

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

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BGer	Bundesgerichtsentscheid (Swiss Federal Supreme Court decision, unpublished)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

ICJ	International Court of Justice
ICSID	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)
SCrimC	Swiss Criminal Code (Schweizerisches Strafgesetzbuch; StGB) (SR 311.0)
SCrimPC	Swiss Criminal Procedure Code (Schweizerische Strafprozessordnung; StPO) (SR 312.0)
SD	Southern District
SIAC	Singapore International Arbitration Centre
SPILA	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

LIST OF ABBREVIATIONS

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UNCLOS	UN Convention on the Law of the Sea
UNCITRAL	UN Commission on International Trade Law
UNGA	UN General Assembly
VIAC	Vienna International Arbitral Centre
WGB	Working Group on Bribery (OECD)
WHO	World Health Organisation
WLR	Weekly Law Reports