

INDEX

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

- 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 bonos 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
- 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

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

Hamester 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 (ICC)
 International Court of Arbitration of the 34
 international claims tribunals 38
 International Court of Arbitration
 applicable arbitral procedure 35
 applicable substantive law 34–35
 jurisdiction 34
 international law
 in commercial arbitration, role of 33–34
 sources of 20
 international public policy, definition of 30
intime conviction 62, 64
 investment arbitration
 ad hoc 23
 general remarks on the legal framework 12–13
 ICSID 13–23
 non-ICSID institutional 23
 investment, definition of the term 14–17
iura novit curia (and *arbiter*) 287
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 293–294

- 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 1 255
- 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

- 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
 of bribery pacts 43
 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. Jugimport 182–194
Westinghouse v. National Power Corporation 169–178
World Duty Free v. Kenya 75–81
Yukos Universal Limited v. Russia 17, 38, 293, 295