SHOULD ALLEGATIONS OF CORRUPTION MAR ARBITRAL PROCESS IN THE ABSENCE OF CREDIBLE EVIDENCE?

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Abstract

Corruption is the bane of many institutions around the world. Arbitration is often seen as resistant to corruption, but recent trends suggest otherwise. Allegation of corruption is rife in arbitration proceedings and may only be entertained if there is credible evidence to establish it, even though the threshold may be cumbersome. Until good faith is established, the tribunal cannot assume jurisdiction. Doing so risks rendering the award unenforceable. The poser in this article is: should mere allegation of corruption be enough to derail arbitration? The answer is no. Such an approach risks inviting tactical misuse, with parties raising corruption allegations based on frivolities as a strategy to delay proceedings, sidestep contractual duties, or erode the finality arbitration is designed to secure. However, tribunals can adjudicate such allegations, but it must be guided by the competence-competence doctrine, which distinguishes the arbitration agreement from the underlying contract.[1] Using a doctrinal approach, the article analyses how corruption in arbitration is treated legally, drawing on international conventions, institutional rules, national laws, and case law from different jurisdictions. It explores whether corruption disputes are arbitrable, what standard of proof applies to such allegations, and the power of tribunals to investigate and sanction corrupt conducts and other salient issues. The study finds that contemporary arbitration practice increasingly distinguishes between mere allegations and

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[1] UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006, Art.16

proven instances of corruption, which aligns with principles of due process, party autonomy, and the presumption of good faith. The article concludes that maintaining strong evidentiary threshold preserves the integrity of arbitration while preventing its misuse as a strategic weapon. The study recommends procedural fairness, transparency, and integrity in the appointment of arbitrator.

Keywords: Corruption, Arbitrability, Award, Separability, Competence-Competence.

1.0 INTRODUCTION

1.1 What Does Corruption Connote?

Corruption is the bane of many institutions,[2] including the revered judicial space. According to *Gurria,* 'Integrity, transparency and, fight against corruption has to be part of our culture they have to be taught as a fundamental value.'[3] Corruption is a very complex phenomenon that has been in society from time immemorial. Efforts at combating this societal evil are unending because it fights back every attempt. In the general sense, Transparency International concludes that 'Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, who improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.'[4] This evil permeates virtually all systems; the justice system is not exempted. This global phenomenon

[2] Fidelia Ifeoma Ekeh, 'Corruption as the bane of National Development in Nigeria' (2024) 14(2) African Journal of Social and Behavioral Science <https://journals.aphriapub.com/index.php/AJSBS/article/view/2572/2376>accessed 14 June 2026

[3] The OECD Secretary-General's Report to Ministers 2018 (OECD Publishing 2018) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/05/secretary-general-s-report-to-ministers-2018_g1g8ed2e/sg_report-2018-en.pdf> accessed 24July 2026.

[4] Dennis Ude Ekumankama, 'Corruption and Corrupt Practices in the Nigeria Public Service: An Appraisal'(2022) 8(6) Journal of Legal Studies and Research <https://file:///C:/Users/HP/Downloads/dennis-jlsr%20(2)>accessed 16 July 2026

transcends national boundaries and symbolizes phenomenal universal unwholesomeness politically.[5] Corruption in international arbitration is fast becoming an issue of public discourse and interest.[6] It does not only erode public confidence; it can subtly undermine business integrity and legal institutions. Disappointingly, it is one of the biggest challenges faced by any society, system, causing disaffection among a people, harm to equality, weakening social contract and disenabling friendly business and economic environment.

Incursion of corruption into international arbitration is quite disturbing; more so that international arbitration is a private endeavor involving consenting parties having no coercive relationship, though with a public consequence (award).[7] The corruption in the justice sector has transcended beyond the courts and has crept into the private realm of international arbitration.[8] Actors in international arbitration are not exempted from this malaise just that a simple configuration of 'misconduct' is used to simplify the evil. Corrupt practices in international arbitration may not be obvious compared to the court system where parties are usually at each other's necks to get a verdict at all costs. The quest to have all the benefits of international

[5]Ukpong U Cletus, 'Theories of Corruption and their Applications in Business Environment' (2022)9(2) Journal of Innovations in Accounting and Information Management <https://bwjournal.org/index.php/bsjournal/article/view/894/804>

[6] Natalia Rincon, 'Allegation of Corruption in International Arbitration: Key Issues' (2021) American Review of International Arbitration <https://aria.law.columbia.edu/columbia-arbitration-day-2021-allegations-of-corruption-in-international-arbitration-key-issues/?cn-reloaded=1 > accessed 3July 2026

[7] Paul O Idornige, 'New Developments in Arbitration Law and Practice in Nigeria' (2020) <https://paulidornigie.org/wp-content/uploads/2020/12/New-Developments-in-Arbitration-Law-and-Practice-in-Nigeria-Final> accessed 12 July 2026.

