PROVING BRIBERY, FRAUD AND MONEY LAUNDERING IN INTERNATIONAL ARBITRATION

Over the past few decades, arbitration has become the number-one mechanism to settle international investment and commercial disputes. As a parallel development, the international legal framework to combat economic crime became much stronger within the fields of foreign public bribery, private bribery, fraud and money laundering. With frequent allegations of criminal conduct arising in international arbitration proceedings, it is crucially important to consider how such claims can be proven. This book analyses relevant case law involving alleged criminal conduct within international arbitration and addresses the most pressing issues regarding applicable criminal law and evidence. It is an essential resource for practising lawyers and academics active in the field of international investment and commercial arbitration.

Kathrin Betz completed her PhD thesis at the Chair of Professor Mark Pieth, Basel University, Switzerland, in 2016 (summa cum laude). As an academic assistant, her responsibilities included assisting the former Chairman of the OECD Working Group on Bribery. She coordinated the second edition of The OECD Convention on Bribery (2014) edited by Mark Pieth, Lucinda A. Low and Nicola Bonucci and published by Cambridge University Press.
PROVING BRIBERY, FRAUD
AND MONEY LAUNDERING
IN INTERNATIONAL
ARBITRATION

On Applicable Criminal Law and Evidence

KATHRIN BETZ

University of Basel
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Saunders v. United Kingdom, European Court of Human Rights, Application no. 19187/91, Judgment, 17 December 1996
ABBREVIATIONS

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<td>AAA</td>
<td>American Arbitration Association</td>
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<td>AC</td>
<td>Appeal Cases</td>
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<td>AfDB</td>
<td>African Development Bank</td>
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<td>All ER</td>
<td>All England Law Reports</td>
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<tr>
<td>AMLA</td>
<td>Swiss Anti-Money Laundering Act (Geldwäschereigesetz; GwG) (SR 955.0)</td>
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<td>ASA</td>
<td>Association suisse de l’arbitrage (Swiss Arbitration Association)</td>
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<tr>
<td>BBI</td>
<td>Bundesblatt (Swiss Federal Gazette)</td>
</tr>
<tr>
<td>BGE</td>
<td>Bundesgerichtsentscheid (Swiss Federal Supreme Court decision, published)</td>
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<tr>
<td>BGer</td>
<td>Bundesgerichtsentscheid (Swiss Federal Supreme Court decision, unpublished)</td>
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<tr>
<td>BIT</td>
<td>bilateral investment treaty</td>
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<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>CIETAC</td>
<td>China International Economic and Trade Arbitration Commission</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>D.</td>
<td>District</td>
</tr>
<tr>
<td>DIAC</td>
<td>Dubai International Arbitration Centre</td>
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<tr>
<td>DIS</td>
<td>Deutsche Institution für Schiedsgerichtsbarkeit (German Institution of Arbitration)</td>
</tr>
<tr>
<td>DOJ</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<tr>
<td>FCPA</td>
<td>Foreign Corrupt Practices Act (US)</td>
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<tr>
<td>HKIAC</td>
<td>Hong Kong International Arbitration Centre</td>
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<tr>
<td>IADB</td>
<td>Inter-American Development Bank</td>
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<td>IBA</td>
<td>International Bar Association</td>
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<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>ICDR</td>
<td>International Centre for Dispute Resolution (the International Division of the American Arbitration Association)</td>
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LIST OF ABBREVIATIONS

ICJ International Court of Justice
ICSD International Centre for Settlement of Investment Disputes
IFFs illicit financial flows
ILA International Law Association
ILC International Law Commission
J Judge
LCIA London Court of International Arbitration
LJ Lord Justice of Appeal
MDB multilateral development bank
MKAS Международный коммерческий арбитражный суд (International Commercial Arbitration Court of the Russian Federation)
MoD Ministry of Defence
MoJ Ministry of Justice
NAFTA North American Free Trade Agreement
NGO non-governmental organisation
OECD Organisation for Economic Co-operation and Development
OIC Organisation of Islamic Cooperation (formerly: Organisation of the Islamic Conference)
OJ Official Journal
OLAF Office de Lutte Anti-Fraude (European Anti-Fraud Office)
PCA Permanent Court of Arbitration
PDG Président directeur général (chief executive officer)
POCA Proceeds of Crime Act 2002 (UK)
QBD Queen’s Bench Division
SCC Swiss Civil Code (Schweizerisches Zivilgesetzbuch; ZGB) (SR 210)
SCO Swiss Code of Obligations (Obligationenrecht; OR) (SR 220)
SCPC Swiss Civil Procedure Code (Schweizerische Zivilprozessordnung; ZPO) (SR 272)
SCrimeC Swiss Criminal Code (Schweizerisches Strafgesetzbuch; StGB) (SR 311.0)
SCrimePC Swiss Criminal Procedure Code (Schweizerische Strafprozessordnung; StPO) (SR 312.0)
SD Southern District
SIAC Singapore International Arbitration Centre
SPIA Swiss Private International Law Act (Bundesgesetz über das Internationale Privatrecht; IPRG) (SR 291)
SR Systematische Rechtssammlung (Systematic Compilation of Swiss Federal Acts)
TAS/CAS Tribunal Arbitral du Sport/Court of Arbitration for Sport
TI Transparency International
UKHL United Kingdom House of Lords
UNCAC UN Convention against Corruption
<table>
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<tbody>
<tr>
<td>UNCLOS</td>
<td>UN Convention on the Law of the Sea</td>
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<td>UNCITRAL</td>
<td>UN Commission on International Trade Law</td>
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<tr>
<td>UNGA</td>
<td>UN General Assembly</td>
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<tr>
<td>VIAC</td>
<td>Vienna International Arbitral Centre</td>
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<td>WGB</td>
<td>Working Group on Bribery (OECD)</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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