Dubai International Arbitration Center, the number of arbitration cases registered with the center from 2018 is increasing according to the following chart:

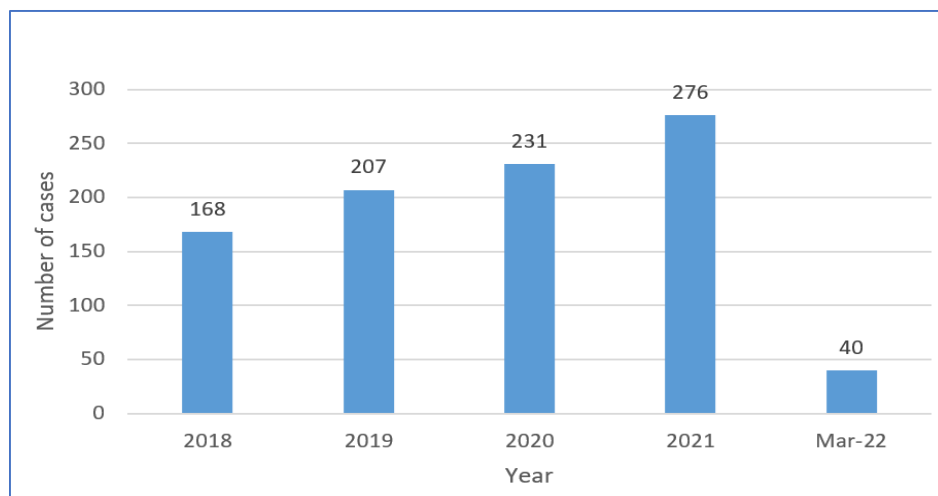


Figure 2: Total cases registered in DIAC from 2018 till March 2022

Therefore, the UAE legislator was keen to ensure that the state has a developed legislative system, especially in the field of investment. As we find that the arbitration institutions in the country are internationally advanced and have a wide reputation at the level of

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<sup>15</sup> C Kehoe and A Wren, 'Dubai: The Heart of Arbitration in the Middle East' [2018] Inside Arbitration.

international issues, in addition to an impartial judiciary that supports and protects arbitration.

A federal arbitration law was issued, which is Law No. 6 of 2018, which became effective as of June 15, 2018. Where this law came with unprecedented rules to codify arbitration, expand the powers of the arbitral tribunal, set the correct framework for arbitration procedures, criteria for selecting an arbitrator, and the conditions necessary to be available in him, leading to the issuance of a final judgment that is binding on the parties and protects it from the causes of invalidity, whenever possible, and gave the competent court the power to confirm and verify the validity of the arbitration procedures and to carry out some of the powers of the arbitral tribunal if they couldn't do that.

## CHAPTER 3: ARBITRATION AGREEMENT

### 3.1 Introduction

The great demand for arbitration stems from recent times, since the contract parties resort to it of their free will, according to the arbitration agreement chosen by the parties to the contract or the parties to the dispute, as well as choosing the applicable law, and arbitration procedures. For this reason, it was the motive behind the research and finding out the correct conditions that must be met in the arbitration agreement in law.

At the beginning of this section, the researcher would like to point out that the arbitration clause in the agreement or the contract concluded between the parties is independent of the rest of the terms of the contract<sup>16</sup>. Therefore, this independent clause remains valid even in the event of the expiration or termination of the contract, in addition to the arbitration clause depriving the judiciary of the jurisdiction to consider the subject matter of the dispute, so if any party raises the dispute to the judiciary, the other party has the right to plead not to accept the case before the court due to the existence of the arbitration clause<sup>17</sup>.

It is worth noting that the UAE law set a condition that the arbitrator or the arbitral tribunal may not decide the dispute on the basis of the rules of fairness and justice only without being bound by the provisions of the law or without observing the terms of the contract in dispute and the current customs between the parties in the type of dispute<sup>18</sup>.

### 3.2 Definition

Arbitration is based primarily on the arbitration agreement, and this is what the French jurisprudence called a term “La convention d'arbitrage”<sup>19</sup> under which the parties are

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<sup>16</sup> Atefeh Darami Zadeh and Shapur Farhangpur, ‘A Comparative Study of Separability of Arbitration Clause under Main Contract of LIca and the UNCITRAL Model Law’ (2018) 7 37. See also Art. 6 (1) UAE Arbitration Law 2018.

<sup>17</sup> MM BÂRSAN and MM CARDIŞ, ‘The Arbitration Clause. Aspects of Comparative Law’ 155 <<https://buid.on.worldcat.org/oclc/8772780969>>. See also Art. 8 (1) UAE Arbitration Law 2018.

<sup>18</sup> ‘Art 36 (3) Federal Law No. (6) of 2018 on Arbitration’.

<sup>19</sup> Serge Guinchard Jean Vincent, *Procédure Civile* (27e éd., Dalloz 2003).



obligated not to resort to litigation and to submit their disputes to one or more arbitrators for settlement by which the parties to the agreement are bound. Where the arbitration agreement constitutes the rules and procedures to be followed by the arbitrator or the arbitral tribunal during the arbitral process<sup>20</sup>.

In principle, an arbitration agreement is a consensual agreement to resolve any existing dispute or any dispute that may arise between the parties at a later time<sup>21</sup>. Unanimously, this dispute is referred to arbitration between them through a neutral third party to resolve this dispute and not to the judiciary. In addition to that, it is also a condition for the validity of the arbitrators' judgment, as the presence of the arbitration clause entails the validity of the arbitration, and the absence of an arbitration agreement leads to the nullity of the arbitrators' judgment<sup>22</sup>.

In other words, it is the agreement between the parties to the dispute to present this existing dispute, or which may arise in the future, to persons of confidence, integrity and impartiality, to assume the task of adjudicating this dispute without resorting to the court of the state originally competent to consider the dispute<sup>23</sup>. The UAE Arbitration Law of 2018 defines the arbitration agreement as the agreement of the parties to resort to arbitration, whether this agreement was made before or after the occurrence of the dispute<sup>24</sup>.

Through the previous definitions, it is clear that arbitration has basic components represented in the presence of dispute between the parties and the existence of a valid agreement between them to refer the dispute to arbitration, and the selection of one or more arbitrators to resolve this dispute, provided that this choice is based on the desire of the parties and unanimous opinions about the appointing of this arbitrator or arbitrators to settle the dispute. It should be noted that UAE law defines arbitration as the method regulated by law through which a

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<sup>20</sup> Zadkovich, *Guide to English Arbitration Law* (2018).

<sup>21</sup> *WIPO Arbitration, Mediation, and Expert Determination Rules and Clauses*, vol 446 (Arbitration and Mediation Center WIPO 2009).

<sup>22</sup> American Arbitration Association Inc., 'Narrow Arbitration Clause -- Absence of Agreement to Arbitrate Dispute.' (1967) 22 *Arbitration Journal* <<https://buid.on.worldcat.org/oclc/5740027444>>.

<sup>23</sup> (A. A. Association. 2016)

<sup>24</sup> 'Art 5 (1) Federal Law No. (6) of 2018 on Arbitration' (n 5).

binding judgment is settled in a dispute between two or more parties by the arbitral tribunal based on the parties' agreement, where the arbitration agreement is defined as the parties' agreement to resort to arbitration, whether this agreement is made before or after the occurrence of dispute.

### **3.3 Conditions for the validity of the arbitration agreement**

The UAE Arbitration Law did not stipulate conditions for the validity of the arbitration agreement. However, the UAE legislator only stipulated that the arbitration agreement should be in writing, otherwise it would be void<sup>25</sup>. This is the only condition stipulated by the text of the UAE Arbitration Law of 2018, which means that the arbitration agreement derives its validity from the conditions necessary for the validity of any consensual contract binding on both sides that is concluded by offer and acceptance. These are the conditions stipulated in the Civil Transactions Law, which are almost compatible with most legislations of the rest of the world that stipulate the same conditions<sup>26</sup>.

Among these conditions stipulated in the Civil Transactions Law of the United Arab Emirates in the first chapter is the capacity of the contracting parties to agree, as it is not valid to contract except for those who have the capacity to dispose of their rights, and it is not permissible to contract with a minor, interdicted, bankrupt or deprived of his rights in accordance with the law, otherwise, the contract has become void. One of the conditions is also the consent of the contracting parties to the essential elements of the contract, and since the arbitration agreement is a consensual agreement, it must not be tainted by any of the defects of consent, which are coercion, error, and unfairness. Therefore, the UAE legislator emphasized that the arbitration agreement should be in writing in order to avoid any defect from the defects of satisfaction. The last reason that will be talk about is the subject of the contract, where in the arbitration agreement, the subject of the dispute to be settled is the

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<sup>25</sup> 'Art 7 (1) Federal Law No. (6) of 2018 on Arbitration' (n 5).

<sup>26</sup> See Article 12 Egyptian Arbitration Law 1994, See also Article 7 (3) Qatar Arbitration Law 2017, See also Section 4 The Federal Arbitration Act (USA), See also Article 2 (2) New York Convention, see also Article 1442 French Civil Procedure Code of 1980, See also Article 7 (2) Bahraini Arbitration Law 2015, see also Article 7 (2) UNCITRAL Model Law on International Commercial Arbitration 1985

subject of the contract, and thus it is a legitimate and specific subject to be appointed negating ignorance, which should not be contrary to the public policy of the state and not be in issues in which arbitration is not permissible.

In this regard, the Court of Cassation in the Dubai Courts ruled in Appeal No. 220 of 2004 (Commercial Appeal)<sup>27</sup> that arbitration is the disputants' choice of a neutral party to settle the dispute between them without resorting to the judiciary. Arbitration is based on a specific contract that is mentioned in its essence and within its terms, and it is called the arbitration clause. It may be on the occasion of a specific dispute that already exists between the litigants, and in this case it is called the arbitration agreement or the arbitration clause. Arbitration is based on two foundations, namely, the will of the litigants represented in agreeing to arbitration and the legislator's acknowledgment of this will by allowing him to resort to arbitration, and without this permission it is not possible to resort to arbitration, because imposing justice is a right of the state through the judiciary, and no one has the right to infringe on this right, as the judiciary is a manifestation of sovereignty. By agreeing to arbitration, the parties grant the arbitrator the authority to rule on the dispute instead of the competent judiciary. The legislator has provided the arbitration with certain guarantees, such as that the agreement on arbitration can only be established in writing and it is not required that the agreement to arbitrate is fixed in one document. Rather, the offer may be fixed in one document and its acceptance is fixed in another document as long as it is consistent with the offer. Just as the agreement on arbitration may be evidenced by a written instrument signed by both parties, it may be evidenced by the exchanged letters, telegrams and other written means of communication if they were signed by the person who sent them or it is proven that they were sent by the sender's device. Arbitration does not take place unless it is proven that the joint will of the two contracting parties has gone to arbitration, which is what is achieved in the case of the arbitration clause being included in the general conditions printed in the contract document signed by the two parties, or the arbitration being included in an agreement or arbitration agreement signed by the two parties. The proof of arbitration shall not be extracted from the mere silence of one of the parties in responding to the

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<sup>27</sup> Case no 220/2004 Commercial Appeal – Dubai Court of Appeal hearing held on Monday Jan. 17, 2005.

arbitration offer submitted by the other party, as long as it is not proven that the party to whom this offer is addressed has accepted in writing the arbitration. The contract and proof of arbitration also may not be extracted from the mere work between the two parties to arbitrate in certain contracts that the arbitration shall apply to another contract between them that did not include an arbitration clause, Since the agreement on arbitration is not assumed and may not be drawn implicitly. It is not valid to agree on arbitration - whether it is in the form of a condition or a stipulation - except for those who have the capacity to dispose of the disputed right, and there is no place for the theory of the apparent situation in the agreement on arbitration because agreeing to arbitration means waiving his right to bring the case to court, which puts his right at risk.”.

The arbitration agreement takes into account all the bases and elements that the arbitrator is committed to<sup>28</sup>, including, but not limited to, the following:

- Subject of dispute.
- Nationality of the parties and their place of residence.
- The nationality of the arbitrators.
- The applicable law to resolve the dispute.
- The arbitral procedures established by law.
- The place of arbitration.
- The language of arbitration.
- The currency.
- The appointment of Arbitral tribunal.
- Any Other provisions agreed by parties to be followed and considered in the arbitration agreement.<sup>29</sup>

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<sup>28</sup> Fiadjoe (n 8).

<sup>29</sup> Latham & Watkins, ‘Guide to International Arbitration Latham & Watkins ’ International Arbitration Practice’ [2015] Guide to International Arbitration.

## CHAPTER 4: ARBITRATOR

### 4.1 Who is Arbitrator

Arbitration is a legal model that consists of two main factors: the arbitration agreement and the arbitration judiciary, where the actors are different. The first: is done by the parties to the dispute, and the second: is the arbitrator does it. Therefore, the main feature of arbitration is the agreement of the parties of the dispute to appoint or select one or more arbitrators to resolve the dispute, unlike the judiciary, where no party is entitled to choose the judge to rule in the case. The researcher, therefore, considers the arbitrator to be the most important element of arbitration, since, to the extent that the arbitrator is competent, impartial, and independent during the arbitration process, the integrity of the arbitration proceedings, and the validity of the final award in the dispute. In other words, we can say that the basis for the success of the arbitral process depends mainly on the arbitrator's ability to understand the nature of the dispute on the one hand and the ability to make a valid judgment that cannot be invalidated by any improper procedure on the other hand, as long as the arbitrator remains bound by the provisions of the arbitration agreement and the law.

