Arbitrator bias in the Middle East: two distinct thresholds for challenging independence and impartiality

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*Int. A.L.R. 323 Abstract

It is a fundamental principle of international arbitration that arbitral tribunals should be neutral as between the parties. To that end, most national laws and institutional rules mandate arbitrators' independence and impartiality throughout the arbitral proceedings. In their approach to arbitrator independence and impartiality, Middle Eastern jurisdictions fall broadly into two categories. The first category comprises those jurisdictions that have adopted the UNCITRAL Model Law *"justifiable doubts" threshold by incorporating the standard of "circumstances giving rise to justifiable doubts as to impartiality or independence". The second category, called the "serious doubts" threshold, includes those jurisdictions that require a "serious doubt" of bias by incorporating the higher standard of "circumstances giving rise to serious doubts as to impartiality or independence" for a successful challenge. The difference between these two thresholds is not mere semantics. Indeed, it raises important questions about the meaning of the words "justifiable" and "serious" and the application of these two distinct thresholds when challenging arbitrators for a lack of independence or impartiality.*

I. Introduction

One of the fundamental tenets of international arbitration is that parties' disputes are decided by arbitrators who are independent and impartial, both in connection with the parties and the dispute itself. [1] It is therefore crucial for the integrity and legitimacy of the process that the arbitrator be neutral and capable of adjudicating *Int. A.L.R. 324* fairly over the arbitration proceedings. [2] When an arbitrator is deemed to no longer be neutral, his or her mandate must be terminated.

The obligations of arbitrator impartiality and independence derive from a variety of sources: arbitration agreements, institutional rules, and the *lex arbitri*. [3] Most laws and arbitration rules recognise the arbitrator's lack of impartiality or independence as a reason for challenge. [4] Even the New York Convention indirectly addresses the subject in arts II(1), II(3) and V(1)(d), by requiring recognition and enforcement of the terms of the parties' agreement to arbitrate, including contractual requirements regarding the arbitrators' independence and impartiality. [5] The Convention also addresses the subject indirectly in art.V(1)(b), which provides for the non-recognition of awards where a party is denied the opportunity to be heard, a failure that can ensue from a biased arbitral tribunal, as well as in art.V(2)(b), which provides for the non-recognition of awards that violate the public policy of the judicial enforcement forum (rules that more often than not include policies against a biased judiciary). [6]

While there is almost universal agreement on the existence of arbitrators' obligations of independence and impartiality throughout the arbitral proceedings, there is substantial difference in how the content of these obligations is assessed under various legal regimes and arbitral institutions. [7] In their legislative approach to challenges on grounds of arbitrator bias, certain Middle Eastern jurisdictions fall broadly into two categories.

The first category is the most straightforward and comprises those jurisdictions that have adopted the UNCITRAL Model Law "justifiable doubts" approach by incorporating the standard of "circumstances giving rise to *justifiable doubts* as to impartiality or independence". [8] This category includes Turkey, the Kingdom of Bahrain and Qatar. The second category includes those jurisdictions that follow the "serious doubts" approach by incorporating a higher standard—that is, "circumstances giving rise to *serious doubts* as to impartiality or independence" for a successful challenge. This category includes Egypt, Oman, the United Arab Emirates (UAE) and the Kingdom of Saudi Arabia (KSA). This article examines the approaches to arbitrator bias under the regimes of these seven Middle Eastern states.

The remainder of this article is in five parts. First, this article will seek to define arbitrator bias and differentiate between the notions of arbitrator independence and impartiality. Second, the article will set out the disclosure requirements for arbitrators and the thresholds for challenging arbitrators with reference to different arbitral rules and international sources. Third, the article will review how arbitrator bias is assessed in seven Middle Eastern jurisdictions whilst highlighting the ***Int. A.L.R. 325*** different disclosure requirements and thresholds for challenging arbitrators for bias. Fourth, the article will consider the impact of the two different thresholds in Middle Eastern jurisdictions and, with regard to the English approach, analyse whether the chosen phraseology of "justifiable doubts" or "serious doubts" is a semantic irrelevance or a meaningful distinction. Finally, the article will offer brief concluding observations.

II. Defining arbitrator bias: independence and impartiality

Arbitrator bias can be defined through the notions of independence and impartiality, which are related but distinct concepts. An arbitrator may be considered bias when he or she is no longer independent and/or impartial vis-à-vis the parties to the arbitration.

Independence connotes the absence of any material or emotional interest, connection or relationship with either party or the outcome of the dispute. [9] A professional relationship could include a relationship in which the arbitrator has acted or is acting as counsel, an employee, an adviser or as a consultant on behalf of one party. A business relationship could include a business venture in which the arbitrator or a partner holds an executive or non-executive position or is a party to a business transaction, such as a property or stock investment, with one party. [10]

Impartiality, on the other hand, deals with a state of mind and is therefore a more subjective determination. [11] It refers to the absence of bias or predisposition towards a specific party or legal question that has to be decided upon in a given case. An arbitrator is partial towards one party if he or she displays a preference for, or partiality towards, one party or against another, or if a third person reasonably apprehends such partiality. Such partiality goes to whether it is reasonable to believe that the arbitrator will favour one party over the other for reasons that are unrelated to a reasoned decision on the merits of the case. These unrelated factors could include a relationship, such as the influence that a professional, business, or personal relationship might give rise to the reasonable belief that the arbitrator is partial. [12]

Taken together, independence and impartiality work together to protect parties against arbitrators being influenced by factors other than the merits of the case. [13]

III. Disclosure requirements and the threshold for challenging arbitrators

Various institutional arbitral rules and international sources describe (i) the disclosure requirements of arbitrators, as well as (ii) the threshold for challenging arbitrators on the basis of a lack of independence and/or impartiality.

As regards disclosure requirements for arbitrators, the 1985 UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law or Model ***Int. A.L.R. 326*** Law) and the 2010 UNCITRAL Arbitration Rules (UNCITRAL Arbitration Rules) require the disclosure of "any circumstances likely to give rise to justifiable doubts" as to the arbitrator's impartiality or independence. [14] A number of international arbitral institutions have adopted a similar procedural approach. The 2020 London Court of International Arbitration (LCIA) Rules require prospective arbitrators to disclose "any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence". [15] The 2016 Singapore International Arbitration Center (SIAC) Arbitration Rules also require the disclosure of "any circumstances that may give rise to justifiable doubts" as to the arbitrator's impartiality or independence. [16] The 2021 ICC Arbitration Rules (the ICC Rules) not only require the disclosure of "any circumstances that could give rise

to reasonable doubts as to the arbitrator's impartiality" but also require any prospective arbitrator to disclose "any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties". [17]

In the Middle East, the 2007 Dubai International Arbitration Center (DIAC) Rules state that arbitrators must "disclose to the Centre, the other members of the Tribunal and to the parties any circumstances that may arise during the course of the arbitration that are likely, in the eyes of the parties, to give rise to justifiable doubts as to [their] independence or impartiality". [18] The 2015 Istanbul Arbitration Center (ISTAC) Rules require arbitrators to disclose "any facts or circumstances which might have an influence on their impartiality and independence, as well as any facts or circumstances which may give rise to justifiable doubts as to their impartiality and independence". [19] The 2012 Qatar International Center for Conciliation and Arbitration (QICCA) Rules require arbitrators to "disclose any circumstances likely to give rise to justifiable doubts as to [their] neutrality or independence". [20] Similarly, the 2017 Bahrain Chamber for Dispute Resolution (BCDR) Rules and the 2011 Rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) require arbitrators to disclose "any circumstances that may give rise to justifiable doubts as to [their] impartiality or independence". [21]