[8]Jaimee Salgado, 'The Truth is out There: Examining whether International Commercial Arbitration is a Conduit For Money Laundering (2024) 53(1) *Denver Journal of International Law and Policy* <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=2542&context=djilp> accessed 15July2026

arbitration for oneself may create incentives for unethical conducts and which is why corrupt practices in international arbitration persists.

Simply put, corruption in arbitration refers to any unethical or misconduct on the part of the arbitrator or even the tribunal that may raise doubt about the arbitrator's integrity and fairness in discharge of his duties.[9] Essentially, corruption could take the form of bribery, inducements, unethical conduct of the arbitrator as well as undue influence from arbitral institutions. Note, the prevalence of corruption can be attributed to lack of transparency resulting from confidentiality,[10] greed, inadequate disclosure of conflicts of interest,[11] lust for power or holding on to power, lavish lifestyle, may be adduced for corruption in international arbitration.

Allegations of corruption in international arbitration can be sensitive, as they imply criminal wrongdoing by one or both parties in arbitration. The problem of paucity or insufficiency of evidence and the standards of proof is an arduous task which further concretizes corrupt behaviours that is often hidden by its perpetrators.[12] Scholars have remarked that even though corruption is generally condemned,

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[9] Michael Hwang S C and Kevin Lim, 'Corruption in Arbitration - Law and Reality' (2011)18(1) *Asian International Arbitration Journal* <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/media013261720320840corruption_in_arbitration_paper_draft_248> accessed 12 January 2026

[10] A J Schmitz, 'Untangling the Privacy Paradox in Arbitration' (2006) 54 U. *Kansas Law Review* < <http://ssrn.com/abstract=1303691>accessed 14 July 2026

[11] C Rogers, 'The Ethics of International Arbitrators' Legal Studies Research Paper Series, Institute of Comparative Law Angelo Sraffa Bocconi University <https://ssrn.com/abstract=1081436> accessed 12 May 2025

[12] Domitile Baizeau and Tessa Hages, 'The Arbitral Tribunal Power to Address Corruption Sua Sponte in International Arbitration & Rule of Law Contribution and Conformity' (2017) 19 *Kluwer Law International* <https://www.lalive.law/wp-content/uploads/2024/04/Duty_and_Power_to_Address_Corruption> accessed 15 June 2026

very little has been achieved in terms of its eradication. However, there is a global conference of legal rules, authorities, and opinion condemning corruption.[13]

Arbitration that is tainted with corruption at whatever stage is likely to suffer setbacks.[14] Apart from award of the tribunal being challenged and set aside, it may also be refused enforcement at the place of enforcement. Ultimately, a corrupt arbitrator is exposed to reputational damage,[15] and loss of future engagements. It is also possible for a party to institute criminal or civil action against a corrupt arbitrator depending on the gravity of the allegation. The mind-boggling question is-should mere allegation of corruption mar the entire process of arbitration in the absence of credible evidence? Is corruption allegation arbitrable in international arbitration? What are the possible sanctions against corrupt arbitrators? These questions are answered using doctrinal approach by analyzing various international treaties, arbitral laws, rules, and scholarly articles.

It must be reiterated that nipping corruption in the bud, is a task that needs decisive action to forestall negative consequences,[16] such as

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[13] Hwang and Lim (n 9) 2

[14] Margaret L Moses, 'Corruption's Challenge to Arbitral Legitimacy' (2025) 25(2) *Pepperdine Dispute Resolution Law Journal* <https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1577&context=drlj> accessed 16 June, 2026

[15] Joao Iloha Moreira, Ke Xu and Zhe Ma, 'Regulating Arbitration Through Criminal Law: An Empirical Exploration of the Criminal Prosecution of Arbitrators in Mainland China' (2026) *Law and Social Inquiry* <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/regulating-arbitration-through-criminal-law-an-empirical-exploration-of-the-criminal-prosecution-of-arbitrators-in-mainland-china/6EF7A31714E5F4783B95F0A920BD2B9D > accessed 12 May 2026

