

CHALLENGE OF AN ARBITRATOR

WITH A REFERENCE TO RECENT JUDGMENTS OF THE ITALIAN COURT OF CASSATION

Article 815 of the Italian Code of civil procedure provides that an arbitrator may be challenged in the following cases:

- 1) if the arbitrator does not have the qualifications, expressly required by the parties;
- 2) if the arbitrator, or any entity, association or company in which he is a director has an interest in the dispute;
- 3) if the arbitrator or his consort is a relative, lives with, or has a close relation with one of the parties, or with their legal representative or attorneys;
- 4) if the arbitrator or his consort has a legal proceeding pending with one of the parties or a serious antagonism with one of them or with his legal representative or with his attorney;
- 5) if the arbitrator has a professional relationship with one of the parties, with a company controlled by one of the parties, or with the person that controls said company, or with a company subject to joint control, as an employee, consultant, adviser or similar, that could probably affect arbitrator's impartiality; or if the arbitrator is a curator or trustee of one of the parties; and
- 6) if the arbitrator has acted as a consultant, counsel or attorney of one of the parties in a previous phase of the dispute, or has appeared as a witness.

The parties cannot challenge the arbitrator they have appointed, except for the grounds discovered after the appointment.

A challenge must be brought to the President of the Court of the first instance at the seat of the arbitration.

Unless the arbitral tribunal provides otherwise, arbitral proceedings are not stayed after the filing of the challenge. If the challenge is granted the activities performed by the challenged arbitrator does not have effect.

Italian Court of Cassation, section I, 16-05-1998, n. 4924

The decision on the challenge of an arbitrator, rendered by the President of the Court, shall not be challenged before the Court of Cassation, because said decision is merely an instrument for the correct composition of the arbitral tribunal and for the impartiality of the arbitrators' function.

Italian Court of Cassation, section I, 28-08-2004, n. 17192

1. The party whose request for challenge an arbitrator has been rejected, can ask - on the same ground - to the competent Court to set aside (annul) the arbitral award rendered by the arbitral tribunal composed by the said arbitrator.
2. The lack of impartiality of an arbitrator cannot be inferred from the sole circumstance that the firm of the latter shares some rooms with the firm of the counsel of one of the parties to the arbitration. Lack of impartiality can be inferred only in case of a common economic interest or of a common counseling activity performed by (arbitrator law firm and counsel law firm) on common clients.

Italian Court of Cassation, section I, 16-05-2000, n. 6309

The request for challenge an arbitrator cannot determine *ipso iure* the suspension of the arbitral proceedings. (The debate related to the suspension or not of the proceedings during the challenge of an arbitrator has been now resolved by the 2006 amendment: new rule provides now that: "*Unless the arbitral tribunal provides otherwise, arbitral proceedings are not stayed after the filing of the challenge. If the challenge is granted the activities performed by the challenged arbitrator does not have effect*").