Turning to the threshold for the challenge of arbitrators based on independence and impartiality, the UNCITRAL Model Law and the UNCITRAL Arbitration Rules set an internationally recognised standard by providing that an arbitrator may be non-eligible when there are "justifiable doubts as to [their] independence or impartiality". [22] The applicable provision in the UNCITRAL Model Law is art.2(2), which has been adopted by many states, including in the Middle East. [23]

While these provisions establish a requirement for disclosure and a benchmark for challenges, they do not necessarily guide counsel and arbitrators as to whether ***Int. A.L.R. 327*** an impermissible conflict of interest exists in a specific situation. For this reason, the IBA Committee on Arbitration and ADR constituted a Task Force with the objective of setting standards regarding conflict of interest in arbitration. [24] The IBA Guidelines on Conflict of Interest in International Arbitration (the IBA Guidelines) are a key soft-law instrument in the field of international arbitration, the purpose of which is to provide guidance on which relationships can give rise to bias concerns for arbitrators. [25]

The most recent version of the Guidelines was published in 2014. [26] They contain general rules on how to address conflicts of interest and develop three lists—red, orange and green—to categorise specific scenarios of potential conflicts of interest based on their degree of severity. [27] The red list details specific situations that, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator's impartiality and independence. The orange list sets out specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence and therefore, the arbitrator has a duty to disclose such situations. Finally, the green list sets out specific situations where no appearance and no actual conflict of interest exists from an objective point of view and thus, the arbitrator has no duty to disclose such situations. The Guidelines set a standard that may be referred to in judgments, as well as in institutional and tribunal decisions, on challenges to arbitrators. [28]

IV. Middle East jurisdictions

This section examines how arbitrator bias is assessed in seven Middle Eastern jurisdictions, with the objective of highlighting the two distinct thresholds for a successful challenge to an arbitrator's independence or impartiality. As described above, Middle Eastern jurisdictions fall broadly into two categories in their approaches to arbitrator bias. Each of the two sections that follow examine, respectively: the first category, being the UNCITRAL "justifiable doubts" threshold and the countries that have adopted this approach, being Turkey, the Kingdom of Bahrai, and Qatar; and then the second category, the "serious doubts" threshold, and the countries that have adopted that approach, being Egypt, Oman, the UAE and the Kingdom of Saudi Arabia.

(a) The UNCITRAL justifiable doubts approach: Turkey, the Kingdom of Bahrain, and Qatar

(i) Turkey

The Turkish International Arbitration Law (Turkish IAL), which entered into force in 2001, is the principal legislation governing international arbitration in Turkey and is largely based on the UNCITRAL Model Law. Under the Turkish IAL, parties are free to determine the procedure for the appointment and removal of ***Int. A.L.R. 328*** arbitrators. [29] Where the parties fail to do so, the mechanisms contained in art.7 of the Turkish IAL are triggered.

Regarding the selection of arbitrators, art.7(b) of the Turkish IAL states that when the parties are unable to agree on the selection of the arbitrator(s), a competent court (i.e. the civil court of first instance) will be requested to select the arbitrator or arbitrators. [30] In doing so, the court must take into consideration the agreement of the parties, as well as the impartiality and independence of the arbitrators. [31]

The Turkish IAL follows the UNCITRAL Model Law with regard to disclosure requirements for arbitrators as well as the threshold for challenging arbitrators. Article 7(c) of the Turkish IAL sets out the disclosure requirements for arbitrators, stating that a nominated arbitrator must disclose "any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence" before accepting the nomination. [32] The arbitrators are also under a duty to inform the parties immediately if the circumstances in relation to their independence and impartiality change. [33] Article 7(c) also sets out the grounds for challenging arbitrators and provides that arbitrators may be challenged if, inter alia, there are circumstances that may raise justifiable doubts as to their impartiality and independence. [34]

As regards the procedure for challenging arbitrators, parties are required, in the first instance, to raise the challenge before the arbitral tribunal. [35] If the arbitral tribunal rejects a party's challenge, the concerned party may apply to the competent court within 30 days and request that the court set aside the arbitral tribunal's decision. [36] It should be noted that challenges to the whole tribunal or a majority of the arbitrators on the tribunal may only be made directly to the competent court. [37] If a challenge to the whole tribunal or a majority of the arbitrators in the tribunal is accepted by the court, the arbitration comes to an end. [38]

Article 7(b) of the Turkish IAL states that, if the parties to a proceeding are of different nationalities and a sole arbitrator is to be appointed, the arbitrator shall not be of the same nationality as the parties, and if three arbitrators are to be appointed, two of them shall not be of the same nationality as one of the parties. A 2016 decision of the 11th Civil Chamber of the Turkish Court of Cassation sheds light on the application of this particular provision. The case concerned the enforcement of an ICC award, which was challenged on the ground that it was rendered by a sole arbitrator who was of the same nationality as one of the parties. During the proceedings, the challenging party had objected to the appointment, but the challenge was rejected by the ICC Court. The 11th Civil Chamber of the Court of Cassation agreed with the decision of the ICC Court on the basis that the sole fact of the arbitrator being of the same nationality as one of the parties, in and of itself, did not constitute sufficient grounds for a successful challenge. ***Int. A.L.R. 329*** [39]

It is also worth noting that art.36 of the Turkish Code of Civil Procedure (CCP) relates to the fitness of a judge to hear a case. [40] While art.36 is not applicable to arbitral proceedings, Turkish court judges will be familiar with the article such that it may guide their thinking as to arbitrator bias. Pursuant to art.36 of the CCP, a judge may be challenged where (i) the judge has given advice to either party, (ii) the judge has disclosed an opinion on the proceedings to either party or to a third party when such disclosure is not required by law, (iii) the judge has been heard as a witness or an expert in the proceedings, (iv) there is collateral consanguinity between the judge and either party, or (v) there is a dispute or hostility between the judge and either party during the proceedings.

The Turkish IAL provisions relating to disclosure requirements and the threshold for the challenge of arbitrators, combined with the Turkish Court of Cassation's 2016 decision (which was aligned with that of the ICC Court), indicates that Turkey conforms generally to the Model Law and internationally recognised standards for arbitrator independence and impartiality.