In order to know the intended meaning of what an arbitrator is, it was necessary to define his exact role in arbitration as he/she is considered the cornerstone of the entire arbitration process, how he is appointed by the parties to the dispute and what laws and rules he should follow during the arbitration process. In addition to the features that the arbitrator must have in terms of his experience, knowledge, and practice in his work, which he performs in a framework of impartiality, disclosure<sup>30</sup>, integrity, and objectivity between the opponents, to the extent of his success in his mission and achieving the desired and hoped justice.

The arbitrator is the natural person who is entrusted with the task of arbitration between the disputants and issues a final judgment in the dispute<sup>31</sup>, and his task is considered a personal

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<sup>30</sup> Mitchell L Lathrop, 'Arbitrator Bias in the United States :A Patchwork of Decisions' [2013] Defense Counsel Journal 146-153.

<sup>31</sup> Ewan McKendrick, *Contract Law: Text, Cases, and Materials*, vol 5th Editio (2013) p137.

task related to his person. Therefore, it is not appropriate to appoint a legal entity or legal personality to take over the task of arbitration, as the first paragraph of Article 10 of the UAE Arbitration Law stipulates that "*In addition to the qualifications agreed upon by the Parties, the Arbitrator 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 has been discharged, or due to a felony or misdemeanor conviction for a crime involving moral turpitude or breach of trust; even if he has been rehabilitated*"<sup>32</sup>. Therefore, the task of arbitration may end to some extent in the event of the arbitrator's death or loss of capacity for any reason.

In addition to the legal conditions that the arbitrator must fulfill in accordance with the provisions of the law, the arbitration centers have set detailed conditions for registration in their lists of arbitrators, the most important of which are academic qualifications, practical experience, and the precedent cases that have been handled by them.

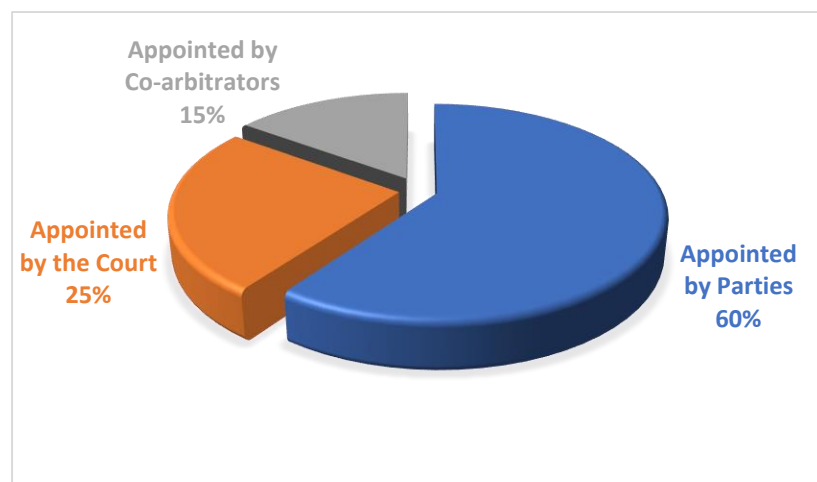
## **4.2 Appointing the arbitrator - Arbitrator Selection Criteria**

Since the arbitrator is the person assigned by the litigants to resolve their dispute, so they must feel confident in him when choosing to handle the arbitration case. Therefore, he must fulfill a number of conditions in order to be eligible to manage the arbitration process. There are conditions that jurisprudence and arbitration centers have agreed that they must be met by the arbitrator, and there are other conditions that are left to the discretion and agreement of the disputing parties. Therefore, there is nothing more important than choosing the appropriate arbitrator or arbitral tribunal to resolve the dispute, and this choice is not only important for the parties to the dispute but also important for both the arbitrator or the arbitral tribunal itself. Where the importance of this choice for the arbitrators lies in that they demonstrate their ability to carry out the arbitral procedures to the fullest extent in order to reach a correct final judgment, and thus it has been proven that this arbitrator is qualified and that every case he ends with constitutes a stone for him in building his good reputation.

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<sup>32</sup> (Federal Law No. (6) of 2018 on Arbitration)

Therefore, the parties to the dispute prefer to choose the arbitrator by their own will for what they may deem appropriate to resolve the existing dispute or that may arise between them, compared to choosing the arbitrator or the arbitral tribunal through the arbitration center or the competent court. The statistics of the International Chamber of Commerce (ICC) in 2020 according to figure no. 3<sup>33</sup> indicate that with the increasing demand for the registration of arbitration cases with the Chamber, we find about 60% of the cases registered with the center, the arbitrator is appointed by the parties themselves, and this confirms the extent of agreement between the parties on selecting the right arbitrator and the extent of confidence they place in him to ensure the success of the arbitration process.



*Figure 3: Selection Of Arbitrators in ICC registered cases in 2020*

Many jurists believe that the defects attributed to arbitration are based on the wrong choice of the arbitrator. If an arbitrator who is not neutral or is not qualified to decide the dispute is chosen, it will consequently lead to a breach of the arbitration procedures, and therefore, with ease, the award issued in this case can be annulled and the entire arbitration process fails.

The process of selecting an arbitrator for a dispute that may arise in the future between the contracting parties is a difficult process due to the absence of parameters for this dispute. It

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<sup>33</sup> International Chamber of Commerce, 'ICC Dispute Resolution 2019 Statistics' <<https://iccwbo.org/publication/icc-dispute-resolution-statistics-2020/>>.

is worth noting here that most of the international arbitration laws give full freedom to the parties to the dispute in choosing the arbitrators, as there is no guardianship over the parties in choosing the arbitrators, so each party is responsible for his choice as long as he trusts the chosen arbitrator and his qualifications that enable him to decide the dispute.

In order to clarify the role of the arbitrator in the arbitration litigation, it is necessary to look into the conditions that must be met by the arbitrator or the arbitral tribunal, because ensuring the proper performance of the mission of the arbitrator depends on his personality and his qualifications and practical experience. Accordingly, the conditions to be met by the arbitrator will be clarified in two parts, the first is the legal conditions that must be met by the arbitrator through the UAE Arbitration Law, and the second is the agreement conditions.

#### **4.2.1 Obligatory conditions (As per Law)**

The UAE legislator has set some restrictions in the selection of the arbitral tribunal, and if they are violated, the arbitral award shall be considered void according to the provisions of the law article 53. Where the UAE legislator stipulated the conditions that must be met by the arbitrator, as articles no. 9 & 10 of the UAE Arbitration Law 2018 stipulated the conditions that must be met in selecting the arbitrator.

**First, the number of Arbitrators:** Article 9 of the arbitration Law talks about how many arbitrators shall be appointed and this shall be as per parties' agreement. If they fail to agree on the number of arbitrators, then number shall be three arbitrator or to be decided by the concerned body. In all cases number of the arbitrators shall be uneven, even if the parties agreed on two arbitrators the award is consider void and null in case of even numbers of the arbitrators. Thus, multiple judgments and lack of consensus on one opinion are avoided, thus facilitating the procedures for resolving the dispute, in addition to ensuring the impartiality of the arbitration committee and impartiality towards any of the parties.

**Second, Civil Capacity:** The arbitrator must enjoy full civil capacity, and the UAE legislator has indicated in the arbitration law that “the arbitrator shall not be minor, interdicted, or deprived of his civil rights because of his declaration of bankruptcy, unless he has been



rehabilitated or because he has been convicted of a felony or misdemeanor breaching honor or honesty, even if he was rehabilitated.”<sup>34</sup> That is, he who does not have the right to dispose of his own rights, a fortiori, does not have the right to dispose of the rights of others. In order to ensure the integrity of the arbitration and increase the confidence of the parties towards the arbitrators, even if the person is rehabilitated in any case affecting his honor or honesty, he is not qualified to practice the arbitration profession.

**Third, That the arbitrator is a natural person:** the arbitrator is from among the natural persons and is not a legal person, and the UAE legislator has indicated that “it is not permissible to agree on arbitration except for the natural person who has the right to dispose of his rights.”

**Fourth, the arbitrator must be independent:** The arbitrator shall not have any interest in the dispute and be completely independent of any relationship he has with one of the parties, whether it is financial, social, or professional. If there is a relationship between the arbitrator and one of the parties or if he works for him, this may make the arbitrator as if he is subordinate to that party or is subject to his opinion and authority, and therefore this will affect the arbitration award issued by him and make him biased towards this party. Therefore, the UAE legislator stipulated that the arbitrator, upon assuming the task of arbitration, declare in writing everything that raises reasonable doubts about his impartiality and independence, and initiates the notification of the parties and the rest of the arbitral tribunal without any delay in the event that any circumstances arise that raise doubts about his impartiality and independence<sup>35</sup>.

**Fifth, the arbitrator cannot be on the board of trustees:** In the case of institutional arbitration, the arbitrator cannot be a member of the board of trustees or the administrative body of the arbitration institution with which the arbitration case is registered, as this principle is considered a public order. Whereas, if the arbitration procedures are conducted otherwise, the arbitration award shall be void for violating public policy.

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<sup>34</sup> ‘Art 10 (1) Federal Law No. (6) of 2018 on Arbitration’ (n 5).

<sup>35</sup> ‘Art 10 (4) Federal Law No. (6) of 2018 on Arbitration’ (n 5).

#### 4.2.2 Terms agreed upon by the parties

The appointed arbitrator in arbitration proceedings under the laws of the State, regardless of whether he has been appointed by a party or by a court or by any arbitration center, shall comply with the general duty of good faith, the principles set forth in the rules of conduct of his/her profession, with this code of ethics set forth in the arbitration rules, that his/her acceptance of his appointment as arbitrator signifies his acceptance and undertaking to be retained in the performance of that role. And since the will of the litigation parties is the basis for setting the terms of the arbitration agreement, so there are special conditions that are agreed upon under this agreement and that must be met by the arbitrator, which are as follows:

**Gender and Nationality:** As per law, the arbitrator need not be of a specific gender or nationality<sup>36</sup>, unless otherwise agreed upon by the Parties or provided for by law. In reviewing this text, it is permissible to arbitrate by women, and the text of the article excludes only two cases: the first, if the two parties to the dispute agree to choose an arbitrator of a certain gender or agree not to choose a woman to be an arbitrator between them, and the second, if the law agreed upon by the two parties stipulates that it is not permissible for a woman to be chosen as an arbitrator. It is also concluded that the arbitrator may be a foreigner, and it is not required that he be of a certain nationality to perform the tasks of the arbitration. Therefore, the litigating parties must agree on the gender and nationality of the arbitrator before starting the arbitration procedures.

**Qualifications of the Arbitrator:** Although the law does not require any scientific qualification or technical experience to be qualified for the arbitrator to practice arbitration, however according to the type of dispute existing between the parties, the adversarial parties may agree that the arbitrator should have a specific profession to qualify him in considering the dispute and issuing a fair judgment in it, for example, but not limited to, if the dispute arises from a construction contract, the parties to the dispute may resort to placing the

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<sup>36</sup> ‘Art 10 (3) Federal Law No. (6) of 2018 on Arbitration’ (n 5).

litigation in the hands of people who have technical experience in this field in order to avoid resorting to expertise, which leads to increased costs.

### 4.3 Arbitrator vs Expert

The nature of the arbitrator’s work is almost similar to the nature of the expert’s work, but the former acquires a judicial character, as the arbitrator has the authority to issue an award binding on the parties to the dispute<sup>37</sup>, unlike what the expert does by providing his opinion and technical expertise in the subject matter of the dispute. Although the nature of the arbitrator’s work is considered the most important and has judicial authority, there is no special requirement for the arbitrator’s qualifications in the laws regulating the work of arbitration, unlike the requirements that the expert must fulfill in order to be registered with the Ministry of Justice. In the following table, it’s briefly indicate the similarities and differences between arbitrator and expert.

*Table 1: Arbitrator vs Expert*

| <b>Similarities and Differences</b>               | <b>Arbitrator</b>                  | <b>Expert</b>  |
|---|------------------------------------|--|
| <b>Qualifications</b>                             | No academic qualification required | A minimum, a bachelor's degree and experience in the specialty |
| <b>Appointing</b>                                 | By Parties                         | By court or Arbitral Tribunal                                  |
| <b>Relationship with the appointing authority</b> | Contractual                        | Legal  |
| <b>The Mission</b>                                | As per the arbitration agreement   | As per the preliminary ruling issued by the arbitral tribunal  |
| <b>Role</b>                                       | Judicial role                      | Technical role   |
| <b>Monitoring</b>                                 | No monitoring                      | Monitored by the arbitral tribunal                             |
| <b>The End of mission</b>                         | Final Award                        | Technical report   |

<sup>37</sup> the construction specification Institute, *Construction Contract Administration Practice Guide* (John Wiley & Sons, Inc 2011) p210.

The nature of the role of the arbitrator will be reviewed and compared with similarities and differences with the role of the expert, through some basic elements as following:

#### **4.3.1 Qualifications:**

The arbitration laws did not require academic qualification or specific experience that must be available in the arbitrator. In UAE arbitration law, there are no academic qualifications obligating to choose the arbitrator, and the scientific experience and qualifications required are agreed upon by the parties to the dispute. However, arbitration centres require the arbitrator to register an academic qualification and practical experience of no less than a certain number of years of experience in this field in order to be registered in the arbitration centre, and this is somewhat similar to the requirements of the expert as he or she is required to hold, as a minimum, a bachelor's degree and several years of practical experience in the specialty. In UAE, for the experts to be registered in the judicial department and to be a certified expert and approved by the UAE Ministry of Justice, they are requiring a university qualification in the field of specialization of the category to be enrolled in and an equivalent from the competent authorities, in addition to experience certificates supporting his expertise in the field in which he is specialized for at least ten years.

