### INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Facility Rules, ICSID</td>
<td>14</td>
</tr>
<tr>
<td>admissibility of evidence</td>
<td></td>
</tr>
<tr>
<td>as mandatory rules, rules on the</td>
<td></td>
</tr>
<tr>
<td>280–281</td>
<td></td>
</tr>
<tr>
<td>as part of transnational procedural public policy 280</td>
<td></td>
</tr>
<tr>
<td>in commercial arbitration 69</td>
<td></td>
</tr>
<tr>
<td>in English law 56</td>
<td></td>
</tr>
<tr>
<td>in ICSID arbitration 67</td>
<td></td>
</tr>
<tr>
<td>in Swiss law 60–62</td>
<td></td>
</tr>
<tr>
<td>adversarial trial, the English 59–60</td>
<td></td>
</tr>
<tr>
<td>adverse inferences</td>
<td></td>
</tr>
<tr>
<td>definition of 267</td>
<td></td>
</tr>
<tr>
<td>requirements 267</td>
<td></td>
</tr>
<tr>
<td>African Holding v. Democratic Republic of Congo 84–86</td>
<td></td>
</tr>
<tr>
<td>African Union Convention on Preventing and Combating Corruption 32</td>
<td></td>
</tr>
<tr>
<td>Al-Warraq v. Indonesia 296</td>
<td></td>
</tr>
<tr>
<td>anti-money laundering provisions</td>
<td></td>
</tr>
<tr>
<td>application to arbitrators 50–52</td>
<td></td>
</tr>
<tr>
<td>arbitrability 4</td>
<td></td>
</tr>
<tr>
<td>arbitral procedure</td>
<td></td>
</tr>
<tr>
<td>applicable in commercial arbitration 26</td>
<td></td>
</tr>
<tr>
<td>applicable under the ICSID Convention 22</td>
<td></td>
</tr>
<tr>
<td>autonomy principle 25</td>
<td></td>
</tr>
<tr>
<td>beneficial owner 51, 226, 239</td>
<td></td>
</tr>
<tr>
<td>bilateral investment treaties (BITs)</td>
<td></td>
</tr>
<tr>
<td>features of 12</td>
<td></td>
</tr>
<tr>
<td>legality requirement, temporal scope of 293–294</td>
<td></td>
</tr>
<tr>
<td>bribe solicitation</td>
<td></td>
</tr>
<tr>
<td>related to the performance of an</td>
<td></td>
</tr>
<tr>
<td>investment 45</td>
<td></td>
</tr>
<tr>
<td>state responsibility for 298–300</td>
<td></td>
</tr>
<tr>
<td>bribery</td>
<td></td>
</tr>
<tr>
<td>definition of foreign public 42–43</td>
<td></td>
</tr>
<tr>
<td>definition of private 45–46</td>
<td></td>
</tr>
<tr>
<td>main contract procured by 44–45</td>
<td></td>
</tr>
<tr>
<td>main contract procured by private 46</td>
<td></td>
</tr>
<tr>
<td>bribery pact</td>
<td></td>
</tr>
<tr>
<td>attempts to enforce a 43</td>
<td></td>
</tr>
<tr>
<td>attempts to enforce a private 46</td>
<td></td>
</tr>
<tr>
<td>legal consequences of a 300</td>
<td></td>
</tr>
<tr>
<td>bribery-affected contracts, legal</td>
<td></td>
</tr>
<tr>
<td>consequences of 300</td>
<td></td>
</tr>
<tr>
<td>burden of proof</td>
<td></td>
</tr>
<tr>
<td>burden to allege 62</td>
<td></td>
</tr>
<tr>
<td>burden to contest 63</td>
<td></td>
</tr>
<tr>
<td>burden to substantiate 63</td>
<td></td>
</tr>
<tr>
<td>in commercial arbitration 69–70</td>
<td></td>
</tr>
<tr>
<td>in English law 57</td>
<td></td>
</tr>
<tr>
<td>in ICSID arbitration 67</td>
<td></td>
</tr>
<tr>
<td>in Swiss law 62–63</td>
<td></td>
</tr>
<tr>
<td>legal burden 57</td>
<td></td>
</tr>
<tr>
<td>shifting of the 265–266</td>
<td></td>
</tr>
<tr>
<td>circle of association 54</td>
<td></td>
</tr>
<tr>
<td>circumstantial evidence, definition of 55</td>
<td></td>
</tr>
<tr>
<td>clean hands doctrine 295–297</td>
<td></td>
</tr>
<tr>
<td>CoE Convention on Corruption 31</td>
<td></td>
</tr>
<tr>
<td>collective action 300</td>
<td></td>
</tr>
<tr>
<td>commercial arbitration</td>
<td></td>
</tr>
<tr>
<td>general remarks on the legal framework 24–26</td>
<td></td>
</tr>
<tr>
<td>ICC arbitration 34–35</td>
<td></td>
</tr>
</tbody>
</table>