(ii) Kingdom of Bahrain

The Kingdom of Bahrain updated its arbitration law in 2015 through Legislative Decree No.9 of 2015 (the Bahrain Arbitration Act or BAA) and has incorporated the UNCITRAL Model Law in its entirety, while including some additional provisions regarding the parties' representation and arbitrators' liability. [41]

The BAA adopted the UNCITRAL Model Law for disclosure requirements as well as the threshold for challenging arbitrators. The BAA provides that arbitrators must, inter alia, disclose any circumstances that may give rise to justifiable doubts as to their impartiality or independence. [42] The duty to disclose any such circumstances apply from the time of the appointment and throughout the arbitral proceedings. [43] The BAA also enables the Bahraini High Civil Court of Appeal to perform

certain functions in relation to international arbitration, which includes hearing appeals on any unsuccessful challenge to the appointment of an arbitrator should the tribunal refuse the challenge. [44] As regards the grounds for challenging arbitrators, an arbitrator may be challenged if circumstances exist that give rise to *justifiable doubts* as to his or her impartiality or independence. [45]

The parties may agree on a procedure for challenging an arbitrator's appointment. [46] In the absence of such agreement, the challenging party must, within 15 days of the information relating to the challenge coming to light, send a written statement of the reasons for the challenge to the tribunal. [47] Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the tribunal will decide on the challenge. [48] If a challenge is unsuccessful, the challenging party has 30 days from receiving notice of the decision to request that the Bahraini Civil ***Int. A.L.R. 330*** High Court decide on the challenge. [49] Additionally, if an arbitrator is or becomes unable to perform his or her functions, or for other reasons, fails to act without undue delay, his or her mandate will terminate when he or she withdraws from the post or by agreement between the parties. [50]

The BAA requires arbitrators to disclose any circumstances that may affect their independence and impartiality prior to their appointment or confirmation, as well as throughout the arbitral proceedings. The BAA also distinguishes between independence and impartiality as two separate grounds for challenging an arbitrator and breach of either requirement is grounds for a challenge. [51] As such, following the enactment of the BAA, it may be said that the legislative approach to arbitrator bias in the Kingdom of Bahrain is in line with the UNCITRAL Model Law and international standards.

(iii) Qatar

The main legislation governing international arbitration in Qatar is Law 2/2017 Promulgating the Civil and Commercial Arbitration Law (the Qatar Arbitration Law), which was adopted on 16 February 2017 and came into effect in April 2017. The Qatar Arbitration Law replaced the previous regime in the Code of Civil and Commercial Procedure, promulgated by Law 13/1990. It should be noted that international arbitration in Qatar may also be conducted within the Qatar Financial Centre (the QFC), in which case the proceedings will be governed by the 2005 QFC Arbitration Regulations. The QFC legal system is entirely separate from the legal system of Qatar and the QFC Arbitration Regulations only apply where the parties agree that the QFC will be the seat of the arbitration.

When it comes to disclosure requirements, arbitrators are required to disclose in writing "any circumstances likely to give rise to doubts as to their impartiality and independence" before accepting such appointment (and their disclosure obligation continues after their appointment as well). [52] This provision alters the wording of the UNCITRAL Model Law by omitting the word "justifiable". This may indicate a lower threshold given that the absence of the word "justifiable" may require the disclosure of any circumstances that give rise to doubts, whether those doubts are justifiable or not.

As for the threshold for challenging arbitrators, the Qatar Arbitration Law encompasses the duty to be impartial, to treat the parties equally and to provide each party with a complete and equal opportunity to present and put forward their claims, arguments and defences. [53] In line with the UNCITRAL Model Law, challenges against arbitrators may be brought if there are justifiable doubts about their impartiality or independence, or where the arbitrator lacks the necessary qualifications agreed to by the parties. [54]

Failing an agreement between the parties on the procedure for challenges, the Qatar Arbitration Law requires that challenges be presented in writing to the tribunal within 15 days of the challenging party becoming aware of the composition ***Int. A.L.R. 331*** of the tribunal or the circumstances justifying the removal. [55] If the other party objects to the challenge, or the arbitrator in question fails to withdraw, the challenge is referred to the competent court in Qatar or another authority such as the ICC Court, as applicable. Furthermore, arbitration proceedings will be halted while the challenge is heard and the decision of the body to which the challenge is referred is final and may not be appealed. [56]

For arbitrations conducted under the QFC Arbitration Regulations, a request for the removal of an arbitrator must be submitted to the tribunal within 15 days of a party becoming aware of any relevant circumstances. [57] An arbitrator may be disqualified if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or if he or she does not possess the qualifications agreed by the parties. [58] Moreover, under the QFC Arbitration Regulations, the arbitral tribunal's

discretion in conducting the proceedings is limited by the express obligation to treat the parties equally and to give each party a full opportunity to present its case. [59]

The Qatar Arbitration Law has largely adopted the UNCITRAL Model Law, but there are certain important deviations. For example, the Qatar Arbitration Law includes provisions that the UNCITRAL Model Law does not address, for example, in relation to the immunity of arbitrators by providing that arbitrators "shall not be held accountable for the exercise of arbitration tasks, unless the exercise thereof is in bad faith, collusion or gross negligence". [60] On 31 October 2018, a Lower Criminal Court in Doha, Qatar issued a ruling in absentia against three international arbitrators, sentencing them to three years in prison for allegedly participating in criminal activity to cause harm to a prominent Qatari businessman and thus abusing the power granted to the arbitrators as public servants of the Qatar International Centre for Conciliation and Arbitration (QICCA). [61] The convictions related to the arbitrators' decision to transfer the dispute they were hearing away from the jurisdiction of the QICCA and instead conducting the case as an ad hoc proceeding seated in Tunisia. [62]

The adoption of the Qatar Arbitration Law, based mainly on the UNCITRAL Model Law (save for the lower threshold for disclosure requirements), was a decisive move towards Qatar's efforts to build its profile as a place for international arbitration. Nevertheless, faced with the decision of Qatar's criminal court, parties may second-guess the selection of Qatar as a seat and arbitrators may reconsider accepting nominations in that jurisdiction. ***Int. A.L.R. 332***

(b) The "serious doubts" approach: Egypt, Oman, the United Arab Emirates (UAE), and the Kingdom of Saudi Arabia (KSA)

While the UNCITRAL Model Law Approach incorporates the standard of circumstances giving rise to "justifiable doubts" as to impartiality or independence, Egypt, Oman, the UAE and the KSA incorporate a higher standard of circumstances giving rise to "serious doubts" as to impartiality or independence for a successful challenge.

(i) Egypt

The Egyptian Arbitration Law No.27 of 1994 (the Egyptian Arbitration Law) was adopted in 1994 and was inspired by the UNCITRAL Model Law, with some variations, including the threshold used for disclosure requirements and for the challenge of arbitrators on grounds of a lack of independence or impartiality.

Before being formally appointed, an arbitrator must disclose "any circumstances which are likely to cast doubts as to [his or her] impartiality and independence". [63] Similar to the disclosure requirements in Qatar, this provision alters the wording of the UNCITRAL Model Law approach by omitting the word "justifiable". This may indicate a lower threshold given that the absence of the word "justifiable" may require the disclosure of any circumstances that give rise to doubts, whether those doubts are justifiable or not.

As for the threshold for challenging an arbitrator, he or she may only be challenged if there exist circumstances that give rise to serious doubts as to his or her impartiality or independence. [64] The wording of the Egyptian Arbitration Law departs from the Model Law in that the threshold for a challenge is notably higher, being: circumstances that give rise to serious doubts rather than justifiable doubts.