#### **4.3.2 How to be appointed**

The principle is that the appointment of the arbitrators is by the parties to the dispute, and in cases of disagreement about selecting the arbitrator, the appointment is made by the court or the arbitral institution. However, the expert is appointed during the arbitral process by the arbitral tribunal or by the court directly in case of litigation.

#### **4.3.3 The nature of the relationship with the appointing authority**

The relationship of the arbitrator with the parties to the dispute who appointed him/her in the arbitration case is a contractual relationship based on the arbitration agreement which constitute the framework for the arbitrator and define the obligations and rights for both

parties. But the relationship of the expert appointed to give his technical opinion on the subject of the dispute is a legal relationship regulated by law and subject to legal oversight.

#### **4.3.4 The Mission of the Arbitrator:**

The arbitrator's mission is derived from the arbitration agreement and from the powers granted to him under this agreement, where the arbitrator acquires his jurisdiction by agreement with the parties and does not have any powers outside this agreement. Where the task of the arbitrator required of him is specified in detail, including the language and duration of the arbitration, the place in which the arbitration hearings will be held, and the procedures that will be followed during the arbitral process. The arbitrator shall abide by all of the foregoing and issue his judgment within the framework granted to him under the arbitration agreement, otherwise, the award shall become void.

While the task of the technical expert in arbitration is determined by the arbitral tribunal, whereby the expert derives his authority in the dispute by virtue of a preliminary ruling issued by the arbitral tribunal appointing him in the case. Where the procedures followed in the work of technical expertise are more flexible than the arbitration procedures. It is worth noting that the expert's failure to follow the agreed-upon procedures to perform his task does not invalidate his work as an expert and therefore does not affect the validity of the judgment issued in the case, but in all cases, the expert mission to provide unbiased opinion in terms of his/her technical experience<sup>38</sup>.

#### **4.3.5 Nature of role of the Arbitrator**

The role of the arbitrator is a judicial role where the arbitrator plays a role similar to that of a judge in the arbitration case, while the role of the expert is a purely technical role in the subject of the dispute and is considered part of the evidence in the case<sup>39</sup>.

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<sup>38</sup> Jeffery Whitfield, *Conflict in Construction* (2012) p130.

<sup>39</sup> Steven C Bennett, 'Use of Experts in Arbitration: Alternatives for Improved Efficiency ±' (2018) 218 73.

#### **4.3.6 Oversight of the arbitrator's work**

In arbitration, there is no actual monitoring over the arbitrator, as the arbitrator enjoys his immunity very similar to the immunity of judges. The sole observer of the arbitrator is his conscience, as in all cases he must comply with the rules of justice and fairness and act with impartiality and independence during the consideration of the arbitral case. Knowing that there is administrative control over the arbitrator's work in the case of institutional arbitration. However, the expert, while carrying out his mission in the arbitral process, is subject to administrative and technical oversight by the arbitral tribunal. The expert appointed by the judiciary is subject to legal supervision through a judicial body supervising the work of expertise.

#### **4.3.7 End of Mission**

The natural end of the arbitrator's task is to issue an award that is final and binding on the parties. Where this decision is valid and enforceable and is not subject to appeal and review except in cases of nullity, which is an exceptional method and for exclusive reasons determined by the arbitration laws related to arbitration procedures without considering the subject matter of the dispute.

The expert's task ends with the deposit of the expert's report with the arbitral tribunal, which the arbitral tribunal has the right to accept or reject, as it is considered a piece of evidence only.

Where the expert examines the technical elements in the subject of the dispute and gives his technical opinion according to his experience in this field and then delivers the report to the arbitral tribunal, which has the right to adopt it in whole or in part or reject it, where the arbitral tribunal has absolute discretion

## **CHAPTER 5: ARBITRATOR ROLE**

### **5.1 Arbitrator's authority**

The choice of the arbitrator by the parties to the dispute or by the arbitration center to decide the case or dispute does not mean that his mission has begun and that he has the authority to carry out the task assigned to him. Rather, the arbitrator, upon his appointing as an arbitrator and assigning him the task of arbitration, must agree to his appointment as an arbitrator between the parties and notify the parties in writing of everything that would raise reasonable doubts about his impartiality and independence.

Arbitration has a distinct legal nature, as it is of a dual nature, the first of which is consensual and the second is judicial. With the parties' agreement to resort to arbitration to resolve the dispute and conclude the arbitration agreement, it acquires the consensual character, and by initiating arbitration procedures and issuing an arbitrator's judgment to settle the dispute, it acquires a judicial character. Therefore, the legal basis for the arbitrator's capacity and authority to settle the dispute and issue a final and conclusive judgment in it stems from several aspects as follows:

- 1- Law: The law of the state should allow the settlement of this type of dispute through arbitration.
- 2- Arbitration Agreement: The agreement of the parties to settle their dispute through arbitration and not resort to the court.
- 3- Appointing the arbitrator: The parties to the dispute will choose the arbitrator who will be assigned to settle their dispute by arbitration.
- 4- The arbitrator's acceptance of the arbitration case.

### **5.2 Arbitrator's duties**

The role of the arbitrator is as vital as the role of the judge<sup>40</sup>, in addition, he is chosen by the litigants to study the case and decide on it because they trust in his justice and integrity until

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<sup>40</sup> EWAN Macintyre, *Business Law*, vol 8 (8th edn, PEARSON 2016) p53.

he reaches a just and fair judgment. Therefore, the arbitrator has duties of the opponents, duties as per law and duties in terms of ethics.

### **5.2.1 First: Duties specified by the opponents.**

These duties are derived from the arbitration agreement, whereby the parties to the dispute specify the framework that the arbitrator will take during the consideration of the case, and the tasks required of the arbitrator expressly. Herein lies the importance of the arbitration agreement, as it is the law established by the parties that must be followed by the arbitrator and by the parties themselves.

### **5.2.2 Second: Duties in according with the law.**

Since the arbitrator plays the role of a judge in the arbitration process, he must act like a judge whose only motive is to apply the law in order to issue a just and fair judgment in the arbitration case, where he must rule fairly between the parties in all equality, impartiality, and objectivity during the examination of the arbitral case. He should be upright in thought and not judge during his anger, because anger and emotion affect the balance of thought, so his judgment is not sound, in addition to that he must ensure the integrity of the arbitration procedures and protect the final award from its invalidity as a result of any procedural error that the arbitrator or any of the parties may make. The arbitrator must also work hard and persevere, stressing the completion of the arbitration process in accordance with the arbitration agreement without any breach of it, and it is necessary, if the arbitrator discovers that there is a mistake during the course of the arbitration process, he must retract his mistake and issue a fair and justified award.

### **5.2.3 Third: Duties in terms of morals and ethics.**

The duties of the arbitrator in terms of ethics and morals is a very serious and important matter, as non-compliance with the ethics of the profession leads categorically to the invalidation of the arbitral award. For example, the arbitrator must deal with all impartiality and transparency with both parties, and this is what will be reviewed later, as if it is proven that he was biased towards a party in the case as a result of a material or moral relationship with that party, or if there was a kinship relationship and this was not disclosed before



starting the arbitration, then he exposes himself to accountability, and therefore the arbitral award may be invalidated if this is proven. The arbitrator, in whom the parties put their full confidence, must abide by the confidentiality of the information disclosed by the parties during their defense in the case, as the principle of confidentiality in arbitration is one of the basic principles of the entire process, and it is the motivation that makes the parties resort to arbitration, in addition to the general morals that must be adhered to, Such as not accepting any bribery from any party for the purpose of issuing a judgment in his favor or agreeing with any party on a percentage of the amounts that will be judged, and therefore the judgment will cause a big harm to the losing party. The researcher believes that it is appropriate for the arbitrator not to accept his appointment in the case if he does not have sufficient experience to decide on it, in other words, to comply with his duties as an arbitrator, and the motive behind his acceptance of the assignment is not the material or financial return only.

### **5.3 Impartiality and Independence**

At the beginning of this section, we must first define the concept of impartiality and independence so that we can apply this concept to the arbitrator's work in the arbitration process, as impartiality and independence are among the most important rules of conduct adopted by the arbitrator or arbitral tribunal<sup>41</sup>. Where the UAE legislator obliged the arbitrator to disclose, upon accepting the arbitration mission, any circumstances that might raise doubts about his independence or impartiality, and his acceptance of this task means his obligation to continue the arbitration procedures until the issuance of the final judgment, and it is not permissible to waive or abandon that without an excuse. It is clear from the foregoing that a distinction must be made between impartiality and independence in a deeper and more precise manner, especially in aspects related to the moral dimension of the arbitrator and how to provide him with the utmost levels of confidence and reassurance among the parties, as the arbitrator must enjoy an intellectual openness to other types of philosophies, schools of thought and cultures, especially in the international arbitration.

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<sup>41</sup> Freda H Alverson, *Alternative Dispute Resolution : The Advocate ' S Perspective Alternative Dispute Resolution : The Advocate ' S Perspective* (1973).

Therefore, it is not easy to set a consistent standard for the meaning of the arbitrator's impartiality and independence.

***Impartiality*** is the absence of any psychological feeling on the part of the arbitrator towards one of the parties, which may lead him to take a negative or positive behaviour from one of them, and if there is a hostile feeling towards one of the parties for any reason, that may prompt the arbitrator to take a decision against this party, even if this party was right on the subject of the dispute.

***Independence*** is the absence of a material relationship between the arbitrator and one of the parties, such as a business relationship, partnership, debt, or agency, where if there is a relationship that connects the arbitrator with any of the parties and this relationship results in an interest in the arbitrator's favour, he will be biased in making a decision in favour of this party.

If independence appears as an apparent reality that can be objectively assessed, however, impartiality and integrity are mental and psychological states that have a subjective nature rather than an objective one. French jurisprudence has defined the arbitrator's independence as "the backbone of his judicial mission", because once the arbitrator is appointed, his role becomes like that of a judge who is completely independent of any association, especially with the parties to the dispute, and that the circumstances that raise doubts about this independence must have material and mental ties, which is the case if proven, it would affect the arbitrator's award, as it constitutes a definite danger to the rights of one of the parties. So, Justice must be administered and achieved in any judicial system, including the arbitration system, where the entire arbitration process must be fair and not just the award. Thus, the legislator stipulated that the arbitrator must declare in writing everything that might raise doubts about his impartiality or independence.

Since there is no specific mechanism or clear conditions that define the forms or patterns of impartiality or independence, there are many opinions and disagreements about the motives that people may call to sue or challenge the arbitrator as a result of his bias towards one party

at the expense of the other party or as a result of his violation of the conditions to be followed from the principle of impartiality and independence.

We also find that in recent times much has been written on issues of the independence and impartiality of arbitrators. In some cases, we find that one of the parties to the dispute filed a claim for the invalidity of the arbitral award as a result of the arbitrator's violation of the rules of impartiality and disclosure and that he had a previous relationship with one of the parties, or that it was previously appointed in one of the cases in which the plaintiff was the same but a different defendant <sup>42</sup>.

All the regulations of the arbitration centers explicitly stipulated the impartiality and independence of the arbitrators, from UNCITRAL through the International Chamber of Commerce arbitration system to the London Center for International Arbitration. The UNCITRAL system provides for permission to remove the arbitrator if circumstances cast doubt about his impartiality and independence, and the International Chamber of Commerce Arbitration System goes further than that to permit the removal of the arbitrator in the event of a breach of neutrality or for any other reason. In the United States, the Federal Arbitration Act requires that all arbitrators be independent and impartial and says: "The arbitrators chosen by each party shall not consider themselves representatives or attorneys for that party. Once they have been named, they shall disassociate themselves from the one who nominated them if there was a previous association" <sup>43</sup>.

In 2020, we find in the judgment of the UK Supreme Court in the case of *Halliburton Co. vs Chubb Bermuda Insurance Ltd*<sup>44</sup>, that one of the arbitrators was involved in two different cases of one of the parties and the court considered that the arbitrator being a joint party in two different cases does not constitute any violation of the law as the arbitrator did not commit any wrong, intentional wrongdoing, or prejudice towards this party. The court of appeal has adopted in this decision that the arbitrator is like a judge, where the judge may

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<sup>42</sup> OMONI TIKU, 'Strategies for Challenging the Appointment and Removal of Arbitrators' (2014).

<sup>43</sup> 'The Federal Arbitration Act (USA)' (1925) 1925 U.S. Congress 1.

<sup>44</sup> *Halliburton Co. vs Chubb Bermuda Insurance Ltd* (2020) UKSC 48.

consider more than one case for the same party in a manner that does not affect his impartiality and independence and in a manner that does not violate the law. For these reasons, the nature of the arbitrator being a judge in the arbitral process, it is possible that arbitrator might be involved in two different cases of the same party. But on the contrary, some express their concern about this approach taken by the court of appeal, as the court must take into account the context of arbitration and the differences between arbitration and litigation, and that such procedures may lead to the emergence of bias in favor of this party, especially if this party is the winner in the other case where the arbitrator may have his belief based on the events and circumstances overlapping between the two cases, which may raise doubts about his impartiality.