[16] Emina Mujic, 'Corruption in International Commercial Arbitration: The Right of Arbitrator to conduct Self-initiated Investigation of Corruption' (LLM Thesis,

denial of enforcement of the award, nullification of the award, and even the challenge of the arbitrator amongst others. Attempt to downplay these negatives, may strain private-law relations.[17] This paper seeks to determine whether a mere, unsubstantiated allegation of corruption suffices to invalidate an arbitral process, or whether such a claim must meet a defined evidentiary threshold before it can ground the setting aside or non-enforcement of an arbitral award. In doing so, the paper interrogates the evidentiary standard applicable to corruption allegations in arbitration and examines the extent to which corruption itself may be arbitrated as a substantive issue within the arbitral process. The scope of this inquiry is deliberately narrowed to corrupt practices attributable to the arbitrator — that is, arbitrator misconduct — as distinct from corruption allegation in the underlying contract or transaction between the parties.

2.0 DISCUSSION

2.1 Corruption Allegations and Scenarios of Corruption in International Arbitration

Corruption, often manifests in form of gross dishonesty, gross negligence, collusion with one of the parties, bribery, extortion of money, aiding and abetting, fraud,[18] forgery, falsification of documents, undue influence, unjust delay, and tactics which have

Uppsala Universitet 2013) <https://www.diva-portal.org/smash/get/diva2:658396/fulltext01>accessed 13 June 2025

[17]Klara Drličko and Tereza Kyselovská (eds), 'Legal Basis of Parties' Duty to Maintain Confidentiality in International Commercial' (Cofola International, Masaryk University Brno, 2016) <https://is.muni.cz/publication/1366750/COFOLAaj_2016> accessed 12 June 2026

[18] Peter C Kratcoski, 'Introduction: Overview of Major Types of Fraud and Corruption in Peter C Kratcoski, P Edelbacher, (eds), Fraud *and Corruption* (Springer Cham2018)19 < https://link.springer.com/chapter/10.1007/978-3-319-92333-8_1#citeas > accessed 24 May 2026

pervaded the most respected international arbitration.[19] Concerns increasingly center on the laundering of criminal proceeds through fraudulent disputes—where parties ask a tribunal to embody a fabricated settlement in a consent award, thereby concealing an unlawful payment.[20] The award may be enforced internationally, and the money is eventually laundered.[21]

Regrettably, the arbitrator — who is expected to serve as a minister in the temple of justice — is not infrequently enmeshed in unethical and corrupt practices. An arbitrator may, for instance, deliberately fail to disclose a material interest in the dispute, or manifest undue bias in favor of one of the parties, thereby compromising the integrity of the arbitral process.[22] Misconduct in international commercial arbitration raises several key questions: the arbitrability of corruption allegations; the burden and standard of proof, and who bears it; arbitrators' duties in the face of corrupt practices; and the justifiability of reviewing or confirming the resulting award.

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[19] Raoul Wallenberg Institute, Corruption *Comes in Many Forms* (Web Publication, 2021) <https://rwi.lu.se/corruption-comes-in-many-forms> accessed 13 January 2025

[20] Kamila Sulaimankilova, 'Combating Money Laundering in Arbitration through Enhanced Transparency' (LLM Thesis, Central European University 2024)<https://www.etd.ceu.edu>sulaimankulova_kami>accessed 10June 2026

[21] Charles H. Brower, 'Dirty Secret: The Laundering of Foreign Arbitral Foreign Arbitral Awards' (2024) 75(2) *UC Journal* <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=4060&context=hastings_law_journal> accessed 12 May 2026

[22] Antonio Crivellaro, 'Does the Arbitrators' Failure to Disclose Conflicts of Interest Fatally Lead to Annulment of the Award? The Approach of the European State Courts' (2014) 4(1) *The Arbitration Brief* <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1046&context=ab> accessed 12 February 2026

2.1.1. Why Are Corrupt Allegations Raised?

Allegations of corruption have become very rife in international arbitration, particularly in huge commercial transactions, public-private partnership arrangements, and foreign investments amongst other large scale businesses dealings.[23] These transactions are frequently tainted by bribery, fraud, and other sharp practices. Consequently, parties habitually raise allegations of corruption - sometimes genuinely, to challenge the legality of the underlying contract, but more often tactically, as a device to evade contractual obligations they are otherwise bound to perform.

This dual character of corruption allegations - as both a legitimate defense and a tactical weapon - places the arbitral tribunal in a delicate position. On the one hand, a tribunal that too readily credits unsubstantiated allegations risks becoming an instrument for the evasion of legitimate obligations, thereby undermining the finality and predictability that commercial parties rely upon in choosing arbitration. On the other hand, a tribunal that dismisses such allegations too readily risks lending its authority. It behoves on arbitral tribunal to navigate the troubled waters with caution and professionalism.