A party challenging an arbitrator must submit a challenge request, with reasons, to the arbitral tribunal, within 15 days from the date it becomes aware of the constitution of the arbitral tribunal or the circumstances justifying the challenge. [65] If the arbitrator does not withdraw within 15 days of the challenge request, the request must be forwarded to the Egyptian courts to decide. [66] A party may not challenge the same arbitrator more than once in the same proceedings. [67]

In examining arbitrator bias in Egypt, one must start with the Cairo Court of Appeal's decision in a 2014 case concerning the waiver of a party's right to raise a challenge against an arbitrator. [68] The case involved a challenge to an arbitrator who was appointed to an arbitral tribunal constituted to review the same dispute between the same parties in 1998. [69] The first tribunal, which was constituted in 1998, did not issue an award because the arbitral proceedings were terminated by ***Int. A.L.R. 333*** a judicial order for exceeding the time limit for rendering arbitral awards under the Egyptian Arbitration Law. [70]

In 2013, the challenged arbitrator was appointed to a new arbitral tribunal, which was constituted to review the same dispute between the same parties. [71] The second time around, the arbitral tribunal was able to render its award, which prompted the challenging party to file an annulment action before the Cairo Court of Appeal on the basis that, given the arbitrator's previous appointment as arbitrator in the matter, he lacked the requisite impartiality and independence under the Egyptian Arbitration Law. [72] The Cairo Court of Appeal refused to annul the arbitral award, ruling that the duty of disclosure was only required when the arguably suspicious facts were not already known to the challenging party. [73] In this regard, the Court noted that the two arbitrations were between the same parties and concerned the same dispute; as such, there was evidence of presumed knowledge on the part of the challenging party of such facts. Therefore, according to the Court, the challenged arbitrator was not under any obligation to re-disclose these facts when he accepted the mandate for the second arbitration. [74] The Court added that the challenging party, in this case, had also waived its right by failing to raise any challenges against the arbitrator in question within the time limit prescribed under the law. [75]

In July 2018, the Cairo Court of Appeal considered a case in which the challenging party did not know that the challenged arbitrator had previously acted as legal counsel to the opposing party until after the issuance of the arbitral award. [76] The challenged arbitrator had not disclosed that previous representation when accepting his appointment. [77] The Cairo Court of Appeal rejected the challenge on the basis that the facts of his previous representation could have been known, and therefore were presumably known, to the challenging party before the issuance of the arbitral award. [78] According to the Court, the burden of proof was on the challenging party to show that they were not aware of the circumstances concerning the arbitrator before the lapse of the time limit prescribed under CRCICA rules for challenging arbitrators. [79] By not raising the challenge in time, the challenging party had therefore waived its right to challenge the arbitrator. [80]

In 2019, the Court of Cassation overturned the decision of the Court of Appeal. [81] The Cassation Court elaborated on the standard of impartiality and independence of arbitrators by stating that "[t]he arbitrator's independence and impartiality means that the arbitrator has no implicit, material, or moral relation to any of the parties in a way that affects such impartiality and constitutes a flagrant and imminent ***Int. A.L.R. 334*** threat [of] real danger of bias, or raise justifiable doubts". [82] The Court of Cassation further clarified that the presumption of knowledge of the challenging party is only created when the challenged arbitrator discloses the relevant facts surrounding his or her independence and impartiality at the time of officially accepting the appointment. [83] Accordingly, if the arbitrator fails to disclose the relevant facts, then it cannot be said that the challenging party has waived its right to challenge. [84]

The Court of Cassation's 2019 decision is noteworthy for at least two reasons. First, although the Egyptian Arbitration Law sets the standard for challenge as being a serious doubt, the Court of Cassation made reference to a "real danger of bias" threshold and also considered the "justifiable doubts" threshold in reaching its decision. Second, the Court of Cassation has set a sensible (and practical) principle, which is that a party cannot be said to have waived its right to challenge when the arbitrator has failed to disclose the relevant facts (and, one might add, presumably could not have been known otherwise).

(ii) Oman

Oman's Law of Arbitration in Civil and Commercial Disputes, Royal Decree 47/97 as amended by Sultani Decree 03/07 (the Oman Arbitration Law) is broadly based on the UNCITRAL Model Law, with notable differences for the disclosure requirements for arbitrators and the grounds for challenging arbitrators based on independence and impartiality.

The threshold for disclosure in the Oman Arbitration Law is arguably lower than the Model Law Approach as it omits the word "justifiable" and requires arbitrators to disclose "any of the circumstances which may raise doubts about [their] independence or impartiality". [85] This may indicate a lower threshold given that the absence of the word "justifiable" may require the disclosure of any circumstances that give rise to doubts, whether those doubts are justifiable or not.

The grounds for challenge are also different than the Model Law approach. The Oman Arbitration Law, much like the Egyptian Arbitration Law, provides that only circumstances giving rise to serious doubts (and not justifiable doubts as required under the UNCITRAL Model Law) concerning the impartiality or independence of an arbitrator will suffice for a challenge. [86] The challenging party must file a written application with the grounds of the challenge to the arbitral tribunal within 15 days of becoming aware of the grounds or the constitution of the arbitral tribunal. [87]

In the first instance, the tribunal must decide on the challenge, unless the concerned arbitrator steps down. [88] It should be noted that, while the challenge does not result in a suspension of the arbitration proceedings, there is no time limit for the arbitrator to step down or for the tribunal to render a decision on the challenge (as opposed to other legislation in the Middle East, which sets time limits for the **Int. A.L.R. 335* arbitrator to resign or for the tribunal to render a decision on the challenge application). [89] In accordance with art.19(3) of the Oman Arbitration Law, once a decision on the challenge has been rendered, an appeal can be filed against the decision before the competent court within 30 days of notification. Decisions of the competent court concerning the challenge are not appealable. [90]

The Oman Arbitration Law sets a lower threshold than the UNCITRAL Model Law as regards disclosure, and sets a higher standard when it comes to the threshold for challenging arbitrators.

(iii) The UAE

The new UAE Federal Arbitration Law (UAE Arbitration Law) [91] came into force on 16 June 2018. It replaced the previous provisions governing UAE-seated arbitrations found in articles 203 to 218 of the Civil Procedures Code (the CPC). [92] The UAE Arbitration Law governs all existing arbitrations with a seat in onshore UAE, but does not apply to arbitrations seated offshore either in the Dubai International Financial Centre (DIFC) or in the Abu Dhabi Global Market (ADGM) Arbitration Centre. Both the DIFC and the ADGM have their own independent arbitration laws based on the UNCITRAL Model Law, and are governed by the DIFC Law No. 1 of 2018 (the DIFC Arbitration Law) and the 2015 ADGM Arbitration Regulations (the ADGM Arbitration Regulations), respectively. [93]

With regard to disclosure requirements, the UAE Arbitration Law requires that, once notified of his or her nomination, an arbitrator must disclose in writing "anything likely to give rise to doubts about his or her impartiality or independence". [94] It is noteworthy that the provision omits the word "justifiable" and thus may represent a lower threshold than the UNCITRAL Model Law approach. The obligation to disclose continues throughout the proceedings and therefore an arbitrator is obliged to notify the parties of any circumstances that arise during the arbitration, which may impact his or her impartiality and independence. [95]

Article 14(1) of the UAE Arbitration Law sets a higher ground than the UNCITRAL Model Law for challenging an arbitrator. If circumstances exist that give rise to "serious doubts" (and not justifiable doubts as required under the UNCITRAL Model Law) as to an arbitrator's impartiality or independence, or if an arbitrator does not possess the qualifications agreed to by the parties, or required by Article 10, an arbitrator may be challenged. [96] Pursuant to Article 1 of Federal Law 10 of 1992, concerning the Law of Evidence, the burden of proving that an arbitrator failed to comply with the duty of independence or impartiality lies with the party alleging the breach. **Int. A.L.R. 336*

Additionally, in October 2016, a change to Article 257 of Federal Law No 3 of 1987, the UAE Penal Code, introduced the possibility of imprisonment for arbitrators should they act "contrary to [their] duty of fairness and unbiasedness". [97] The provision was amended again, however, in October 2018, removing arbitrators from that threat of criminal liability.