### **5.3.1 Disclosure principle**

The basic qualification of the arbitrator is his independence from the two parties to the arbitration and his commitment to impartiality between them, and the absence of one of them leads to the risk of not ruling without bias to any of the parties, which requires the arbitrator to disclose any relationships that may give the impression of the possibility of his bias to one of the parties<sup>45</sup>. The UAE legislature did not set objective or temporal limits for it, so he is not supposed to be close to one of the litigants, or to have a subordinate relationship with him. Therefore, the arbitrator must disclose any of these relationships, if any, so that his concealment of it does not take as evidence against him, in order to ensure that the judgment that will be issued will be fair.

### **5.3.2 Impartiality**

As we indicated earlier, impartiality is considered one of the basic guarantees in litigation, so that the litigant can be assured of his judge and that his judgment is issued only by those who have the right alone without bias or whim. Lord Jackson J considers that the term “Good faith” or “Honesty” are used as synonyms for term “impartiality”<sup>46</sup>. So the principle of

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<sup>45</sup> See Article 10 (4) of UAE Law No. 6 of 2018 regarding arbitration.

<sup>46</sup> Timothy Elliot, ‘Contract Administrators - The Obligation Of Impartiality And Liability For Incorrect Certification’ [2007] Australian Construction Law Newsletter #112.

impartiality is one of the conditions necessary for the exercise of the judicial function, whoever is in charge of it is a judge or arbitrator. The condition of impartiality is required in any type of arbitration, whether it is national, international or private, and whether the arbitrator is an individual or multiple arbitrators, and whether he is appointed by one of the parties or through the arbitration center or through the court. The French court of cassation recognized in the case of GALERIES LAFAYETTE that "independence of mind is necessary for the pursuit of judicial authority regardless of its source, which is one of the basic elements for arbitrators." Where the court of cassation annulled the ruling issued in the arbitration case due to the fact that it was proven that the arbitrator had given advice to one of the parties previously before commencing arbitration so if the result of counsel had been previously given, the necessary impartiality of opinion on litigation is lost<sup>47</sup>.

In Islamic jurisprudence, the arbitrator has been likened to the IMAM, as the IMAM performs pastoral and educational work towards the Islamic community, as he influences and guides morally and reminds people of what they neglected or forgot temporarily, so he works with full impartiality and transparency, as is the case in the work of the arbitrator<sup>48</sup>.

Circumstances and facts that raise doubts about the impartiality of the arbitrator cannot be limited or enumerated. Therefore, they are not specifically stipulated in the law, but the UAE legislator emphasized that the arbitrator's acceptance of the arbitration mission is conditional on disclosing any circumstances that may raise doubts about his impartiality or independence. Therefore, disclosure is considered a preventive means to ensure the success of the arbitration process, as it is not only imposed on the arbitrator when he accepts the task, but its impact extends throughout the course of the arbitration process until the issuance of the arbitral award <sup>49</sup>. The principle of disclosure helps protect the arbitrators themselves, as it provides a transparent and clear work environment that helps avoid any reason for the invalidity of the arbitral award. Accordingly, if the arbitral proceedings permeate any

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<sup>47</sup> French Court of Cassation, Civil Chamber 2, of April 13, 1972, Appeal number: 70-12.774.

<sup>48</sup> MOHAMED M KESHAVJEE, 'ISLAM, SHARIA & ALTERNATIVE DISPUTE RESOLUTION' (2012).

<sup>49</sup> 'Japan Commercial Arbitration Journal' (2020) 1 JCAA.

circumstances that may raise doubts about the impartiality of the arbitrator, the arbitrator must notify the parties thereof. It is also possible for the arbitrator to notify the competent court of these circumstances, as the role of the court is a procedural one aimed at ensuring the integrity of the arbitration procedures.

Impartiality is a moral issue that appears during the arbitrator's performance of his mission, and it means that his mind is free from any psychological or mental inclination, enmity towards one of the parties, or bias for any reason. For example, but not limited to, if the nationality of the arbitrator is from a country at war with the country of one of the parties, then as a result of the circumstances of the war between the two countries, the arbitrator may take sides in favor of the other party without adhering to the principles of justice and fairness. Therefore, enmity or affection, if any, must be personal and does not reflect in the performance of the arbitrator so that there is no risk of lack of impartiality when issuing the arbitral award<sup>50</sup>.

The researcher believes that this theory can be applied to the current situation between Russia and Ukraine. As if we assume that there is an international dispute between two companies, one of which is Russian and the other from any other country, and the arbitral tribunal was appointed from three arbitrators, provided that the third arbitrator, who is the president of the tribunal, is of a nationality other than the two countries, to provide it contains elements of impartiality in theory and according to the arbitration laws, and this arbitrator was of Ukrainian nationality. It is possible for the arbitrator to be affected emotionally and mentally due to Russia's invasion of Ukraine, and therefore it is natural for him to be biased towards the other party as a result of this situation, but the burden of proving the lack of impartiality of the arbitrator falls on the aggrieved party, meaning that there might be clear reasons that may prompt the losing party in the case to file a claim for the invalidity of the arbitral award as a result of the arbitrator's bias against him, but in practice, it is very difficult to prove that, as according to UAE law, it must be proven that those doubts about the

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<sup>50</sup> Cairo Court of Appeal Judgment No. 78, Judicial Year 120, issued on March 30, 2004

arbitrator's impartiality have affected the procedures of the arbitration process and thus led to the arbitrator's breach and issuance unfair judgment as a result of this bias.

The rulings issued in this regard were frequent, so we find, for example, *Case No. 740/2015 Commercial Appeal* that the appellant is a company that sold a housing unit in a project affiliated with it, and it was agreed in the terms of the sales contract to refer any dispute that may arise between the two parties to arbitration for a decision by an individual arbitrator appointed by the ADCCAC in accordance with its rules, the buyer has submitted a request to the said center to appoint an arbitrator to decide on his request to terminate the sale contract. On 9/29/2013, the aforementioned center appointed the respondent as an arbitrator to settle the dispute, and the appellant pleaded in her claim that the arbitral award was invalid and insisted on the arbitrator's invalidity and his dismissal from the ruling in the dispute due to the impartiality of this arbitrator represented in his inability to adjudicate in the dispute because he had previously decided on the two arbitration cases No. 69 and 74 of 2013 filed by other buyers against the appellant for other housing units in the same project, and because the decision in one of them requires giving an opinion on the same arguments in contradiction to what is required in the judge to be clear of the subject matter of the case so that he can weigh the opponents' arguments in an abstract and objective way, because expressing an opinion calls for his commitment to what is incompatible with the freedom to withdraw from it, which is the right for the appellant to request his response. Moreover, the respondent did not disclose the issues that affect his impartiality, represented by his previous appointment as an arbitrator in previous cases whose facts and requests presented in them are similar to the case presented, and he deliberately neglected to work under the arbitration procedures regulations to disclose any issues affecting his impartiality, which necessitated his dismissal. Then the respondent pleaded not to accept the appellant's request for the nullity of the judgment because it was instituted after the date, as the court upheld this plea due to the failure to file the case within the legally prescribed time, as according to the text of the fourth paragraph of article 207 of the Civil Procedure Code that "*the arbitrator may not be dismissed from the judgment except for reasons that occur or it appears after his person has been appointed, and the response is requested for the same reasons that the judge*

*responds to, or because of which he is considered unfit for judgment. The appointment of the arbitrator, and in all cases, the request for response shall not be accepted if the court's judgment is issued or the pleading in the case is closed.*” It was found from the case papers and presented evidence that the respondent had been appointed on 9/29/2013 as an arbitrator to decide on arbitration case No. 70/2013 at the Abu Dhabi Conciliation And Commercial Arbitration Center (ADCCAC) in the lawsuit filed by the purchaser of the housing unit, subject of that arbitration, against the appellant, and the appellant was notified on the same date, despite the latter's objection on 10/6/2013 to that appointment with the aforementioned center, it did not submit an application to reject it before the competent court until 1/5/2014, i.e. after the legally prescribed deadline had passed. Therefore, the court rejected this appeal and upheld the validity of the arbitrator and the judgment issued in the dispute<sup>51</sup>.

Also we find in the judgment issued by the Dubai court of cassation in case No. 43 of 2022 objection real estate, that the appellant mourns the reasons for her defense of the contested judgment for the lack of impartiality and independence of the head of the arbitral tribunal, as the head of the commission has a working relationship and a financial agreement with the defendant company's lawyer, which affects the judgment and requires its nullify. It was stated in the documents of the contested judgment and proven in the papers that ((The head of the arbitral tribunal was appointed based on the nomination of the co-arbitrators of the two parties and was approved by the defendant and was appointed by the executive committee of the Dubai International Arbitration Center (DIAC) after approval by both parties, and the plaintiff did not object to the statement of independence submitted by the arbitrator to the center and the parties, and that the plaintiff continued to proceed with the arbitration procedures without objecting to it, and that his objection had been rejected by the executive committee of the Dubai International Arbitration Center to submit it after the lapse of the deadline for that, in addition to the fact that the plaintiff did not provide evidence of the lack of impartiality and independence of the chairman of the arbitral tribunal, and that the mere existence of a relationship between the aforementioned arbitrator and the legal representative of the defendant - if any - does not indicate non impartiality unless it is proven

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<sup>51</sup> Case no 740/2015 Commercial Appeal – Abu Dhabi Court of Appeal



that this relationship affected the legal work carried out by the head of the arbitral tribunal and this effect was evident in the arbitrator's behaviour during the consideration of the arbitration proceedings or during the judgment - especially since the opinion of the head of the arbitral tribunal is often a weighted opinion when the judgment was issued by the opinion of the majority - and since the contested judgment was issued with the approval of the members of the arbitral tribunal, the arbitration court, among whom is the arbitrator appointed by the plaintiff, and the papers are devoid of proof of what he pleaded, then the court shall rule to reject the plea)).

Since what the contested judgment concluded was justified, with a proven origin in the papers, and no violation of the law, since according to the text of Article (15) of Law No. 6 of 2018 regarding arbitration, the party who intends to challenge the arbitrator must notify this arbitrator with a request in writing, stating the reasons for the response request, and sends a copy of it to the remaining members of the arbitral tribunal who have been appointed, and to the rest of the parties, within (15) fifteen days from the date of the respondent's knowledge of the appointment of that arbitrator or of the circumstances necessitating the response, which means that the party who he wishes to object to any arbitrator if circumstances exist that raise justified doubts about his impartiality or independence to notify the center within fifteen days from the date of the formation of the panel or his knowledge of the circumstances under which he has the right to object to the arbitrator. Therefore, the case was rejected<sup>52</sup>.

It is clear from this that the absence of the arbitrator's impartiality is a major reason for the invalidity of the arbitral award, provided that this is proven and the extent of the impact of his lack of impartiality on the legal work carried out by the arbitrator.

Respecting the principle of confrontation between adversaries and equality between the parties are a form of arbitrator impartiality<sup>53</sup>, as the arbitrator or the arbitral tribunal must observe equality between the parties to the arbitration, as Article 26 of Law No. 6 of 2018

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<sup>52</sup> Case no 43/2022 Objection, Real Estate – Dubai Court of Cassation

<sup>53</sup> Ray Turner, *Arbitration Awards: A Practical Approach* (Blackwell Publishing Ltd 2008).

on arbitration states that *"The Parties shall be treated with equality and each party shall be given a full opportunity to present its case"*. and the second paragraph of article 28 of the same law states that *"The Arbitral Tribunal shall deliver or communicate the minutes of hearing to the Parties"*.

In light of the previous paragraphs, it is clear that they perpetuate the principle of the arbitral tribunal's impartiality and equality between litigants and respect for the principle of confrontation on the one hand, and respect for the right of defence on the other hand. This principle was raised before the French court of cassation, Second Civil department, whereas pursuant to an arbitration award between DUARIB and JALLAIS, it was stated that DUARIB has to pay JALLAIS an amount of money. Then DUARIB lodged an appeal to set aside the arbitration award; In particular, it stated that it had known, after announcing the award, that one of the arbitrators had telephoned one of the parties to obtain certain information on issues related to the case, but without the knowledge of the other party, as this is considered a violation of the principle of equality between the parties since the arbitrator didn't prepare a report based on this conversation and the other party has not been notified of what was discussed; However, the court of appeal refused to invalidate the award and stated that the award was in no way based on a telephone conversation and that it was based on technical elements and means that are regularly discussed between the parties. DUARIB appealed against the judgment before the Court of Cassation for the same reason, which was agreed by the court in the judgment issued on November 10, 1998 to overturn the judgment, considering that the contacts and investigations made by the arbitrator without the knowledge of the other party constitute a violation of his impartiality and lack of respect for the principle of equality between the parties<sup>54</sup>.

In another case, the Egyptian Court of Cassation endorsed this principle, stating that it is not permissible to accept any memorandums from one of the litigants without informing the

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<sup>54</sup> DUARIB vs JALLAIS 1998

other litigant, as both parties must be given the opportunity to respond to any defence presented by the other party<sup>55</sup>.

However, in this regard, we find in another case before the Dubai Court of Cassation that one of the parties pleaded the invalidity of the arbitration award, given that the arbitrator received documents from the opponent in the absence of this party and after closing the pleadings, but the court decided to reject the case as a result of the appellant not showing how that affected in the arbitrator's ruling, especially since the award's blogs are devoid of the mentioned documents as evidence that he relied on them in his ruling, and therefore it is not suitable as a reason for invalidity, and the court does not see in that what reveals the arbitrator's breach of his impartiality<sup>56</sup>.

