

Selection and Deselection of an Arbitrator

Introduction

Arbitration is a widely used alternative dispute resolution (ADR) mechanism that allows parties to resolve disputes outside traditional court systems. A key component of any arbitration proceeding is the arbitrator, whose neutrality, expertise, and fairness directly influence the outcome. Therefore, the selection and, where necessary, deselection (removal or replacement) of an arbitrator are critical processes that must be handled carefully.

1. Selection of an Arbitrator

1.1 Importance of Arbitrator Selection

The arbitrator acts as a private judge. Their decisions are often final and binding, making it essential to appoint someone who is impartial, competent, and experienced in the relevant field.

1.2 Methods of Selection

a) Party Agreement

The most common method is mutual agreement between the parties. The arbitration clause in a contract may specify:

- A named arbitrator
- A method for appointing one
- A designated appointing authority

b) Institutional Appointment

Arbitral institutions (e.g., ICC, AAA, LCIA) provide rules and panels of arbitrators. If parties cannot agree, the institution appoints the arbitrator.

c) Court Appointment

If parties fail to appoint an arbitrator, courts may intervene and appoint one under applicable arbitration laws.

1.3 Criteria for Selection

- **Independence and Impartiality:** The arbitrator must have no bias or conflict of interest.
- **Expertise:** Knowledge of the subject matter (e.g., construction, finance, maritime law).
- **Experience:** Prior arbitration experience enhances efficiency and credibility.
- **Availability:** The arbitrator must have sufficient time to conduct proceedings promptly.
- **Reputation:** Professional standing and ethical record.

1.4 Disclosure Requirements

Arbitrators are required to disclose any circumstances that may give rise to doubts about their impartiality or independence. This includes financial interests, prior relationships, or involvement in related disputes.

2. Deselection of an Arbitrator

Deselection refers to the removal, challenge, or replacement of an arbitrator after appointment.

2.1 Grounds for Deselection

- **Bias or Lack of Impartiality:** Evidence suggesting favoritism or prejudice.
- **Conflict of Interest:** Undisclosed relationships or financial interests.
- **Incapacity or Illness:** Physical or mental inability to perform duties.
- **Failure to Act:** Delays or refusal to proceed with arbitration.
- **Misconduct:** Ethical violations or improper behavior.

2.2 Challenge Procedure

Most arbitration rules provide formal procedures for challenging an arbitrator:

1. **Filing a Challenge:** A party submits a written challenge within a specified timeframe.
2. **Statement of Reasons:** The challenging party must provide valid grounds.
3. **Response:** The arbitrator or opposing party may respond.

4. **Decision:** The institution or appointing authority decides the challenge.

2.3 Replacement of Arbitrator

If an arbitrator is removed or withdraws:

- A substitute arbitrator is appointed using the same procedure as the original appointment.
- Proceedings may resume from where they left off or restart, depending on circumstances.

2.4 Court Intervention

Courts may intervene in cases where:

- The challenge procedure fails
- There is a deadlock in replacement
- Legal rights are affected

3. Legal Framework

3.1 National Laws

Many jurisdictions follow frameworks such as the UNCITRAL Model Law, which provides standardized rules for arbitrator appointment and challenge.

3.2 Institutional Rules

Different arbitration institutions have specific rules governing selection and deselection, including:

- Time limits for challenges
- Standards for impartiality
- Replacement procedures

4. Best Practices

- Conduct thorough due diligence before appointing an arbitrator
- Clearly define appointment procedures in arbitration clauses

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- Ensure full disclosure from arbitrators
 - Act promptly if grounds for challenge arise
 - Maintain proper documentation throughout the process
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Conclusion

The integrity of arbitration depends heavily on the selection and, when necessary, deselection of arbitrators. A carefully chosen arbitrator enhances trust in the process, while effective mechanisms for removal ensure fairness is maintained. Parties should approach both processes with diligence, transparency, and adherence to applicable legal and institutional frameworks.