With regard to challenge procedures, the UAE Arbitration Law sets out a detailed process for challenging arbitrators and provides parties with the freedom to agree on the challenge procedure in the first instance, whether expressly or implicitly, by reference to institutional rules. [98] The Arbitration Law further outlines the procedure to be followed in the event the parties fail to agree, or if the parties' agreement does not specify a particular method for challenging arbitrators. That default procedure for challenging arbitrators is contained in Articles 15(1) and 15(2) of the Arbitration Law. A party making the challenge must issue in writing a notice of challenge stating reasons for it within 15 days of becoming aware of the appointment of the arbitrator or any circumstances justifying the challenge. [99] A copy of the notice must be served upon the other appointed members of the tribunal, as well as the parties to the arbitration. [100]

If the challenged arbitrator does not withdraw from the mandate, or the other party does not agree to the challenge within 15 days of it being made, the challenging party may present their challenge to the relevant authority (for example, the arbitral institution or the court). [101] This must be done within a subsequent period of 15 days immediately following the first 15-day period. [102] The relevant authority then has ten days to decide on the challenge and its decision is not subject to appeal. [103] A challenge

does not have a suspensive effect (that is, a stay of the proceedings) and the tribunal, including the challenged arbitrator, may continue the arbitral proceedings and issue an award, even if the relevant authority has not yet issued its determination on the challenge. [104]

The direct effect of a successful challenge is the disqualification of an arbitrator from continuing to serve as an arbitrator in the arbitral proceedings. [105] In other words, the disqualified arbitrator's mandate in the proceedings would be terminated. Furthermore, the UAE Arbitration Law provides that, if an arbitrator decides to withdraw from his or her arbitral mandate or if the parties mutually agree to terminate his/her mandate, such withdrawal must not imply the arbitrator's acceptance of the grounds for the challenge. [106]

Finally, it is worth noting that arts 114 and 115 of UAE Federal Law No.11/1992, the Civil Procedures Law (CPL), relate to the fitness of a judge to hear a case. While they are not applicable to arbitral proceedings, UAE court judges will be familiar with them such that they may guide those judges' thinking as to arbitrator bias. Pursuant to those articles, a judge may be prohibited from hearing a case if (i) the judge is married to or related to or is the agent of or has a ***Int. A.L.R. 337*** relationship with one of the parties, (ii) the judge or a close relative has an interest in the dispute, (iii) the judge has acted for one of the parties, (iv) the judge or a close relative is active in a similar claim or has a claim against one of the parties, (v) one of the parties has worked for or been supported by the judge, or (vi) one of the parties has previously chosen the judge as an arbitrator.

The UAE Arbitration Law sets a lower threshold than the Model Law as regards disclosure, and sets a higher standard when it comes to the threshold for challenging arbitrators. The requirement for arbitrators to disclose any circumstances that may affect their independence and impartiality prior to their appointment or confirmation, as well as throughout the arbitral proceedings, through a continuing duty to disclose, contributes to the legitimacy of the arbitral process. The UAE Arbitration Law, like the UNCITRAL Model Law, also distinguishes between independence and impartiality as two separate grounds for challenging an arbitrator. [107] Breach of either requirement represents a ground for challenge. [108] Following the enactment of the UAE Arbitration Law, it may be said that the legislative approach to arbitrator bias in the UAE is broadly in line with international standards.

(iv) Kingdom of Saudi Arabia

KSA enacted Royal Decree No.M/34 on 16 April 2012, approving the Arbitration Law that came into force on 9 July 2012 (the Saudi Arbitration Law). [109] The Saudi Arbitration Law is largely based on the UNCITRAL Model Law while still maintaining principles of Sharia law and applies to all arbitral proceedings seated in KSA. Generally, the parties are free to agree on a set of procedural rules to govern the arbitration, but they must always ensure that they conduct the arbitration in accordance with the principles of Sharia law. [110]

The Saudi Arbitration Law provides that an arbitrator must not have any vested interest in the relevant dispute. [111] Further, the Saudi Arbitration Law follows the UNCITRAL Model Law standard by requiring that, from the date of his or her appointment and throughout the arbitral proceeding, the arbitrator must disclose to the parties, in writing, all circumstances that are likely to give rise to justifiable doubts as to his or her impartiality or independence, unless he or she has previously informed the parties of such circumstances. [112] Failure to do so could ultimately result in the arbitrator's dismissal. Additionally, the Saudi Arbitration Law provides that an arbitrator is prevented from acting in a case for the same reasons a judge in Saudi Arabia would be barred from acting as a judge, even if neither party so demands. [113]

Turning to the threshold for challenging arbitrators under the Saudi Arbitration Law, an arbitrator may be challenged if, inter alia, there are serious doubts as to the arbitrator's impartiality and independence. [114] Similar to the grounds for challenge ***Int. A.L.R. 338*** in Egypt, Oman, and the UAE, this provision alters the wording of the UNCITRAL Model Law and sets a higher threshold for the challenge of arbitrators. Subject to the parties' agreement on the challenge procedure or the relevant provisions in the institutional arbitration rules, a written challenge application, with the reasons for the challenge, has to be submitted to the arbitral tribunal within five days of the date of formation of the arbitral tribunal or of the party becoming aware of the circumstances giving rise to the disqualification. [115]

If the arbitrator does not withdraw or if the other party does not agree with the challenge within five days from the date of the submission of the application, the arbitral tribunal will have to decide on the application within 15 days of the submission of

the application. [116] If the arbitral tribunal dismisses the challenge, the party may submit its challenge application to the Court of Appeal of the KSA within 30 days. [117] The Court of Appeal's decision cannot be appealed. [118] If the challenge is upheld by the arbitral tribunal or the Court of Appeal, pursuant to art.17(4) of the Arbitration Law, all previous arbitration procedures and awards will be considered to be null and void.

KSA has designed the Saudi Arbitration Law and Executive Regulations mostly in line with international standards and as set out in the UNCITRAL Model Law, save for the higher threshold for challenging arbitrators.

V. Justifiable doubts versus serious doubts: semantic irrelevance or meaningful distinction?

The Middle East jurisdictions described in the preceding section have taken different approaches to an arbitrator's disclosure obligations and to the threshold for challenging an arbitrator on the basis of independence and impartiality.