### **5.3.3 Independence**

Independence is not impartiality because it assumes a certain state of mind and mentality. Bias is sometimes recognizable but difficult to prove, so there is often confusion between independence and impartiality. While impartiality is sometimes interpreted in terms of nationality so that the third arbitrator is not of either of the two nationalities of the two parties to the dispute. The parties may be willing, at times, to give up the impartiality of the arbitrator so that they do not mind if this arbitrator be of the nationality of one of the parties, but they are not willing, in any way, to accept that the arbitrator gives up his independence and rules while he is related to one of the parties.

As previously mentioned, the arbitrator acts as a judge in the arbitration process, so the principle of the independence of the judge must be applied to the arbitrator. According to the UAE law, the judge must not have any relationship with any of the parties, and it mentioned in detail the cases in which the Judge is not permitted to hear the case<sup>57</sup>, and if he feels disconcerted for any reason that prevents him from examining the case<sup>58</sup>, he must step

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<sup>55</sup> *Case No. 202 of Judicial Year 30, Egyptian court of Cassation, December 31, 1964*

<sup>56</sup> Case no 164/2015 Commercial Cassation – Dubai Court of Cassation on November 06, 2016.

<sup>57</sup> See Article 115 UAE Civil Procedures Law.

<sup>58</sup> See Article 116 (2) UAE Civil Procedures Law.

down from it or disclose these reasons to the president of the court to eliminate any suspicion that would raise doubts about his impartiality and independence<sup>59</sup>.

The existence of a relationship between the arbitrator and one of the parties to the dispute may be a ground for challenging the arbitral award as a result of the arbitrator's lack of independence<sup>60</sup>, but the burden of proof falls on the aggrieved party, so we find in *Appeal No. 19 of 2021 the invalidity of arbitration*, that the plaintiff instituted the case against the defendant with a request to annul the award issued by the arbitral tribunal, as the ruling was in violation of the law and same must be invalidated. One of the reasons for this is the invalidity of the award due to the lack of independence of the head of the arbitral tribunal, as the head of the tribunal has a financial working relationship with the lawyer of the defendant company, and he was working as a legal advisor in a law firm in the country. The lawyer of the defendant company is appointed as a legal expert in the cases he is handling, as the lawyer of the respondent company used to nominate this arbitrator as the head of the arbitral tribunal in all the cases in which he represents the litigants, and that the president of the board has many interests with the legal representative of the defendant, resulting from continuous working relationships between them. Therefore, in the beginning, it seems that this reason is sufficient to invalidate the arbitral award, but the conclusion reached by the court of appeal regarding what was argued about the lack of independence of the head of the arbitral tribunal is that, based on what is proven in the papers, that the head of the arbitral tribunal was appointed based on the nomination of the plaintiff and was approved by The defendant, then he was appointed by the Executive Committee of DIAC after approval by both parties, and the plaintiff did not object to the statement of independence submitted by the arbitrator to the center and to the parties. The plaintiff continued to conduct the arbitration procedures without objection, in addition, the plaintiff did not provide evidence of the lack of independence of the president of the arbitral tribunal, and that the mere existence of a relationship between the aforementioned arbitrator and the legal representative of the defendant, if any, does not indicate impartiality unless it is proven that this relationship

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<sup>59</sup> Case no 3034/ 2021 Dubai Court of appeal, hearing on March 16, 2022.

<sup>60</sup> Marine Rundschau, 'International Arbitration' (1908) 52 Royal United Services Institution. Journal 76.

affected the legal work carried out by the head of the arbitral tribunal and this effect was evident in the arbitrator's behavior during the consideration of the arbitration proceedings or during issuing the final award. So, as a result of the lack of evidence to prove what the plaintiff had argued, the court decided to reject this plea<sup>61</sup>.

There is a thorny point, which is how the arbitrator sympathizes with the demands of the party who appointed him and his understanding of these demands and his keenness to be understood by all the arbitrators, and at the same time, he should adhere to the principle of independence during the consideration of the dispute.

The appointment of an arbitrator by one of the parties to the dispute does not mean that this arbitrator will work as a lawyer who defends this party and his case through his point of view because this is a deviation from the principle of independence, but the arbitrator must be fair and impartial in his behavior and in the formation of his belief in the subject matter of the dispute even if this leads to the fact that the final judgment is not in favor of the party who appointed him. But proving the arbitrator's biased behavior is very difficult, as if the arbitrator has a prior opinion in the dispute, not by being an arbitrator in another arbitration case, as we mentioned before, but by studying its status on the legal point in question. What is the position of the arbitrator in this case?

The approach of the UAE Federal Supreme Court in this regard is that it is not permissible for anyone of the parties to be an opponent and an arbitrator at the same time, if the parties agree on a specific arbitrator, he may not be a representative of one of the parties to the arbitration, his lawyer, his agent, or one of his subordinates or his employees, or he has previously mediated in resolving the dispute or expressed his opinion about it, or he is a person or persons who are not self-identified, so either of the parties may request the court to reconsider the appointment of an arbitrator - even if it was previously agreed upon - if a reason for incompetence arises against him<sup>62</sup>.

The existence of an old working relationship between the arbitrator and one of the parties to the dispute, or if this arbitrator was previously appointed by one of the parties to the dispute,

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<sup>61</sup> Case no 19/2021 The invalidity of arbitration – Dubai Court of Appeal

<sup>62</sup> case no. 379 of 2013 civil cassation, federal supreme court, UAE Tuesday session corresponding to January 21, 2014.

may raise doubts about the lack of independence of that arbitrator, but proving that this relationship influenced the arbitrator in issuing his judgment with a bias in favor of this party is extremely difficult. We find in one of the cases before the court of appeal in Dubai courts that one of the parties pleaded the invalidity of the arbitral award as a result of the fact that the president of the arbitral tribunal appointed by the DIAC was a representative of the other party in a previous case, but the court rejected this plea only because it came after the legally prescribed period had passed, as it was waived the right of this party to object to the extent of the arbitrator's competence to consider the case in accordance with UAE law, and the court did not mention any other reasons<sup>63</sup>.

The researcher believes that the court, with this approach, opened the way for the fact that there is a working relationship or an old legal representation of one of the parties that could be a reason for the invalidity of the arbitral award, provided that the legal path is achieved and that this relationship has a clear impact on the performance and decisions of the arbitrator during the arbitration procedures.

In addition to the above, we find in many of the cases brought for the nullity of the arbitral award that many parties are trying to argue that the arbitrator is not independent, or that there is a financial relationship with one of the parties, or that there is a history of business relationship with one of the parties to the dispute, therefore, the arbitral award is void, but it depends on how to prove this and the impact of that relationship on the arbitration procedures and award. This is something that is almost very difficult to prove, but it is not impossible. Where the Court of Appeal ruled in *Appeal No. 36 of 2021 The invalidity of arbitration*, to nullify the award issued in the arbitration case No. 116 of 2021 by the UAE Sports Arbitration Center, when it was proven that the head of the arbitral tribunal is a trained lawyer with the respondent's legal representative, which makes it impossible to arbitrate impartially and independently. And the other arbitrator is the vice-chairman of the appeals committee of the football association, and it was decided by Article No. 10/2 of Law No. 6 of 2018 regarding arbitration that the arbitrator must not be a member of the board of trustees

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<sup>63</sup> *Case No. 07 of 2022 Invalidity of Arbitration Award, Dubai Court of Appeal, UAE on June 15, 2022.*

or the administrative body of the arbitration institution competent to organize the arbitration case in the country and then he may not consider arbitration cases at the Emirates Sports Arbitration Center due to a conflict of interest. Accordingly, the arbitration award has been invalidated for the reasons previously mentioned<sup>64</sup>.

The mere existence of a relationship between the lawyer, the legal representative of one of the parties, and the president of the arbitral tribunal. It does not in itself constitute a reason for his disqualification to perform his arbitration mission and preside over the arbitral tribunal. Rather, this may raise doubts about the lack of independence of the president of the arbitral tribunal. However, due to the lack of tangible evidence indicating that this relationship affected the arbitration process till the issuance of the final award, it is not permissible to annul the arbitral award issued by him for this reason<sup>65</sup>.

According to the published awards by the Dubai courts, the chart below shows that over the past five years, since 2018 and until now, 206 cases of nullity of an arbitration judgment were registered in the Dubai Court of Appeal. The arbitration award was invalidated in only 18 cases. The aforementioned case is the only case in which the arbitral award was invalidated as a result of the arbitrator’s lack of independence, and this was proven by the evidence presented to the court’s justice.

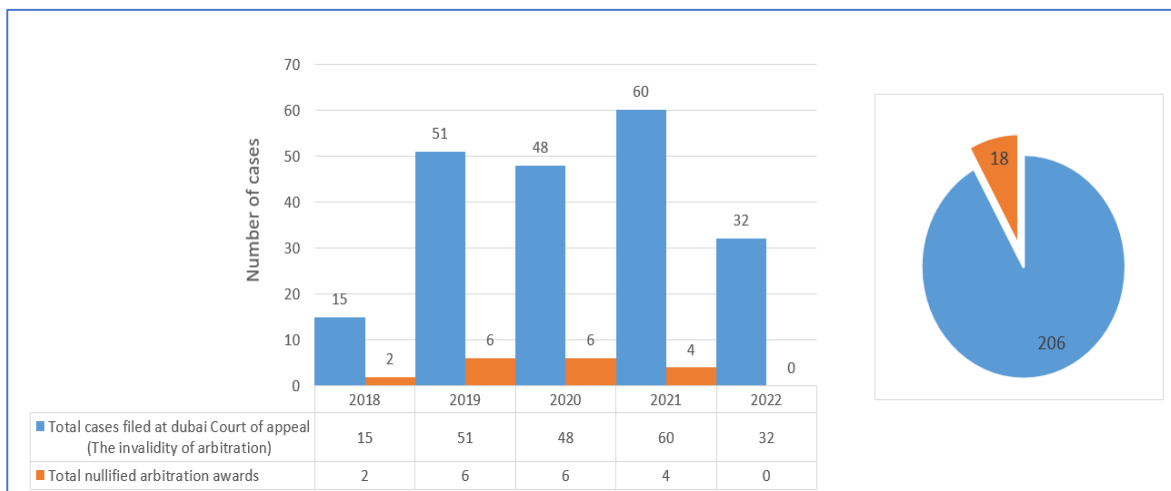


Figure 4: Invalidation of Arbitration Cases which was filed at the Dubai Court of appeal for the past five years

<sup>64</sup> Case no 36/2021 The invalidity of arbitration – Dubai Court of Appeal

<sup>65</sup> Egyptian court of cassation, Appeal No. 13892 of 1881 Judicial year.

## 5.4 Liability VS Immunity

The responsibility of the arbitrator was and still is a subject of jurisprudential controversy due to the absence of legislative regulation of it by the laws regulating the arbitration process, and then there are many opinions about whether or not the arbitrator will be held accountable and the extent of immunity enjoyed by the arbitrator, which is similar to the immunity of judges<sup>66</sup>, as some see that the arbitrator as a natural person must to be subject to accountability if he made a mistake and caused harm to others as a result of this mistake, or it was proven that his act has been in bad faith<sup>67</sup>, while others believe that he was not held accountable and given enough freedom to practice his profession where he enjoys immunity similar to that of judges. Therefore, the researcher sees the necessity and need to establish a legal basis of criteria for the responsibility of the arbitrator so as to achieve a balance between the arbitrator in performing his work and protecting the parties from mistakes that the arbitrator may commit or fall into inadvertently, and thus achieve the desired justice and the goal of the success of the arbitral mechanism.

It is worth noting that the UAE legislator recognized the arbitrator's responsibility for the errors he might commit during the performance of his arbitration mission, and that he may be require to pay the necessary compensation for breach of this duty, as paragraph 2 of Article 207 of the Civil Procedures Law of 1992 stipulates that "if the arbitrator steps down without a serious reason failing to do his work after accepting the arbitration, he may be ordered to pay compensation". However, these paragraphs of the same law were canceled and replaced with the articles mentioned in Law No. 6 of 2018 regarding arbitration, as the researcher believes that the articles of the Arbitration Law of 2018 give more immunity to the arbitrator, as Article 15 (5) stipulates that "*If the Concerned Body decides to remove the Arbitrator, it may decide to pay the Arbitrator such fees and expenses as it considers appropriate or to reimburse any expenses or costs already paid to him, which decision shall be subject to no appeal*". It is clearly indicating that the arbitrator could be asked to refund

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<sup>66</sup> Julian Bailey, 'Construction Law Volume I, II & III' (Informa Law from Routledge 2011) p1679.

<sup>67</sup> EDWIN PEEL and JAMES GOUDKAMP, 'WINFIELD AND JOLOWICZ ON TORT' p1012.



any fees or expenses that were paid to him during the arbitration process, as the text of the previous law obligating the arbitrator to pay compensation for any damage he caused as a result of his mistake has been cancelled.

The relationship between the arbitrator and the parties to the arbitration dispute or the arbitration institution is based on a contractual basis, where the arbitrator's role in the arbitration process begins with the arbitrator's agreement to assume the arbitration task and to initiate the agreed arbitration procedures. Therefore, the arbitrator is considered responsible towards the parties to the dispute if the arbitral award is annulled as a result of any mistake he has committed, and he may be subject to accountability and claim compensation for the damage that may befall any of the parties, and thus this may affect his reputation and professional standing. Therefore, there is a contractual liability for the arbitrator accordingly, and as stated by Dubai court of appeal that the pillars of this contractual liability are violation or breach of the contractual obligation between the arbitrator and the parties to the dispute in accordance with the arbitration agreement, harm to one of the dispute parties, and a causal relationship between the breach resulting from the arbitrator and the damage sustained by one of the parties<sup>68</sup>.