© in this web service Cambridge University Press  
www.cambridge.org
commercial arbitration (cont.)
LCIA (London Court of
International Arbitration) 35–36
other institutions for 37–39
Swiss Chambers’ Arbitration
Institution 36–37
common law, meaning of the term 55
concession to exploit natural resources
6
confidentiality 308
consent of the parties
in commercial arbitration 24
in investment arbitration 12
continental law, characteristics of 60
contra bons mores 43–44
criminal law
applicability in commercial
arbitration 27–29
applicability in ICSID arbitration 23
application of domestic and
international 253–258
criminal proceedings
parallel domestic 273–275
critical theory 54
decision tree for arbitrators 248, 310
deliberate deception 44
double keyhole approach 15
Draft Articles on State Responsibility,
ILC 298
duty to investigate ex officio, an
arbitrator’s 286–291
duty to report an offence, an
arbitrator’s 285–286
economic crimes 5
EDF v. Romania 91–96
effects of corruption 5
enforceability
of arbitral awards 33
of arbitration agreements 33
English Arbitration Act 1996 35
English Fraud Act 2006 47
Enron v. Argentina 17
equal treatment 66
equitable principles 19
error, fundamental 44

INDEX

evidence
and truth 54–55
at the level of jurisdiction 18–19
definition of 53
in commercial arbitration 68–71
in English law 55–57
in ICSID arbitration 66–68
in Swiss law 60–62
late production of 291
meaning of 53–54
evidential burden 57
ex aequo et bono 19
ex officio, duty to investigate 287–291
excessive commission, reduction of an
301–302
facilitation payments 42
fair and equitable treatment
requirement 300
fair competition 5
FATF Recommendations 51, 263
Foreign Corrupt Practices Act (FCPA) 31
foreign investment, legal forms of 11
foreign mandatory law, application of
256
foreign public bribery
active 42
definition of 42
in international arbitration,
manifestations of 43–45
passive 42
Frankfurter Schule 54
Fraport v. Philippines 119–128
fraud
definition of 47–48
efforts to combat 261–262
in English criminal law 47
in international arbitration,
manifestations of 48–49
in Swiss criminal law 47
main contract procured by 48
objective requirements 47
other scenarios 48
fruit of the poisonous tree doctrine 56, 62
functional equivalence 254
INDEX

Geneva Convention of 1927 19
Geneva Protocol of 1923 33
Guyana v. Suriname 108

Hamster v. Ghana 148–151
Hilmarton v. OTV 162–169

IBA Rules of Evidence 67, 69, 267, 280
ICC arbitration
  applicable arbitral procedure 35
  applicable substantive law 34–35
ICC Case No.
  1110 153–158
  12472 203–206
  12732 206–209
  12990 209–213
  13384 214–216
  13515 217–220
  13914 220–223
  14470 223–224
  14878 224–225
  16090 225–227
  3916 158–159
  4145 159–162
  5622 162–169
  6320 233–236
  6401 169–178
  6497 178–182
  7047 182–194
  8891 194–198
  9333 198–203

illegality
  non-use of the term 41–42
  of an investment 17–18
illicit financial flows 5
in accordance with host state’s law requirement 17
in dubio pro reo 63, 269, 278
in pari causa turpitudinis cessat repetitio 301
Inceysa v. El Salvador 139–142
inductive approach 6
inquisitorial principle 66
International Centre for Settlement of Investment Disputes (ICSID)
  Additional Facility Rules 14
  arbitration, evidence in 66–68
jurisdiction, requirements ratione materiae 13
jurisdiction, requirements ratione personae 14
International Chamber of Commerce
International Court of Arbitration of the
International Court of Arbitration
applicable arbitral procedure
applicable substantive law
jurisdiction
international law
in commercial arbitration, role of
sources of 20
international public policy, definition of
intime conviction 62, 64
investment arbitration
ad hoc 23
genral remarks on the legal framework 12–13
ICSID 13–23
non-ICSID institutional 23
investment, definition of the term 14–17
ius cogens 21
judicial precedent, doctrine of 55
Kompetenz-Kompetenz
  in commercial arbitration 25
  of ICSID tribunals 13
Lagergren case 153–158
Lambert case 57
LCIA (London Court of International Arbitration) 35–36
legality of the proceedings 55
legality requirement in ICSID arbitration 17–18
temporality with regard to the
INDEX