Addressing briefly the approach to disclosure obligations, Turkey, the Kingdom of Bahrain, and KSA follow the UNCITRAL Model Law, which requires arbitrators to disclose any circumstances that may give rise to "justifiable doubts". In contrast, the arbitration laws in Qatar, Egypt, Oman, and the UAE omit the word "justifiable", which may indicate a lower and more subjective standard as it arguably requires the disclosure of any circumstances that give rise to doubts, whether those doubts are justifiable or not. [119]

As for the threshold for challenging arbitrators for bias, the question is whether these two different thresholds could create different results in the challenge of arbitrators. The authors' view is that the "justifiable doubts" and "serious doubts" thresholds are not the same, and that the state legislators who have adopted these two different standards did not intend them to produce the same result when applied to a bias challenge. Given the limited jurisprudence in the Middle East regarding arbitrator bias, in assessing whether the UNCITRAL "justifiable doubts" threshold and the "serious doubts" threshold represent merely a semantic irrelevance or a meaningful distinction, regard may be had to the English legislation and case law. ***Int. A.L.R. 339*** Section 24(1)(a) of the 1996 English Arbitral Act (EAA) follows the UNCITRAL justifiable doubts approach in providing that an arbitrator may be removed where "circumstances exist that give rise to justifiable doubts as to his impartiality". [120]

Notably, the EAA does not require independence or that arbitrators disclose their interests. Instead, s.33(1)(a), which relates to the general duty of the arbitral tribunal, imposes the requirement that it "act fairly and impartially as between the parties". [121] The UK Advisory Committee on Arbitration described that this decision to include impartiality as a requirement, and not independence, was based, in part, on the view that a lack of independence is not significant unless it results in justifiable doubts about the impartiality of the arbitrator. [122] The English Court of Appeal also maintained this view in *Stretford v Football Association Ltd*, [123] where it observed, "lack of independence is only relevant if it gives rise to [justifiable] doubts, in which case the arbitrator can be removed for lack of impartiality". [124]

While the EAA adopts the UNCITRAL "justifiable doubts" threshold for challenging an arbitrator, the English courts have interpreted the legislation in various ways and have adopted divergent standards ranging from a "reasonable suspicion" [125] to a "real possibility" [126] or a "real danger" [127] of bias. The "reasonable suspicion" test requires a fair-minded and informed observer to have a reasonable suspicion that the arbitrator is biased. [128] The "real possibility" test requires a fair-minded and informed observer to think that there is a "real possibility" that the arbitrator is biased. [129] The "real danger" test does not use a "reasonable third person" vantage point, and requires that the court find a "real danger" of bias. [130]

The IBA Guidelines provide some guidance on the meaning of the "justifiable doubts" threshold, explaining that doubts are "justifiable" when a reasonable and informed party would conclude that there was a likelihood that the arbitrator, in reaching his or her decision, may be influenced by factors other than the merits of the case as presented by the parties. [131] Additional guidance for the "justifiable" standard may be found in a 1995 arbitration under the UNCITRAL Arbitration Rules, where the appointing authority stated that: "[t]he test to be applied is that the doubts existing on the part of the Claimant here must be justifiable on some objective basis. Are there reasonable doubts as tested by the standard of a fair minded, rational, objective observer? Could that observer say, on the basis of the ***Int. A.L.R. 340*** facts as we know them, that the Claimant has a reasonable apprehension of partiality on the part of the Respondents' arbitrator?". [132]

The guidance provided by the IBA Guidelines and the 1995 arbitration suggests that a parallel may therefore be drawn between the "reasonable suspicion" test from the English case law and the UNCITRAL "justifiable doubts" approach, in that both require an objective, third-party assessment by a fair-minded observer. The "real possibility" test also requires an objective third-party assessment but represents a higher standard as it requires a "real possibility" for arbitrator bias as opposed to a "reasonable suspicion". [133] It may be said that, without the word "real", the concepts of "possibility" and "reasonable apprehension" would be similar. However, the combination of the word "real" with "possibility" makes it a higher standard because the "possibility" must then satisfy the requirements of reality, which exceed those of mere suspicion. [134]

The "real danger" test represents the highest standard as it does not require a third-party assessment, but rather a finding of "real danger" for arbitrator bias. The "real possibility" and the "real danger" tests are therefore identical standards save for the vantage point from which the decision maker is to be assessed. [135] In other words, the "real possibility" test still requires an assessment by an objective third-party while the "real danger" test does not. They also set a higher standard than the Model Law approach as the evidentiary burden imposed by these tests exceed the requirements imposed by the "reasonable suspicion" or the "fair minded, rational, objective observer" tests. [136] The evidentiary burden for a successful challenge under the latter is based on a notional third-party's reasonable apprehension of bias. In other words, the reasonable appearance of bias, rather than evidence of actual bias, is sufficient. The evidentiary burden under the "real possibility" and the "real danger" tests is based more on facts rather than reasonable apprehension or appearance.

Returning to the Middle East, as they have adopted the UNCITRAL "justifiable doubts" threshold, Bahrain, Turkey, and Qatar may benefit from the international guidance provided for that standard. In contrast, there does not appear to be much by the way of guidance for the "serious doubts" threshold adopted by Egypt, Oman, the UAE and KSA. Nevertheless, it is the authors' view that the "serious doubts" threshold is similar—and perhaps even equivalent—to the "real danger" threshold under English law. The definition of the word "serious" connotes important or dangerous possible consequences. [137] Similarly, the adjective "real" draws on a parent concept of "reality", a term that (a) describes a state of affairs arising out of the observable elements that are actual and occurring in fact, or (b) emphasises ***Int. A.L.R. 341*** the significance or seriousness of a situation. [138] The definitional overlap in the words "serious" and "real", as well as the words "serious" and "danger", suggests a similarity or equivalency with the "real danger" approach. This means that the "real danger" jurisprudence from the English case law may help guide the "serious doubts" approach in Egypt, Oman, the UAE and KSA.

Particular attention must also be paid to the attachment of the word "serious" to the word "doubts", which creates a higher threshold than the UNCITRAL justifiable doubts threshold, because the "doubts" must satisfy the requirements of "serious" or "dangerous possible consequences". As discussed above, the "real danger" approach may impose a higher evidentiary burden than the UNCITRAL "justifiable doubts" threshold as it focuses on actual factual evidence rather than the perception of reasonable third-party apprehension of bias. In light of this heightened evidentiary burden, both the "serious doubts" threshold and the "real danger" threshold may make it more difficult to successfully raise a challenge on the basis of a lack of impartiality and independence.

VI. Conclusion

Arbitrator selection in international arbitration is a critical decision, which should ensure that the arbitral process will be fair and result in an unbiased award. The requirements for arbitrators to be impartial and independent are therefore necessary safeguards of the arbitral process and are critical to enhancing the integrity of arbitral proceedings.