## **5.5 Litigants' guarantees against the arbitrator**

Although arbitration is considered an alternative path to the judiciary, the legislator did not relinquish his entire judicial authority when establishing the arbitration. Rather, he retained the judiciary's right to supervise the arbitration procedures and even extended its oversight until after the arbitral ruling was issued that settled the dispute, in order to encourage individuals to resort to arbitration and to be the best tool in settling the dispute.

Given that the arbitrator plays a judicial role, it is necessary for the litigants to be surrounded by some guarantees during the course of the arbitral process in order to ensure the arbitrator's impartiality and independence, which achieves confidence and reassurance in the hearts of the litigants. Among these guarantees are guarantees related to the performance of the

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<sup>68</sup> Case no 484/2017 Civil Cassation – Dubai Court of Cassation, 21 December 2017

arbitrator during the conduct of the arbitral proceedings, which are the dismissal and termination of the arbitrator, the ending of his mission, and his replacement. These guarantees are of great importance in arriving at a sound and fair judgment, as they constitute the judicial oversight role over the work and performance of arbitrators. Most of the legislations have been keen to stipulate many guarantees in the face of arbitrators, in order to provide the required limit of their impartiality and independence from the parties to the dispute, given that these guarantees are necessary for the administration of justice, and therefore their omission and failure to observe them may lead to the arbitral decision being null and void.

Since impartiality and independence are the essences of the judiciary, if one of the parties discovers after the appointment of the arbitration committee that one of them does not have impartiality and independence, he may request his dismissal from considering the case, as the right of the parties to request the arbitrator's dismissal reflects respect for an original principle in litigation, which is the right of Parties to the dispute to appear before an impartial judge. That is to say, if there are actually circumstances established (and not merely supposed or inferred) that negate or raise a clear doubt of the impartiality of the arbitrator, then the security for the parties would disappear and a challenge by either party would have to be upheld<sup>69</sup>.

Impartiality and independence are considered the cornerstones of litigation, as we mentioned before, and they are two interrelated rules, so there is no impartiality without independence and no justification for independence if impartiality is not accompanied by it. Therefore, the UAE legislator permitted the arbitrator's response if circumstances arise that raise serious doubts about his impartiality and independence, as the first paragraph of article no. 14 of the UAE arbitration law stipulates that "*The Arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed to by the parties or stipulated by this Law*".

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<sup>69</sup> CL Lim, Jean Ho and Martins Paparinskis, *International Investment Law and Arbitration* (2021) p540.

Also, Article (10) of the Model Law on International Commercial Arbitration (UNCITRAL) stipulates that *“the arbitrator may be challenged if circumstances are found that raise justifiable doubts about his impartiality or independence.”*

It is clear from the above texts of these laws that the legislator did not limit the reasons for the arbitrator’s dismissal, but rather allowed the parties to the dispute to dismiss the arbitrator in the event that circumstances exist that raise doubt about his impartiality and independence, and therefore it is not permissible to reject him for any abstract reasons or doubts that are not based on real justifications that affect his impartiality and independence, and this confirms what it was previously mentioned and what has been studied through the judgments issued by the courts of the UAE that the plea after the arbitrator’s impartiality or lack of independence without proof of this and without proof that his lack of impartiality affected the procedures for the conduct of the arbitral case and thus affected the judgment issued in it, does not lead to the dismissal or terminate of the arbitrator It is up to the aggrieved party who pleads the nullity of the judgment how to prove this before the competent court.

## **CHAPTER 6: DATA ANALYSIS**

### **6.1 Introduction**

This section will consist of the collected data from using a closed-ended survey, as mentioned in Appendix B, that was developed based on the experience of arbitrators and practitioners in the UAE arbitration field. The survey was sent to different respondents, as mentioned in Appendix A) who are knowledgeable regarding the research topic. It was based on prepared questions to help contribute to the main objectives of the researcher

### **6.2 Survey design**

The survey consists of 18 questions and was formed based on the literature review and the collected data from legal cases in UAE related to the research topic. It was sent to an assortment of professional individuals who have an experience in UAE arbitration field. The purpose of the survey was to obtain practical feedback from those who worked as arbitrators and also who have experience with arbitration cases and to find out their opinion on the research problem and whether the researcher's opinion is compatible with their opinions or whether there are other opinions or solutions that may contribute to finding solutions to meet the challenges related to performance and the behavior of the arbitrator and how to supervise the work of the arbitrators in terms of their impartiality and independence.

### **6.3 Survey analysis**

#### **1- Background and type of organization**

First two questions aim to know the background of the respondents and what type of the organization he/she belongs

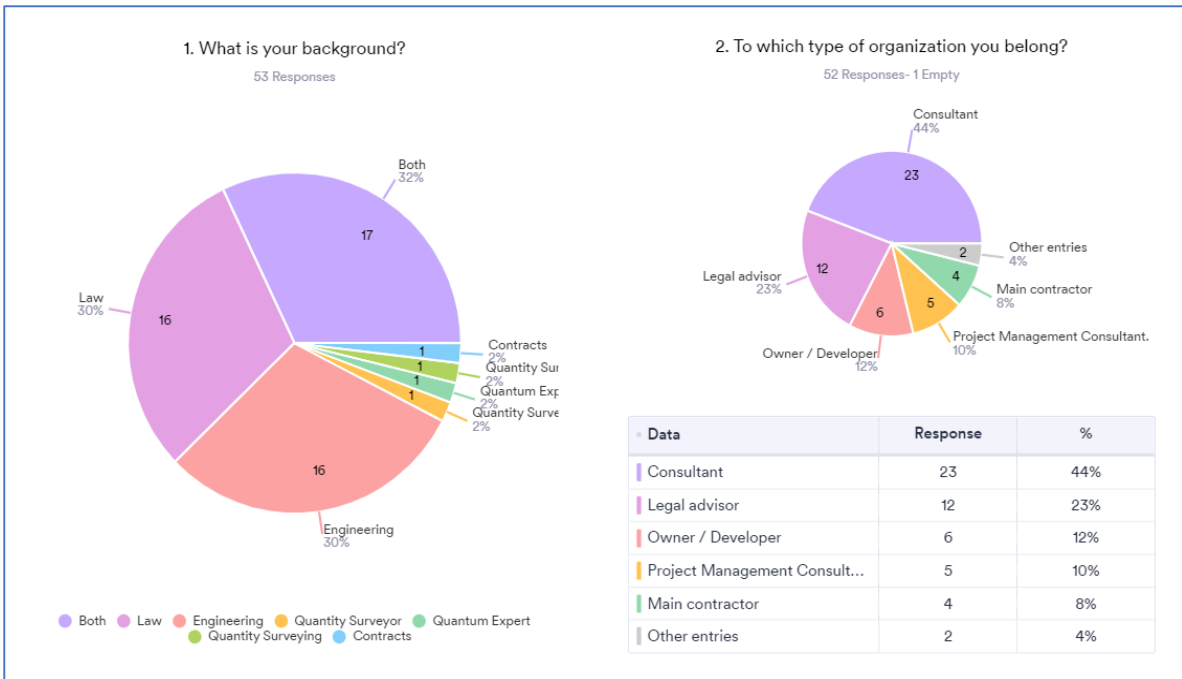


Figure 5: Background of the respondents and what type of the organization he/she belongs

## 2- Age and years of experience

Question no 3 and 4 identifying the age range of the respondents and determines the extent of their experience in UAE

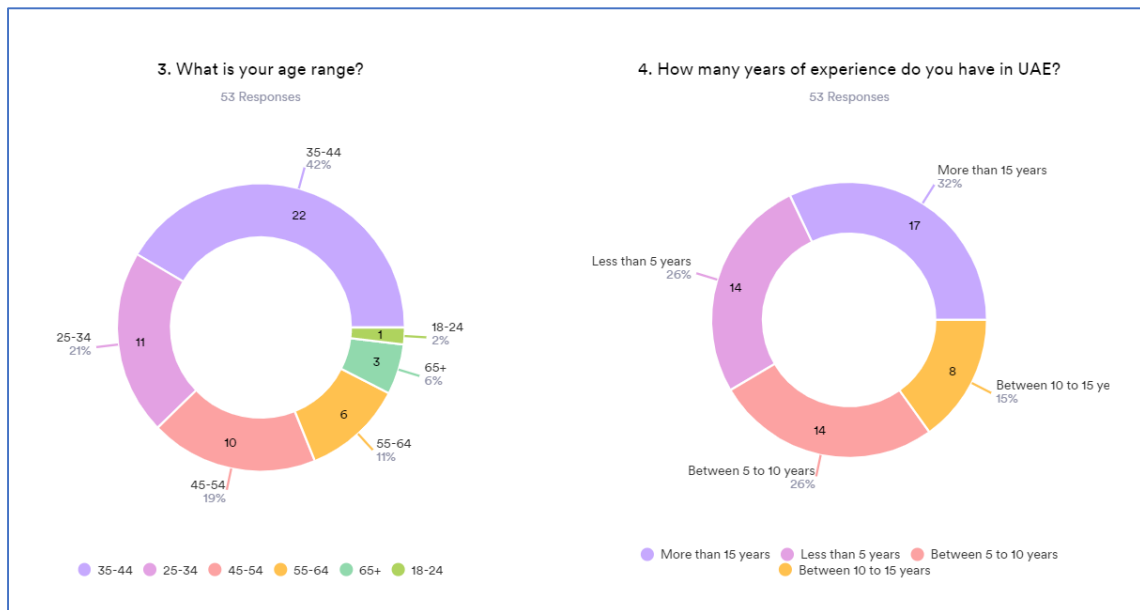


Figure 6: Respondent's Age and Experience in UAE

### 3- Diversity of the respondents

The following questions (no. 5 and 6) aims to evaluate the diversity of the respondents in terms of their gender and nationalities

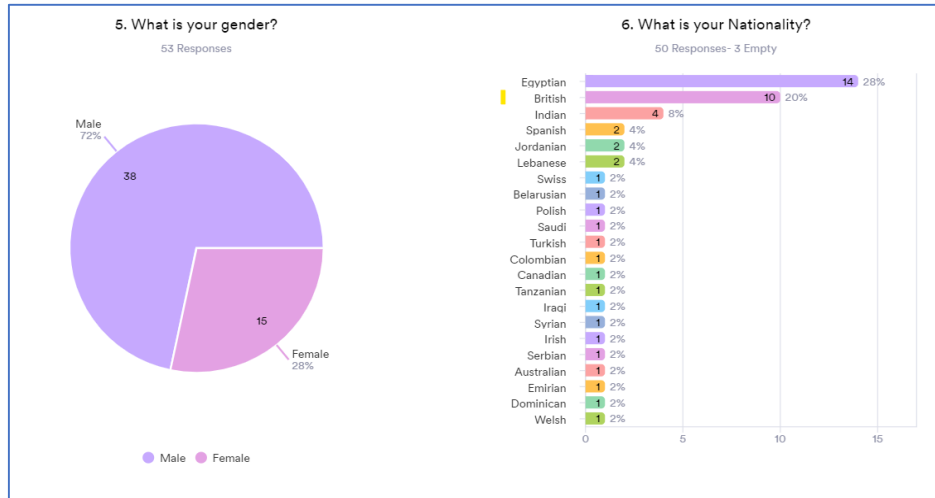


Figure 7: Respondents gender and nationality

### 4- Attended arbitration cases

Question 7 aims to assess the strength of the respondents' observations and their knowledge of arbitration procedures to determine the impact of their opinion on the questionnaire, by knowing the number of arbitration cases they attended.

