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# *PH Arbitration Speedread: English Court Sets Aside Multibillion-Dollar Award Procured by Fraud*

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In a significant decision, on 23 October 2023 the English Commercial Court (Knowles J) set aside a US\$11 billion arbitration award obtained by a BVI-incorporated company against the Federal Republic of Nigeria arising from a failed construction project for a gas processing facility (The Federal Republic of Nigeria v Process & Industrial Developments Limited [2023] EWHC 2638 (Comm)). Nigeria successfully challenged the award on the basis it had been procured through “the most severe abuses of the arbitral process”.

The decision provides several important takeaways for companies operating in the energy and infrastructure space, including:

1. The importance of effective preventative compliance programmes to address potential bribery and corruption risks (including when executing agreements with Sovereign States or State-owned enterprises); and
2. The continuing importance of national courts as a check and balance on the arbitral process in the appropriate circumstances.

## **Background**

The dispute arose from a 2010 agreement between Process & Industrial Developments Limited (“P&ID”) and Nigeria’s Ministry of Petroleum Resources for the construction of a gas-processing plant in Nigeria. The terms of the agreement provided for ad hoc arbitration.

P&ID filed an arbitration claim in 2012, arguing that Nigeria had repudiated the agreement by failing to supply adequate infrastructure and gas for the plant. An arbitral tribunal seated in London (chaired by Lord Hoffman, with Sir Anthony Evans KC appointed by P&ID and Nigeria’s former attorney-general, Chief Bayo Ojo SAN, appointed by the State) subsequently found in P&ID’s favour and ordered Nigeria to pay compensation of US\$6.6 billion plus interest (rising by 2023 to US\$11 billion due to accumulating interest).

Nigeria applied for, and was then granted, permission by the English Court in 2020 to bring a challenge to the award under section 68 of the English Arbitration Act on the basis of procedural irregularity. Following an eight-week trial beginning in January 2023, at which the Court received additional evidence, the English Court found that P&ID: (1) paid bribes to a former legal director at the Ministry to procure the agreement; (2) made further payments to that individual during the arbitration to keep her “on-side”; and (3) improperly obtained and used over forty of Nigeria’s

privileged and confidential internal documents so as to monitor Nigeria's awareness of the deception during the arbitration proceedings.

In making these findings, the Court noted that "the case has shown examples where legal representatives did not do their work to the standard needed, where experts failed to do their work, and where politicians and civil servants failed to ensure that Nigeria as a state participated properly" in the arbitration.

### **Analysis and Takeaways**

While this is a substantial decision that has a number of significant ramifications that are beyond the scope of this article, we highlight the following two in particular:

1. The importance of effective compliance programmes to address potential bribery and corruption risks. Evidence of corruption can, as in this case, deprive companies of the benefits of the contract and their investment, and of protection of a successful arbitration award. This could render significant investments effectively worthless. Clients should be alive to these risks in projects involving States or State-owned entities.
2. English courts continue to provide an important check and balance on London-seated arbitration proceedings. In a sign of the English courts' continued support of international arbitration, successful challenges to London-seated arbitration awards remain rare. However, this case demonstrates that English courts are prepared to set aside awards when there are justifiable grounds to do so. It also shows that English courts are prepared to use their wide-ranging disclosure powers, when procedurally appropriate, to ensure that any procedural irregularities in the arbitral process are uncovered. This should provide companies and multinationals with added comfort in choosing London-seated arbitration in their project documents.

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*The International Arbitration and Investigations and White Collar Defense teams at Paul Hastings would be delighted to discuss with you the implications of the award in more detail, and how to structure and implement an effective compliance programme.*

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