The threshold for challenging an arbitrator on the basis of bias may be divided into two main categories. The first category represents jurisdictions that have adopted the UNCITRAL "justifiable doubts" threshold by incorporating the standard of circumstances giving rise to "justifiable doubts" as to impartiality or independence. [139] This includes Turkey, Bahrain, and Qatar. The second category includes jurisdictions that lay down a higher "serious doubts" threshold for a successful challenge, similar to the "real possibility" or "real danger" tests under the English approach. This includes Egypt, Oman, the UAE and KSA where the threshold is such that an arbitrator may only be challenged if there exist circumstances that give rise to "serious doubts" as to his or her impartiality or independence. [140]

The selection of the UNCITRAL "justifiable doubts" threshold and the "serious doubts" threshold cannot be taken to be semantic irrelevance. A state's legislative choice as to the threshold applicable to a successful challenge for arbitrator bias, and the courts' interpretation of that threshold, must be meaningful and applied to the factual matrix accordingly. In challenging an arbitrator for

bias, parties must have regard to the wording in the legislation and the threshold that they must meet. In other words, if a higher legislative threshold for disqualification has been adopted, the parties may bear a higher evidentiary burden for a successful challenge. While the jurisprudence on arbitrator bias in the Middle East is more limited, ***Int. A.L.R. 342*** regard may be had to English case law, where parallels may be drawn between the various tests applied there and in the Middle East.

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Footnotes

1 *Nigel Blackaby, Constantine Partasides, et al., Redfern and Hunter on International Arbitration (6th edn, Kluwer Law International; Oxford University Press, 2015), p.254*.

2 Alan Redfern, "The Importance of Being Independent: Laws of Arbitration, Rules, Guidelines—and a Disastrous Award" [2017] I.J.A.L. 23.

3 *Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International, 2014), p.1761*.

4 Article 12 of the Bahrain Arbitration Act; art.14 of the UAE Arbitration Law; art.7 of the Turkish Arbitration Law; art.12 of the Qatari Arbitration Law; art.18 of the Egyptian Arbitration Law; art.16 of the Saudi Arbitration Law; art.18 of the Oman Arbitration Law. See also, *Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International, 2014), p.1761*.

5 *Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International, 2014), p.1644*.

6 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), art.V(1)(b), (2)(b). See also art.11(1), (3) and art.V(1)(d); *Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International, 2014), pp.1643–1652*.

7 *Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International, 2014), p.1762*.

8 UNCITRAL Model Law on International Commercial Arbitration 1985, art.12.

9 Christopher Koch, "Standards and Procedures for Disqualifying Arbitrators" [2003] J.I.A. 327.

10 IBA Guidelines, Part I: General Standards Regarding Impartiality, Independence and Disclosure, art.6.

11 *Jeffrey Waincymer, Procedure and Evidence in International Arbitration (Kluwer Law International, 2012), p.294*.

12 IBA Guidelines, Part I: General Standards Regarding Impartiality, Independence and Disclosure, art.6.

13 *Karel Daele, Challenge and Disqualification of Arbitrators in International Arbitration (Kluwer Law International, 2012), p.87*.

14 UNCITRAL Model Law, art.12(1) and UNCITRAL Arbitration Rules, art.10(1).

15 LCIA Rules 2020, art.5(4).

16 SIAC Arbitration Rules 2016, art.13(4).

17 ICC Rules 2021, art.11(2).

18 DIAC Rules 007, art.9.8.

19 ISTAC Rules 2015, art.12(3).

20 QICCA Rules 2012, art.12.1.

21 BCDR Rules 2017, art.10.4 and CRCICA Rules 2011, art.11(1).

22 UNCITRAL Model Law on International Commercial Arbitration (1985), art.12(1); UNCITRAL Arbitration Rules 2010, art.12(1).

23 Qatar Arbitration Law, art.12; Bahrain Arbitration Law, art.12(2); Turkish Arbitration Law, art.7(c).

24 Otto L.O. de Witt Wijnen, Nathalie Voser and Neomi Rao, "Background Information on the IBA Guidelines on Conflicts of Interest in International Arbitration" [2004] 5 B.L.I. 433.

25 de Witt Wijnen, Voser and Rao (fn.25 above) 439.

26 IBA Guidelines on Conflict of Interest in International Arbitration (2014), p.iii.

27 IBA Guidelines, p.iii.

28 de Witt Wijnen, Voser and Rao (fn.25 above) 434.

29 Turkish International Arbitration Law 2001, art.7(a) and (d).

30 Turkish International Arbitration Law 2001, art.7(b)(2) and (3).
31 Turkish International Arbitration Law 2001, art.7(b)(4)(iii).
32 Turkish International Arbitration Law 2001, art.7(c).
33 Turkish International Arbitration Law 2001, art.7(c).
34 Turkish International Arbitration Law 2001, art.7(c).
35 Turkish International Arbitration Law 2001, art.7(d).
36 Turkish International Arbitration Law 2001, art.7(d).
37 Turkish International Arbitration Law 2001, art.7(d).
38 Turkish International Arbitration Law 2001, art.7(d).
39 11th Civil Chamber of the Court of Cassation, File No. E.2015/11441 K.2016/8701 T.3.11.2016.
40 Turkish Code of Civil Procedure, art.36.
41 Bahrain Law No.9/2015 On the Issuance of the Arbitration law, arts 6 and 7.
42 Bahrain Arbitration Law 2015, art.12(1).
43 Bahrain Arbitration Law 2015, art.12(1).
44 Bahrain Arbitration Law 2015, art.13(3).
45 Bahrain Arbitration Law 2015, art.12(2).
46 Bahrain Arbitration Law 2015, art.13(1).
47 Bahrain Arbitration Law 2015, art.13(2).
48 Bahrain Arbitration Law 2015, art.13(2).
49 Bahrain Arbitration Law 2015, art.13(3).
50 Bahrain Arbitration Law 2015, art.14.
51 Bahrain Arbitration Law 2015, art.12(1).
52 Qatar Arbitration Law 2017, art.11(3).
53 Qatar Arbitration Law 2017, art.18.
54 Qatar Arbitration Law 2017, Article 12.
55 Qatar Arbitration Law 2017, art.13(1).
56 Qatar Arbitration Law 2017, art.13(1).
57 QFC Arbitration Regulations 2005, art.16(2).
58 QFC Arbitration Regulations 2005, art.15(2).
59 QFC Arbitration Regulations 2005, art.24.
60 Qatar Arbitration Law 2017, art.11(11).
61 *Angela Bilbow, "Qatari conviction of arbitrators raises rule of law concerns" (The International Comparative Legal Guides, 17 December 2018)*. https://iclg.com/cdr/arbitration-and-adr/8892-qatari-conviction-of-arbitrators-raises-rule-of-law-concerns [Accessed 20 October 2021]; *"Conviction of arbitrators in Qatar—Mourre writes to Emir" (Global Arbitration Review, 31 December 2018)*. https://globalarbitrationreview.com/article/1178407/conviction-of-arbitrators-in-qatar-mourre-writes-to-emir [Accessed 20 October 2021].
62 See fn.62 above.
63 Egyptian Arbitration Law 1994, art.16(3).
64 Egyptian Arbitration Law 1994, art.18.
65 Egyptian Arbitration Law 1994, art.19(1).
66 Egyptian Arbitration Law 1994, art.19(1).
67 Egyptian Arbitration Law 1994, art.9(2).
68 Cairo Appeal Challenge No.29/Judicial Year No.131, hearing dated 4 August 2014.
69 *Ibrahim Shehata, "Arbitrators' Conflict of Interest: An Egyptian Perspective" (Kluwer Arbitration Blog, 17 October 2019)* http://arbitrationblog.kluwerarbitration.com/2019/10/17/arbitrators-conflict-of-interest-an-egyptian-perspective/?print=print [Access 20 October 2021].
70 The order was based upon art.45(2) of the Egyptian Arbitration Law, which empowers a competent court to issue a judicial order either: (i) extending the period of time for rendering the arbitral award, or (ii) terminating the arbitral proceedings.
71 Shehata (fn.70 above).
72 Shehata (fn.70 above).
73 Shehata (fn.70 above).
74 Shehata (fn.70 above).
75 Shehata (fn.70 above).
76 Cairo Appeal Challenge No.65/Judicial Year No.134, hearing dated 22 July 2018.