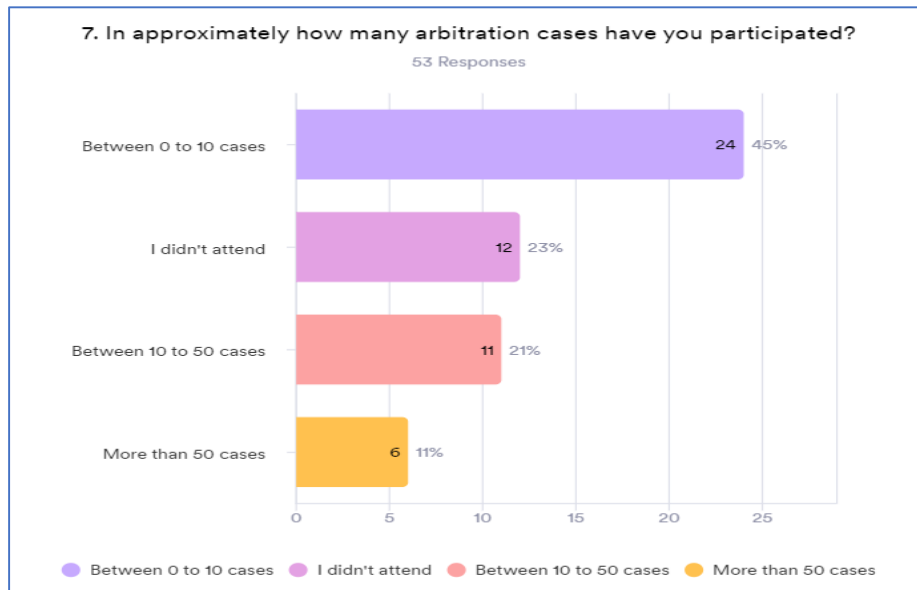


Figure 8: How many arbitration cases the respondent attended

## 5- Cases attended as an arbitrator

Question no 8 and 9 consider the total cases attended by the respondents as an arbitrator

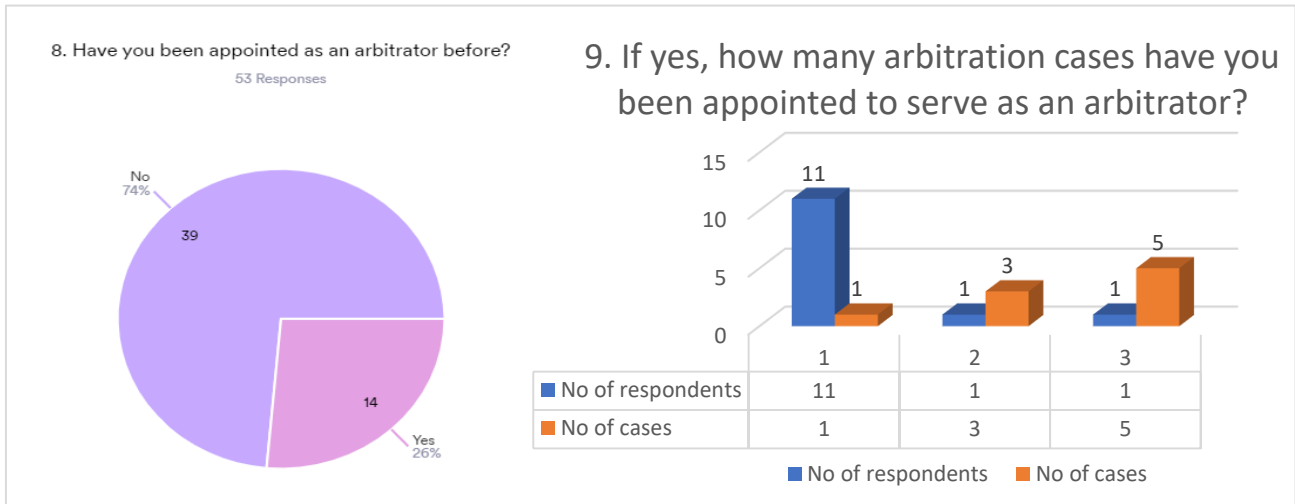


Figure 9: No of Cases which respondent appointed to serve as an arbitrator

## 6- Most industry has disputes

Question 10 aims to know from the respondent point of view what is the most common dispute cases in terms of industry, economic sector. The majority answered that the most common disputes are, in the first place, at banking and finance sector, followed in the second place by the construction sector.

## 7- Was there any challenge to the arbitrator in the cases that respondent attended?

In Question no 11, It was necessary to know that if the respondent face any real case that the arbitrator was challenged by anyone from parties after issuing the final award or no?

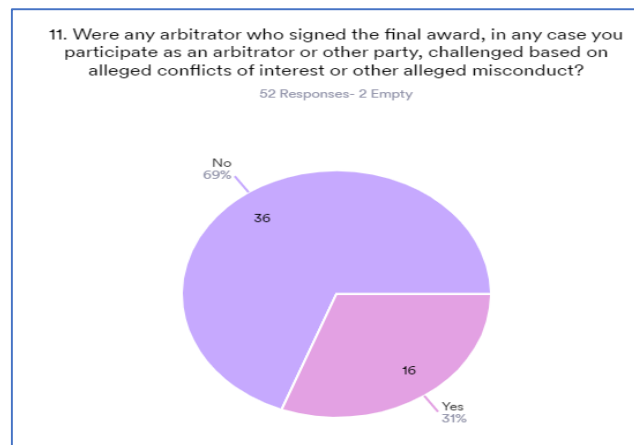


Figure 10: How many responded attend a real case of challenge the arbitrator?

## 8- Grounds of challenging the Arbitrator

The following question No:12 aims to determine the most ground of challenging the arbitrator and led to nullifying the award.

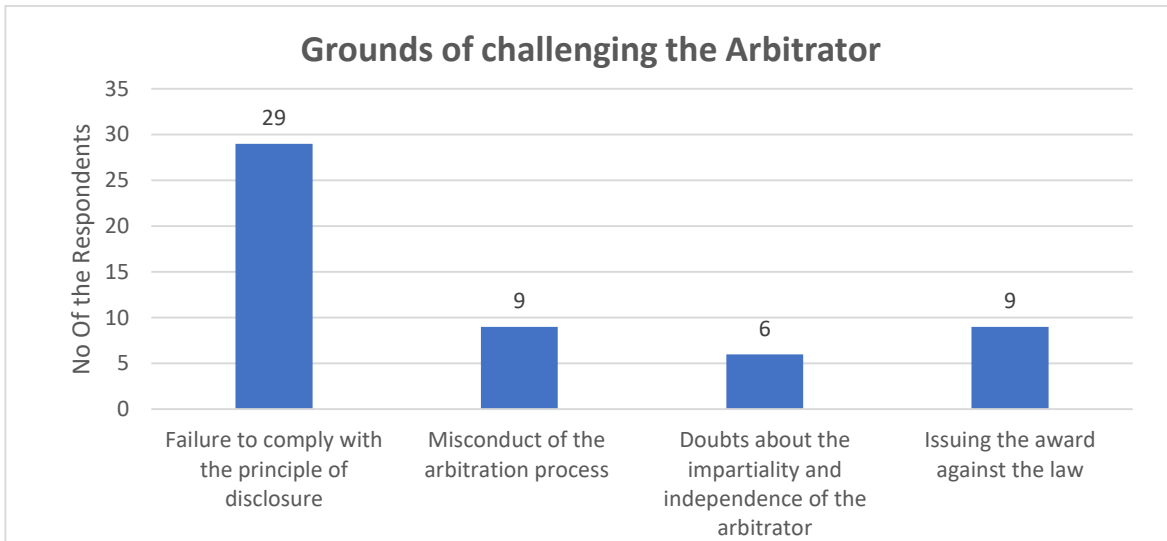


Figure 11: Grounds of challenging the Arbitrator

## 9- Previous Relation with dispute party:

Question 13 might confound the respondents because they were requested if they got appointed for an arbitration case and they found that they had appointed before in other case with the same parties or one of them, so will they accept to handle this case or no?

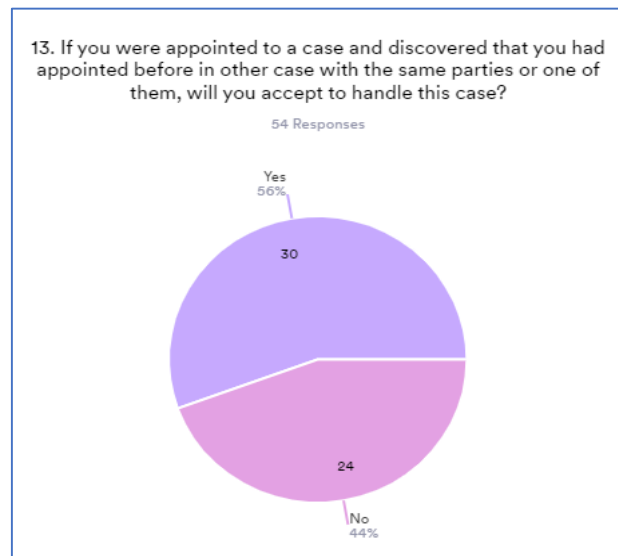


Figure 12: How many respondent will handle a case that one of the parties appointed him previously in other case?



## 10- Arbitrator criteria's

Question 14 aim to identify the most criteria, from the respondent point of view, they rely on it while choosing the right arbitrator.

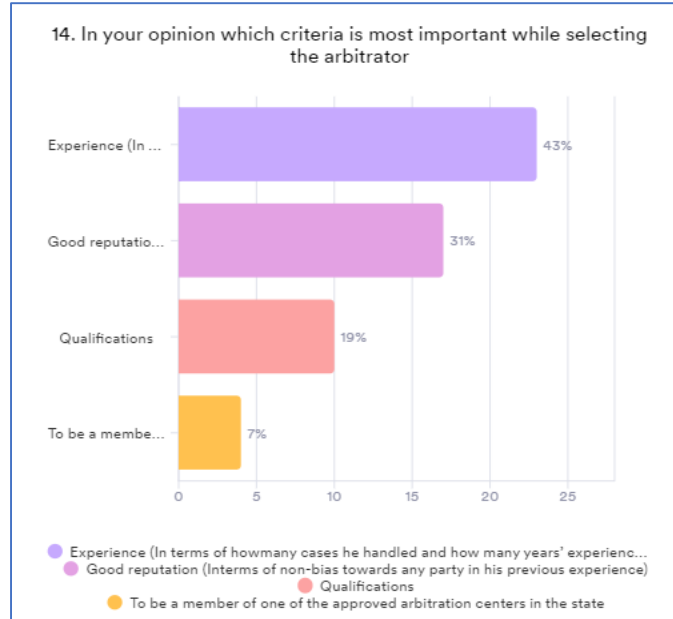


Figure 13: Arbitrator's Criteria's

## 11- Judicial body supervising the works of Arbitrators

Question no 15 aims to get the feedback from the respondent about existing of Judicial body appointed by the state to supervise the works of arbitrators.

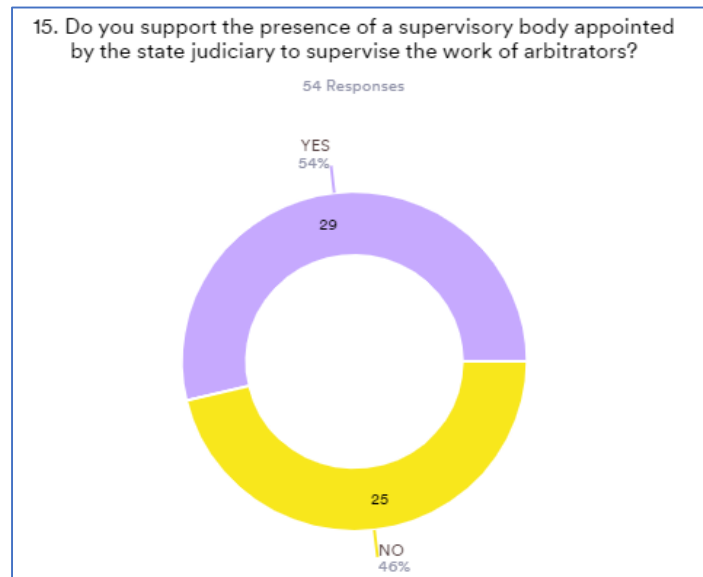


Figure 14: How many respondent support the presence of judicial supervisory body for the arbitration works?

## 12- Freelance Arbitrator or belong to arbitration center

In question no 16, it was necessary to know if the respondent is a decision maker to select an arbitrator in a case he is involved in it, shall he choose him from one of the arbitrators who belong to the arbitration center, or shall he select a freelance arbitrator?

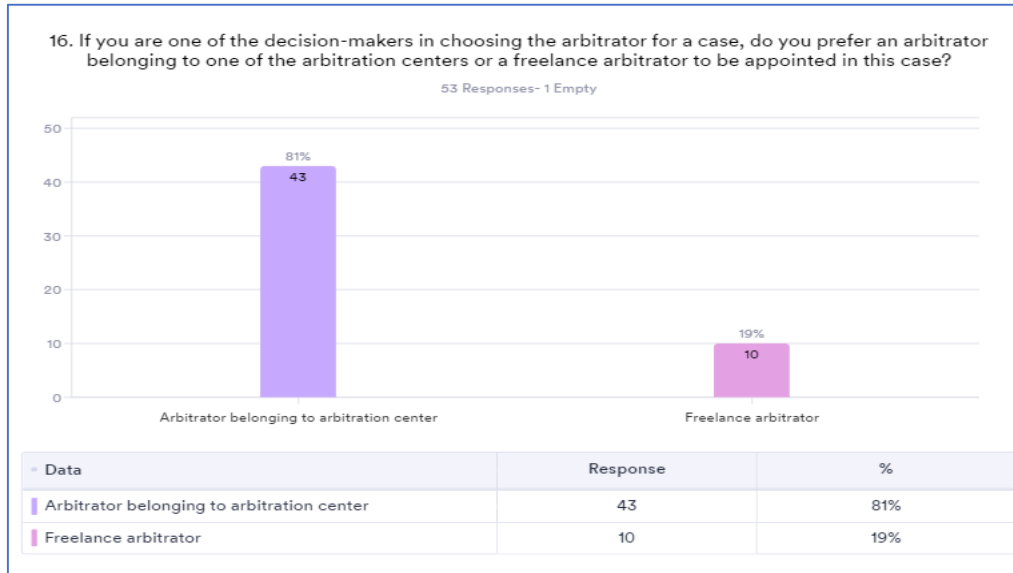


Figure 15: Freelance arbitrator Or Arbitrator belong to arbitration center?

## 13- Unified legal authority for the arbitration

Finally, the aim of questions no 17 and 18 was to know the extent to which the respondent supports the researcher's opinion on the existence of a unified legal center for the qualification and accreditation of arbitrators in the country, and also the existence of a unified legal authority to grant licenses to arbitrators to practice the profession of arbitration.