Note, it is not every allegation of corruption before arbitral tribunal that is borne out of good faith.[24] Sometimes parties raise spurious allegations to tactically delay proceedings, evade contractual

[23] Vaishnavi Rastogi, 'Addressing Corruption and Fraud in Investor-State Arbitration: Insights from P& ID Case in Nigeria' (Mediation and Arbitration, 2024) <https://viamediationcentre.org/readnews/MTc1Mg==/Addressing-Corruption-and-Fraud-in-Investor-State-Arbitration-Insights-from-the-P-ID-Case-in-Nigeria> accessed 25 July 2026

[24] Aceris Law LLC, 'Can Misconduct in Arbitration Invalidate an Award?' (Aceris Law, 24 May 2026) <https://www.acerislaw.com/can-misconduct-in-arbitration-invalidate-an-award > accessed 24 July 2026

obligations, discredit the opposing party, or lay grounds for resisting enforcement or annulment of an award. Ordinarily, corruption is inherently difficult to prove and often concealed, even unsubstantiated claims can complicate proceedings, inflate costs, and delay resolution.[25] This risk of strategic misuse makes it essential for tribunals to distinguish credible, evidence-based claims from frivolities aimed merely at frustrating the arbitral process.

One of the fundamental principles in international arbitration is that tribunals will decline to give effect to contracts procured, or performed, through corrupt means.[26] This is as a result of the general consensus that corruption is contrary to both international and domestic public policy of any state.[27] It is precisely this consensus that gives corruption allegations their strategic weight: parties invoke them, whether sincerely or otherwise, to resist the enforcement of an agreement or an award.[28] However, allegations of corruption may be raised at any stage of the arbitral proceedings themselves, or later, when enforcement is sought before national courts.[29] Thus, arbitrators

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[25] F Haugeneder and C Liebscher, 'Corruption and Investment Arbitration: Substantive Standards and Proof' (2009) 2 Austrian Arbitration Yearbook 539 <https://law.yale.edu/sites/default/files/documents/pdf/sela/Haugeneder_Liebscher_Corruption> accessed 20 June 2026

[26] Boris Praštalo, 'On Corruption in International Arbitration: Exploring the Topic Through the Lens of the MOL v. Croatia Saga' (2023) 8(1) *European Investment Law and Arbitration Review* 73 <https://bura.brunel.ac.uk/bitstream/2438/28492/4/FullText> accessed 15 June 2025

[27] ibid.

[28] Adeola Agunbiade-Adeyemi, 'Corruption and Enforcement of Arbitral Awards' (*Lexology*, 13 November 2023) <https://www.lexology.com/library/detail.aspx?g=56d0c2b7-a111-4d9c-a519-7858c0956243>accessed 15 April 2026

[29] ID Folorunso, 'Arbitration in Corrupt Cases in Nigeria' (*Folorunso and Co.*, 2 February 2021) <https://folorunsoandco.com/arbitration-in-corrupt-cases-in-nigeria> accessed 24 July 2026

and judges alike have a duty not to lend their authority to something built on illegality.[30]

International arbitration is a default mechanism for resolving cross border disputes[31] arising from large-scale commercial transactions such as infrastructure projects, oil and gas concessions, mining agreements, defense procurement, and public-private partnerships, amongst others. These transactions typically involve high financial stakes and close dealings with public officials, conditions that make them particularly vulnerable to bribery, kickbacks, fraud, and other corrupt practices. Corruption allegations are becoming prominent in arbitration because of regulatory, legal, and reputational risk on one side, and as compliance programs increasingly expose misconduct once commercial relationships turn sour.

Also, there is a risk that parties wishing to escape their contractual obligations may be tempted to invoke corruption as a defense, given that a successful corruption claim can undermine the validity or enforceability of the agreement. This put arbitrators and reviewing courts in a difficult position because they must be able to differentiate between illegalities and tactical claims. In the same vein, they cannot ignore genuine misconduct whilst permitting a corruption allegation to void a valid contract.

[30] Manuel Penades Fons and Uglješa Grušić, 'Illegality in English Arbitration After Patel v Mirza' in Paul S Davies and Magda Raczynska (eds), *Contents of Commercial Contracts: Terms Affecting Freedoms* (Hart Publishing 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3629380> accessed 20 May 2026

[31] Adetoyese Latilo and others, Management of Complex International Commercial Arbitration: Insights and Strategies' Research gate (2024)6/8 <https//researchgate.net/publication/383491633_Management_of_complex_international_commercial_arbitrations_Insights_and_strategies/link/66cf9e27b1606e24c2a64e47/download> accessed 13April 2026.

