

Amendments to the English Arbitration Act on Hold

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In our September 2023 newsletter, we wrote about proposed amendments to the English Arbitration Act as it approaches its 30th anniversary. The proposed amendments were seen as very light touch, but included changes to:

- Codify arbitrators' duties of disclosure.
- Strengthen arbitrator immunity around resignation and removal.
- Formalize the power of arbitrators to dispose summarily of issues which have no real prospect of success.
- Clarify court powers in support of arbitral proceedings and emergency arbitrators.
- Revise the framework for jurisdiction challenges.
- Create a new rule on the governing law of the arbitration agreement.

However, the decision of Prime Minister Rishi Sunak to call a general election in July (rather than in the autumn as expected) brought all parliamentary business to a halt. As a consequence, draft legislation (including the draft Arbitration Bill) that had not passed through all of the necessary parliamentary stages was automatically paused. There is a process in the United Kingdom (UK), a constitutional practice called "wash-up", where uncontroversial draft legislation can be rapidly finalized in the last few days before Parliament is formally dissolved. However, although uncontroversial, the Arbitration Bill was not captured in this process.

Interestingly, some commentators have questioned whether the Ministry of Justice (the government department sponsoring the Arbitration Bill) might use this as an opportunity to propose further amendments to the Arbitration Act in light of the much reported English High Court decision in *P&ID v Nigeria* [2023] EWHC 2638 (Comm), in which a multi-billion dollar arbitral award was set aside in light of corruption of the underlying contract and in the parties' conduct during the arbitral process. This case led to significant debate in the English arbitration community about the role of

the Tribunal in addressing issues of fraud and corruption, and whether it should have intervened earlier and more substantively uncovered the corruption at an earlier stage in the process.

In any event, a new Parliament will be constituted shortly after the 4 July election, but will start with a legislative blank slate. There remains a chance that the Bill will pass into law by the end of the year, although it may now be 2025 before we have an amended Arbitration Act.

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