77 Shehata (fn.70 above).
78 Shehata (fn.70 above).
79 Shehata (fn.70 above).
80 Shehata (fn.70 above).
81 Court of Cassation Challenge No.18116/Judicial Year No.88, hearing dated 11 June 2019.
82 Court of Cassation Challenge No.18116/Judicial Year No.88, hearing dated 11 June 2019 (excerpt is a translation from the original).
83 Shehata (fn.70 above).
84 Shehata (fn.70 above).
85 Oman Arbitration Law 1997, art.16(3).
86 Oman Arbitration Law 1997, art.18(1).
87 Oman Arbitration Law 1997, art.19(1).
88 Oman Arbitration Law 1997, art.19(1).
89 See art.19 of the Egyptian Arbitration Law, which sets the time limit for the arbitrator to resign at 15 days after the challenge has been submitted to the arbitral tribunal.
90 Oman Arbitration Law 1997, art.19(3).
91 Federal Law No.6 of 2018 on Arbitration in Commercial Disputes.
92 UAE Civil Procedures Law No.11 of 1992.
93 Pursuant to art.3(2) of Federal Law No.8 of 2004 regarding the Financial Free Zones, arbitrations seated in those free zones should continue to be governed by the respective arbitration laws of each zone.
94 UAE Arbitration Law 2018, art.10(4).
95 UAE Arbitration Law 2018, art.10(4).
96 UAE Arbitration Law 2018, arts 10 and 14(1).
97 UAE Law No.3 of 1987, art.257.
98 UAE Arbitration Law 2018, art.15.
99 UAE Arbitration Law 2018, art.15(1).
100 UAE Arbitration Law 2018, art.15(1).
101 UAE Arbitration Law 2018, art.15(2).
102 UAE Arbitration Law 2018, art.15(2).
103 UAE Arbitration Law 2018, art.15(2).
104 UAE Arbitration Law 2018, art.5(3).
105 UAE Arbitration Law 2018, art.16(1) and (2).
106 UAE Arbitration Law 2018, art.15(4).
107 UAE Arbitration Law 2018, art.14(1).
108 UAE Arbitration Law 2018, art.14(1).
109 KSA Cabinet Resolution No.541 of 1438 issuing the Executive Regulations implementing the Arbitration Law was issued on 22 May 2017 and came into force on 7 June 2017 ("the Executive Regulations").
110 Saudi Arbitration Law 2012, art.2.
111 Saudi Arbitration Law 2012, art.16(1).
112 Saudi Arbitration Law 2012, art.16(1).
113 Saudi Arbitration Law 2012, art.16(2); Law of Procedure before the Sharia Courts, art.92.
114 Saudi Arbitration Law 2012, art.16(3).
115 Saudi Arbitration Law 2012, art.17(1).
116 Saudi Arbitration Law 2012, art.17(1).
117 Saudi Arbitration Law 2012, art.17(1).
118 Saudi Arbitration Law 2012, art.17(1).
119 The original Arabic texts of the arbitration laws in Qatar, Egypt, Oman and the UAE depart from the Arabic version of the UNCITRAL Model Law in that they have redrafted the disclosure obligation to omit the word "امرربي" ("justifiable").
120 English Arbitration Act 1996 s.24(1)(a). This differs somewhat from the UNCITRAL Model Law in that the article does not include the word "independence".
121 English Arbitration Act 1996 s.33(1)(a).
122 *UK Departmental Advisory Committee on Arbitration, Report on the Arbitration Bill (1996) 102–04*. The Committee also described that, if independence were included, it could lead to endless challenges, where almost any remote connection between an arbitrator and a party could be furnished as a basis to challenge

the independence of the arbitrator, and could consequently significantly diminish the availability of experts who could act as arbitrators.

123 *Stretford v Football Association Ltd [2007] EWCA (Civ) 238 at [39]; [2007] All E.R. (Comm)* at [1] (Eng.).

124 *Stretford v Football Association Ltd [2007] EWCA (Civ) 238 at [39]; [2007] All E.R. (Comm)* at [1] (Eng.).

125 *R. v Mulvihill [1990] 1 All E.R. 436, 441*.

126 *Porter v Magill [2001] UKHL 67 at [103]; [2002] 1 All E.R. 465, 507* at [103].

127 *R. v Gough [1993] 2 All E.R. 724 (HL)* at 729, 732.

128 *Sam Luttrell, Bias Challenges in International Commercial Arbitration: The Need for a "Real Danger" Test (Kluwer Law International, 2009), p.8*.

129 Luttrell (fn.129 above), p.8.

130 Luttrell (fn.129 above), p.8.

131 *IBA Guidelines on Conflict of Interest in International Arbitration, Part I: General Standards Regarding Impartiality, Independence and Disclosure, Article 2(c) (2014)*.

132 Challenge Decision of 11 January 1995, XXII YBCA 227 (1997), cited in *J.D.M. Lew, L.A. Mistelis and S.M. Kröll, Comparative International Commercial Arbitration (Kluwer, 2003), p.305*; also *Sam Luttrell, Bias Challenges in International Commercial Arbitration: The Need for a "Real Danger" Test (Kluwer Law International, 2009), p.14*.

133 While a suspicion (or apprehension) may be reasonably founded insofar as it has been formed in the mind of a person as a result of his or her exercise of the faculty of reason, the facts upon which the suspicion is based may not necessarily produce the result that the apprehended outcome is a real possibility. For a full discussion, see Luttrell (fn.129 above), p.39.

134 Luttrell (fn.129 above), p.39.

135 This was the view expressed by Lord Phillips MR in *Re Medicaments* where his Lordship said "real possibility, or real danger, the two being the same" (at 733, 737 and 738).

136 Luttrell (fn.129 above), p.39.

137 Definition of the word "serious" in the *Oxford English Dictionary (2nd edn, Vol.XV, Oxford University Press, 1989), p.15*. Other definitions of the word serious include "grave", "not light or superficial" or "considerable".

138 Definition of the word "real" in the *Oxford English Dictionary (2nd edn, Vol.XV, Oxford University Press, 1989), p.272*.

139 UNCITRAL Model Law, art.12.

140 Egyptian Arbitration Law 1994, art.18; Oman Arbitration Law 1997, art.18(1); Saudi Arbitration Law 2012, art.16(3).