lex arbitri
- definition of 26
- English 35
- Swiss 36

lex fori 27

mandatory rules of law
- application of foreign 256–257
- in commercial arbitration 26–29
- in ICSID arbitration 21
- rules on the admissibility of evidence as 280
- rules on the privilege against self-incrimination as 272

mens rea 258–259

Metal-Tech v. Uzbekistan 110–119
- money laundering
- an ad hoc arbitration involving alleged 236–247
- arbitration conducted for the purpose of 49–50
- arbitrator’s legal obligations in the face of 50–52
- definition of 49
- efforts to combat 262–263
- in international arbitration, manifestations of 49–50
- under the Swiss Criminal Code 50
- under the UK Proceeds of Crime Act (POCA) 51
- multilateral development banks (MDBs) 32, 260–261

nemo tenetur se ipsum accusare 65, 71
- New York Convention of 1958 33, 258, 288
- Niko v. Bangladesh 101–110
- nullity of bribery pacts 43, 301

OECD Convention on Bribery 31
- application of the 254–256
- Article 1 235
- onus probandi incumbit actori 70, 266

party autonomy
- in commercial arbitration 26
- limits to 29
- under the ICSID Convention 19–21

performance of an investment bribery related to the 45
- fraud in relation to the 48
- Permanent Court of Arbitration (PCA) 38

Phoenix v. Czech Republic 18
Plama v. Bulgaria 17
- politically exposed persons (PEPs) 285
- predicate offence 49, 262, 285
- presumption of innocence 57, 63, 269, 278

prima facie evidence, definition of 54
- private bribery
- active 45
- definition of 45–46
- efforts to combat 260–261
- in international arbitration, manifestations of 46–47
- passive 45
- privilege against self-incrimination
- as mandatory rules, rules on the 272
- as part of transnational procedural public policy 271
- in commercial arbitration 71
- in English law 58–59
- in ICSID arbitration 68
- in Swiss law 64–66
- with regard to parties 272–273
- with regard to witnesses 270–272
- Proceeds of Crime Act (UK) 51
- public policy 30
- international public policy 30
- transnational public policy
- see transnational public policy
- truly international public policy 30
- public procurement 5

red flags
- for fraud 284
- for money laundering 284–285
- for private bribery 283–284
- role of 266, 283, 292, 305, 309

renvoi 20
- right to be heard 66
- right to equal treatment 66
- right to silence 59, 271
- risk-based approach 284
- RSM v. Grenada 96–101
INDEX

Salini test 16
Sang case 56
separability principle 25, 128, 300
severability principle 25
Siag v. Egypt 143–148
Siemens v. Argentina 81–84
Sistem v. Kyrgyz Republic 88–91
soft law 32, 255, 263
Spentex v. Uzbekistan 128–136
standard of proof
in cases of alleged criminal conduct 279
in commercial arbitration 70–71
in English law 57–58
in ICSID arbitration 67
in Swiss law 63–64
state responsibility
Draft Articles on State Responsibility of the ILC 298
for bribe solicitation 298–300
sua sponte 287
substantive law
applicable according to the ICSID Convention 19–21
applicable in commercial arbitration 26
Swiss Chambers’ Arbitration Institution 36–37
Swiss Federal Supreme Court appeal to the 37
revision by the 37
Swiss Private International Law Act 36
trading in influence 42
transnational procedural public policy admissibility of evidence as part of 280
privilege against self-incrimination as part of 271
transnational public policy content of 31, 260–263
definition of 30

in commercial arbitration 30–33
in ICSID arbitration 21–22
role of 33, 264
truly international public policy, definition of 30
truth, notion of 54
TSA Spectrum v. Argentina 86–88
UK Bribery Act 2010 58
ultra petita 288–289
UN Convention against Corruption (UNCAC) 31
application of the 255
UNCITRAL
Rules 23, 39
Rules on Transparency 39
UNCITRAL Model Law on International Commercial Arbitration 33
unclean hands 295–297
unenforceability due to money laundering See money laundering: an ad hoc arbitration involving alleged
unity of investment 17, 293

varieties of evidence
in English law 55
in Swiss law 60–61
voidability 44, 48

weight of evidence
in English law 56
in Swiss law 62
Westacre v. Jugoinport 182–194
World Duty Free v. Kenya 75–81

Yukos Universal Limited v. Russia 17, 38, 293, 295