

Procedures of Removal of Arbitrators (w.e.f. 1 Nov 2018)

Rule 3.6 of the FDRS Mediation and Arbitration Rules addresses the removal of the arbitrator, when the arbitrator is biased, lack of impartiality or in conflict of interest. Rule 3.6 is quoted below for easy reference.

3.6 Removal of Arbitrator by the FDRC

- 3.6.1 The FDRC may remove an Arbitrator for conflict of interest or bias, either upon request of a Party or on the FDRC's own initiative.
- 3.6.2 The FDRC will grant a Party's request to remove an Arbitrator if it is reasonable to infer, based on information known at the time of the request, that the Arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative.
- 3.6.3 The FDRC must first notify the Parties in writing before removing an Arbitrator on its own initiative. The FDRC may not remove the Arbitrator if the Parties agree in writing to retain the Arbitrator within 7 days of receiving notice of the FDRC's intent to remove the Arbitrator.

The following guidelines explain the procedures in more details in relation to the removal of the arbitrators and appeal against an arbitral award.

Guideline No. 1 : Procedures of Removal of Arbitrators (w.e.f. 1 Nov 2018)

"A party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance (see Note 1 below) referred to in Rule 3.6.2, send a written statement of the reasons for the challenge to the FDRC, and in any event before the issuance of the arbitral award by the arbitrator (see Note 2 below). Unless the challenged arbitrator withdraws from his office, the FDRC shall decide on the challenge, which decision shall be subject to no appeal.

No award shall be issued until the FDRC has decided on the challenge. While a decision of the FDRC is pending, the arbitrator shall not continue the arbitral proceedings and make an award."

Note 1: The period of fifteen days follows that prescribed under Article 13(2) of the UNCITRAL Model Law which is adopted as part of section 26 of the Arbitration Ordinance (Cap. 609).

Note 2: The arbitrator is "functus officio" as he or she has discharged his or her duties after making the arbitral award and his or her authority is at an end. Once an arbitral

award is rendered, it is final and binding on all the parties (Paragraph 2.1 of Section A, ToR). There is no further role for the arbitrator save as expressly provided in Rule 3.8.9 of the FDRS Mediation and Arbitration Rules for the correction of any clerical or typographical errors or any errors of a similar nature. If a party wishes to have recourse against the arbitral award or setting it aside, it may involve court procedures, apart from having to spend more time and costs in the process.

Procedures of Removal (Challenging and Replacing) of an Arbitrator in the FDRS Arbitration are illustrated as below as attachment to Guidelines No.1 and No.2

