Cripps

Arbitration reform back on the agenda

The proposals for reform of the Arbitration Act 1996 which were recommended by the Law Commission following its consultation with the sector in 2022/3, are back on the agenda in the form of the Arbitration Bill. The recently elected Labour government has reinstated the Bill as a priority, and it was mentioned in the King's Speech on 17 July 2024.

The Arbitration Bill was initially proposed by Rishi Sunak's government, but along with a number of other proposals for new legislation, was put aside on the dissolution of parliament in May preceding the General Election of 4 July 2024. Keir Starmer and his newly elected government are driving the Bill forward, which is largely based on the Law Commission's earlier recommendations set out in its final report in September 2023, that seek to support *"more efficient dispute resolution, attract international legal business, and promote UK economic growth"*. We considered the proposals in our previous article "[Arbitration Act 1996 under review](#)".

What does the Arbitration Bill propose to do?

The Bill seeks to:

- Introduce the capacity for arbitrators to dispose summarily of issues that have no real prospect of success. This will mirror the ability of the courts to dispose of meritless claims or defences without the time and expense of a full trial.
- Clarify the applicable law governing international arbitration agreements by codifying a default rule that where the parties do not specify the governing law of the arbitration agreement, it will be governed by the law of the seat chosen for the arbitration – this provides clarity following the Supreme Court's decision in *Enka v Chubb* [2020].

- Codify the common law duty on arbitrators to disclose potential conflicts of interest to promote trust in arbitration.
- Strengthen arbitrator immunity against liability for reasonable resignations, and against the cost of their removal on application by a party, unless the arbitrator has acted in bad faith. This will support arbitrators to be able to make impartial and robust decisions.
- Clarify that the court has power to make orders in support of arbitral proceedings including against third parties which aligns with the approach in court proceedings.
- Provide emergency arbitrators with the power to issue peremptory orders and apply to the court to order compliance with them, or apply directly to the court to issue its own order. This will give emergency arbitrators the same routes to enforce their orders as other arbitrators.
- Simplify the procedure for challenging arbitral awards on substantive jurisdiction and introduce a rule that such applications should not contain any new evidence or arguments. This should reduce delay and costs by avoiding the challenges becoming a rehearing of matters already addressed before the tribunal.
- Clarify time limits for challenging awards.
- Make minor changes including around making appeals available from an application to stay, or halt, legal proceedings.

What happens next?

The Arbitration Bill was read for a second time by the House of Lords on 30 July and has now been committed to a Committee of the whole House for further review. Notably, management of the issue of corruption was raised following the decision in the _Nigeria v P&ID_ [2023] case (wherein on 23 October 2023, Lord Justice Knowles sitting in the Commercial Court overturned an $11 billion award against the state of Nigeria, citing that it had been obtained through corruption and fraud). It is likely that some amendment to the Arbitration Bill in its present form will be proposed before it is committed to the statute books so as to encapsulate this prevalent issue.

The passing of the Arbitration Bill and its coming into force are widely anticipated, and we will keep you posted on developments in this area.

How we can help

For further help and advice on resolving disputes through arbitration contact our arbitration team who will be able to provide the necessary advice and assistance.

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