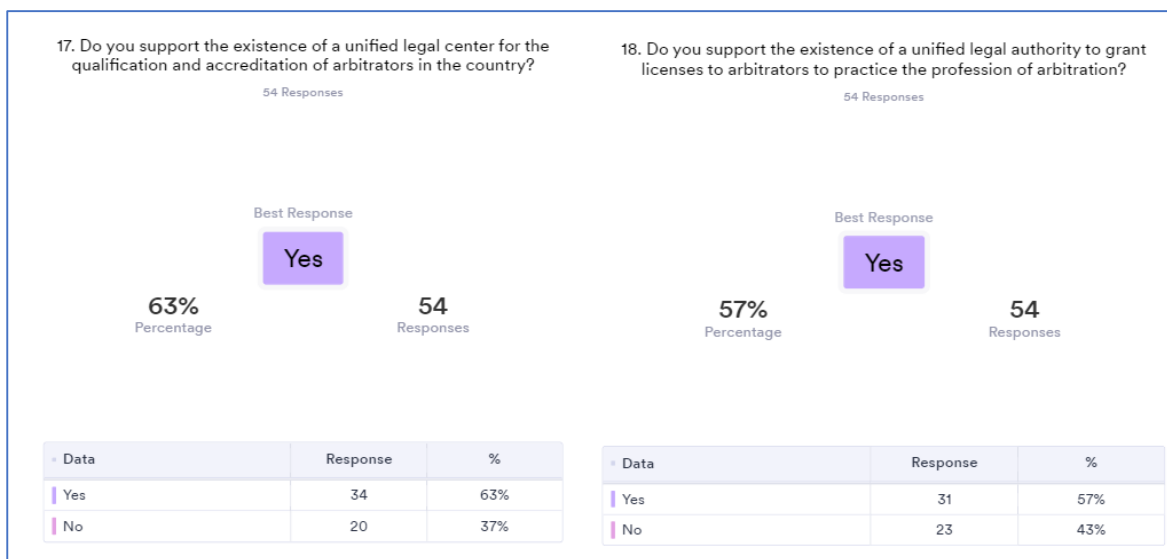


Figure 16: How many respondent support existence of a unified legal center and authority for arbitration?

## 6.4 Outcomes

There were 53 respondents to the survey who were attending arbitration cases, either as an arbitrator or practitioner. The background of the respondents was 30% law, 30% Engineering, 32% both, and 4% others. Majority of the respondents were working as a consultant or legal advisor with an experience in UAE which was a help for understanding the practice of arbitration in UAE. The respondents were from 21 different countries and 72% were males and 28% females which reflect the diversity of the respondents in terms of their nationality and gender.

It became clear from the results that most of the respondents attended real arbitration cases and about 26% of the respondents were appointed as an arbitrator, in addition to that 31% of the respondents were aware of the real cases in which the arbitrator was challenged, so their observations will be of more value because it will depend on the practical cases in which they may encounter during their previous employment. The result was that 55% of the respondents believe that failure to comply with the principle of disclosure is the most ground for challenging the arbitrator.

There was no significant difference between the respondents who agreed to be appointed again with the same party for a different case and those who rejected, this might be to avoid any circumstances for their independence or bias to this party which maybe led to be a ground for challenging them.

The result for the most important criteria shall be considered while selecting the arbitrator was 43% of the respondents will choose him based on his experience first, 31% based on his reputation, 19% based on his qualification, 7% based on his membership with the arbitration center.

54% of the respondent agree to have a judiciary body supervising arbitrator's work while 46% of them disagree. 81% of the respondent will choose the arbitrator who belong to arbitration center and 19% will go for a freelance arbitrator.

Finally, it was understood from the feedback of the respondents that the majority, 63%, support the idea of existence of a unified legal center for accreditation of the arbitrator, and 57% supporting existence of a unified legal authority to grant licenses to arbitrators to practice the profession of arbitration.

## **6.5 Summery**

The researcher believes that the feedback of the respondents supports his idea, which is the existence of a unified legal body whose competence is to qualify and prepare arbitrators and give a license to practice a profession to those who are qualified to work as an arbitrator, and thus ensuring that the arbitrator will be committed to the ethics of the profession and fully aware of the laws that must be applied in the arbitration process.

## **CHAPTER 7: THE CONCLUSION**

### **7.1 Conclusion**

Arbitration is the choice of the disputing party by another neutral party to settle the dispute between them without resorting to the judiciary, and arbitration is pursuant to a contract that is mentioned in its core and within its terms and is called the arbitration clause, and it may be on the occasion of a specific dispute that already exists between the opponents and in this case it is called the arbitration agreement. Arbitration is based on the full will and freedom of the litigants to resort to arbitration instead of the judiciary, and in agreeing to choose the arbitrators who will consider the subject of the dispute as they put their full confidence in these arbitrators to issue a fair ruling that is not subject to appeal, and the arbitrator or the arbitration committee is appointed based on the arbitration agreement as it is the source the basic principle from which the arbitrator derives the authority to rule in the dispute instead of the competent judiciary, and therefore the legislator surrounded him with certain guarantees that guarantee the rights of the parties during the course of the arbitration process and also guarantee the arbitrator's behavior and how he deals with the parties during the arbitration procedures and until the issuance of a final ruling. Therefore, the arbitrator is considered to be the backbone of the arbitral process, and the breach of his mission or failure to fulfill his duty of independence and impartiality may lead to the failure of the entire arbitration process and the invalidation of the arbitral award as a result of this defect.

Since arbitration has a special nature, the arbitral tribunal is not obligated to follow the same path adopted by state courts in applying the same procedural system but is obligated to implement the essence and content of this system in a manner that does not conflict with the nature, characteristics, and purpose of the arbitration. In all cases, the arbitrator must respect the basic guarantees of litigation represented in respecting the principle of equality between litigants, the rights of defence, and the principle of confrontation between litigants. All of this means that the arbitrator works with all impartiality, transparency, and complete independence from the parties in light of adherence to the applicable law, with the aim of achieving the required balance between respecting the authority of the will and observing the legal regulation in society.

Arbitrator performs judicial work, so he enjoys his immunity similar to the immunity of judges, except that imposing the principle of absolute immunity of the arbitrator, and not determining his responsibility for the actions he commits in bad or bad faith is considered harmful to the parties to the dispute, and affects their financial positions, especially in the case of lack of conscience, and the unbridled inner motives of the arbitrator as a human being can make mistakes or be right. This will, as a result, damage the reputation of the arbitration system and its effectiveness in resolving disputes. Therefore, some view the disciplinary liability of the arbitrator as not in line with the private nature of the arbitration. Especially since arbitration has not yet become a common profession, and there are no syndicates representing it, as is the case with law, medicine, or engineering. The arbitrator is appointed temporarily to adjudicate a specific dispute, and his mission ends once his arbitral award is issued.

Others have also argued that the arbitrator should be held responsible for his mistakes that may cause damage to the parties to the litigation, despite his enjoyment of immunity prescribed by law. His responsibility can be raised if he breaches his job duties and his immunity is not absolute as some imagine, as there must be some penalties that can be imposed. It is imposed on the arbitrator in the event of his breach of some of his obligations, such as obligating him, for example, to pay compensation for damages incurred by one of the litigants, or the obligation to return the sums he received for his fees spent in the arbitration case.

## **7.2 Recommendations**

The absence of a unified judicial organization regarding the disciplinary responsibility of the arbitrator in the event of his breach of the principles of arbitration, and the lack of a professional system that supervises the conduct of arbitration matters and oversight over it, leads to a lack of professional responsibility for the arbitrator, and therefore to the absence of professional punishment that the arbitrator may be subjected to, this was the motive behind the study of the researcher finds a legal solution to fill this legal void, especially in the UAE system, where the researcher recommends the need to establish centers or

associations specialized in taking disciplinary measures against violating arbitrators, and the scope of their work will be side by side and in cooperation with arbitral institutions. Where any arbitrator can become a member of such centers or associations if he wants to work as a certified arbitrator by the state, in addition to adopting a unified ethical charter that defines the broad lines of reprehensible or commendable behavior, and the same disciplinary procedures can be adopted against member arbitrators who deviate from those practices. Therefore, a nominal list of arbitrators is approved, showing their qualifications and experience, so that the parties wishing to resort to arbitration can choose the right and suitable arbitrator, within the framework of professional associations of arbitrators.

I recommend the UAE legislator amend the text of the arbitration law to include in detail the cases of lacking the independence and impartiality of the arbitrators that would, if found, render the arbitral tribunal unfit to hear the case, as he stated in detail those circumstances that apply to judges and are mentioned in detail in the Civil Procedure Law.

### **7.3 Limitation**

Due to the confidentiality of the arbitration procedures and no published arbitral awards, there was a limitation in the research topic because there is a lack of data and statistics related to the arbitration field in UAE. In addition to the difficulty to get feedback from the legal and judiciary body in relation to the research topic. The survey sample never represents the depth of understanding of the research due to the knowledge and number of the respondents which were not high due to the result of less contribution to the main research topic.

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- 7- Duarib vs Jallais (Fra, 1998)
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- 9- (Case no 164/2015 Commercial Cassation – Dubai Court of Cassation on November 06, 2016).
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- 12- (*Case No. 07 of 2022 Invalidity of Arbitration Award, Dubai Court of Appeal, UAE on June 15, 2022*).
- 13- (Case no 36/2021 The invalidity of arbitration – Dubai Court of Appeal).
- 14- (Case no 484/2017 Civil Cassation – Dubai Court of Cassation, 21 December 2017).
- 15- Egyptian court of cassation, Appeal No. 13892 of 1881 Judicial year, Hearing February 22, 2022.
- 16- Case no 3034/ 2021 Commercial appeal, Dubai Court of appeal, hearing held on Wednesday March 16, 2022.

## APPENDIX A

Dear Sir/Madam,

As part of my Master of Science in Construction Law and Dispute resolution, I am conducting a survey to examine the Role of the Arbitrator in the Arbitration Process.

Your experience and opinions will be an important contribution to assessing to what extent the arbitrator's behavior affects the arbitration process. This survey may take 5 minutes and I would request you fill it out completely.

Please note that the information received will be retained confidential and will be utilized for educational purposes only.

If you have any queries or need any clarification/information about the survey, please get in contact with me.

Many Thanks,

Mina Elsayed

Post Graduate student,

M.Sc. Construction Law and Dispute resolution,

The British University in Dubai,

20002640@student.buid.ac.ae (or) [mina.elsayed@gmail.com](mailto:mina.elsayed@gmail.com)

## APPENDIX B

1. What is your background?
  - Law
  - Engineering
  - Both
  - other
2. To which type of organization you belong?
  - Owner / Developer
  - Subcontractor
  - Project Management Consultant.
  - Finance / Account Consultant
  - Legal advisor
  - Main contractor
  - Other
3. What is your age range?
  - 18-24
  - 25-34
  - 35-44
  - 45-54
  - 55-64
  - 65+
4. How many years of experience do you have in UAE?
  - Less than 5 years
  - Between 5 to 10 years
  - Between 10 to 15 years
  - More than 15 years
5. What is your gender?
  - Male
  - Female
  - Prefer not to answer

6. What is your Nationality?
7. In approximately how many arbitration cases have you participated (in any capacity)?
  - I didn't attend
  - Between 0 to 10 cases
  - Between 10 to 50 cases
  - More than 50 cases
8. Have you been appointed as an arbitrator before?
  - Yes
  - No
9. If yes, how many arbitration cases have you been appointed to serve as an arbitrator?
10. From your experience, please rank the most common dispute cases in terms of industry, economic sector?
  - Banking and finance
  - Construction
  - Corporate transactions
  - Energy (other than oil & gas)
  - Information services
  - Insurance
  - Intellectual property
  - Mining
  - Manufacturing
  - Oil and gas
  - Real estate
  - Shipping and transportation
  - Sports
  - Telecommunications
  - Trade in goods
  - Other (please specify)

11. Was any arbitrator who signed the final award, in any case you participate as an arbitrator or other party, challenged based on alleged conflicts of interest or other alleged misconduct?
  - Yes
  - No
12. In your opinion rank the grounds of challenging the Arbitrator led to nullification of the final award?
  - Failure to comply with the principle of disclosure in Initial disclosures during the appointment process or Subsequent disclosures during the proceedings.
  - Newly discovered facts raise doubts about the impartiality and independence of the arbitrator
  - Misconduct of the arbitration process and non-compliance with the arbitration agreement
  - issuing the award against the law (ex: public policy or jurisdiction)
  - Other (please specify):
13. If you were appointed to a case and discovered that you had appointed before in other case with the same parties or one of them, will you accept to handle this case?
  - Yes
  - No
14. In your opinion which criteria is more important while selecting the arbitrator?
  - Qualifications
  - Experience (In terms of how many cases he handled and how many years' experience in arbitration)
  - Morals and good reputation (In terms of non-bias towards any party in his previous experience)
  - To be a member of one of the approved arbitration centers in the state
  - Others (Please specify)
15. Do you support the presence of a supervisory body appointed by the state judiciary to supervise the work of arbitrators?
  - Yes
  - No

16. If you are one of the decision-makers in choosing the arbitrator for a case, do you prefer an arbitrator belonging to one of the arbitration centers or a freelance arbitrator to be appointed in this case?

- Arbitrator belonging to arbitration center
- Freelance arbitrator

17. Do you support the existence of a unified legal center for the qualification and accreditation of arbitrators in the country?

- Yes
- No

18. Do you support the existence of a unified legal authority to grant licenses to arbitrators to practice the profession of arbitration?

- Yes
- No