

ReSolution: In Brief



Arbitration Amendment Bill passes third reading

On 1 May 2019 the Arbitration Amendment Bill 2017 passed its third reading, the final hurdle before being made law.

The Bill established three amendments to the Arbitration Act 1996. The amendments are:

1. Clarification of jurisdictional challenges;
2. Clarification of the setting aside and enforcement provisions; and
3. Removal of the 'quick draw' provision for the appointment of the arbitral tribunal.

The amendments remedy a loop-hole in the existing legislation which allowed parties to make unexpected and untimely challenges to awards on the basis of jurisdiction. They also remove the 'quick draw' procedure for appointing arbitrators when parties were unable to agree. This 'quick draw' provision allowed either party to a dispute to give notice to the other that they were in 'default' and if the 'default' was not remedied within seven days then the notifying party's chosen arbitrator would automatically be appointed – although the

Court held in *Hitex Plastering v Santa Barbara Homes* that such procedure required a genuine attempt to be made to agree before resort could be had to the default appointment procedure.

The amendments gained cross-bench support and will keep New Zealand up to date with the changing landscape of arbitration.

Two proposals were left out of the final bill; the first, that court proceedings related to arbitration should, by default, be held in private was rejected by committee in favour of the status quo. The second, which concerned the validation of arbitration provisions in trust deeds, will be dealt with by the Trusts Bill, which is under consideration by the same committee.

Bill sponsor, Andrew Bayly MP, endorsed the Bill to the House saying "Arbitration is a very cost-effective and timely method of resolving commercial and other disputes."

The Chair of the Justice Select Committee, Mr Raymond Huo MP commented "let's not regard the third reading of this bill as the end of this conversation. Rather, we should regard this third reading debate as a beginning of many thought-provoking discussions about good ideas of how to promote New Zealand as a business-friendly destination for international commercial arbitration hearings. So my message to the sector is: let's work together".

The Arbitration Amendment Act 2019 came into force on 8 May 2019.

To read the Bill, click [Here](#)

Arbitration in Papua New Guinea to be raised to global standards

Prime Minister Peter O'Neill, when addressing the more than 300 delegates who attended the International Arbitration and Mediation Conference in Port Moresby in March, assured the PNG judiciary that mediation and arbitration will be taken to the next level. The PNG justice system has long been restricted by unmanageable backlogs and mediation and arbitration could be

Mr O'Neill said the PNG judiciary was already providing the direction and facilitating for this process that was empowering communities. "But this process of mediation is important for our business both high and small, for persons in our community who are aggrieved and want their voice to be heard.

"Our next step in our country is making sure that we take the international and domestic arbitration to the next level, we are committed to the process of United Nations Convention.

"We are now producing a draft Arbitration Bill which will be ready for consultation so that the process is complete.

"This committee includes the PNG judiciary with the support and input from Asian Development Bank, UN Commission on International Trade Law and other international bodies are included in the process and of course after the conclusion of the consultation process we will take it to parliament and enacted well before the end of this year."

Mr O'Neill, who announced his resignation as Prime Minister on 29 May said the PNG judiciary had also taken steps to make sure that the arbitration process continued to work in the country by making the necessary facilities available and as an annex to the courts.

"This is to ensure that there are appropriate practices taking place in the arbitration process and also in identifying in the court list an arbitration clause that these court cases be removed from the court list and placed on the courts arbitration list.

"Our Judiciary will also approve the list of persons to conduct both international and domestic arbitration and this will include some of the most eminent individuals who are attending this conference today," Mr O'Neill said.

French Tycoon on trial over \$450 million arbitration deal

French tycoon Bernard Tapie, 73, is facing criminal charges for a fraudulent 403 million-euro (\$450 million) arbitration award linked to the sale of his www.nziac.com



majority stake in sportswear company Adidas in 1993.

Mr Tapie, a former TV actor, purchased the French Ligue 1 Marseille soccer team in 1986 and guided the struggling club to new heights, including winning the UEFA Champions League in 1993. In the same year Tapie sold his shareholding in Adidas – a sale he then disputed and litigated against for a decade, claiming that he had been defrauded by his lenders which included the state-owned Credit Lyonnais. The dispute was eventually settled in 2008 through an arbitration which saw Tapie awarded the historically high pay-out.

The pay-out to Tapie was to be made from state funds which prompted public indignation and questions were raised as to whether he benefited from political connections, including with then-President Nicolas Sarkozy. The arbitration was challenged, and a Paris Court of Appeal court ruling found the unusually generous 2008 award was the result of fraud and directed Tapie to refund the money.

Tapie, along with five others appeared in court in Paris in March in a trial to determine whether they should also face criminal penalties for fraud and the misuse of public funds.

The Court's decision is due on July 9th.