2.1.2 Legal Significance of Allegation as Distinct from Proven Corruption

An allegation is nothing more than an unproven claim until verified by credible evidence.[32] Courts and tribunals must be guided not to substitute mere allegation for proof. Thus, an allegation should not metamorphose into proof to the extent that the court or tribunal bases its judgment on unsubstantiated fact. In doing this, the court and tribunal would undermine their integrity and fairness. To a very large extent, there is a presumption of regularity in the conduct of an arbitration proceeding.[33] Parties, arbitrators, and the arbitral proceeding are presumed to be properly constituted and the arbitral procedure was according to agreement of the parties. Otherwise, award resulting from non-compliance with procedures will not be recognized.[34]

One of the fundamental objectives of international commercial arbitration is to guarantee procedural fairness where parties are afforded equal opportunity to present their case and be heard accordingly. The implication of this is that arbitrators are duty-bound to decide parties' disputes impartially and objectively based on law and evidence before them.[35] As a corollary, the burden of rebutting the presumption of regularity rests on the party alleging the contrary to

[32]Adamu Idris Taminu, 'Burden of Proof in Criminal Case' *African Journal of Criminal Law and Jurisprudence* 8 (2023)<https://journals.ezenwaohaetorc.org/index.php/AFJCLJ/article/download/2535/2609> accessed 13 March 2026.

[33]Arbitration and Mediation Act 2023, ss 30, 31(1) - (2).

[34]Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted 10 June 1958, entered into force 7 June 1959, New York Convention, Art V(1)(d).

[35]Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) Ch 15 <https://icsid.worldbank.org/sites/default/files/parties_publication/c3765/Claimants%27%20Reply%20%28Redacted%20per%20p08%29/Legal%Authorities/CL-0051> accessed13 February 2026

establish its contention.[36] Presumptions generally serve as initial premises of legal reasoning.[37] Therefore, mere speculation will not suffice; credible and persuasive evidence must be established before there can be legal consequences to invalidate the action of the official(s) involved in the corruption. To allow speculation or suspicion to take the place of credible evidence amounts to sabotaging party autonomy, procedural fairness and finality of the arbitral process. Essentially, corruption must be proved because it comes with fatal legal consequences, which could ultimately result in the setting aside of the award and non-enforcement of the award in international arbitration.[38]

3.0 COURT SANCTIONS AGAINST MISCONDUCT

Rules of various institutions set out the procedure for disqualifying an arbitrator for misconduct. Thus, under the London Court of International Arbitration (LCIA) and International Chamber of Commerce (ICC) Rules, decisions on misconduct are reached by their respective courts.[39] Specifically, if a challenge is brought under ICC

[36]Aram A Gavoor and Steven A Platt, 'In Search of the Presumption of Regularity'74(5) *Florida Law Review* (2022) <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?params=/context/flr/article/4074/&path_info=01Gavoor> accessed 14 March 2026

[37]Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Grotius Publications/Cambridge University Press 1987) 105

[38]Ekaterina M Karochkina, 'Legal Problems of Enforcement of Foreign Arbitral Awards set aside at the place of Arbitration' (2024) 6(1) *Journal of Private International Law Studies*<https://journals.rcsi.science/2644-5514/article/view/372148> accessed 24 July 2026.

[39]London Court of International Arbitration, Arbitration Rules 2020 Art 10; International Chamber of Commerce Rules of Arbitration 2026 Art 14; Alexander J Belohlavek and others, 'Procedural Irregularities and Arbitrator Misconduct during Proceedings' in Larry A DiMatteo and others (eds), The Cambridge Handbook of Judicial Control of Arbitral Awards (Cambridge University Press 2020) 54 <https://www.cambridge.org/core/books/abs/cambridge-handbook-of-judicial-control-of-arbitral-awards/vacating-commercial-arbitration-awards/A6EDBD0A5D9E06D40FE46DBDB35C33B5> accessed 20 April 2026

Rules, it is decided by a plenary session of the International Court of Arbitration. Aside from Section 8 of the Arbitration and Mediation Act, 2023 provides that a party may challenge an arbitrator where circumstances exists that give rise to justifiable doubt as to the arbitrator's impartiality, independence, or qualification agreed to by the parties. The challenge is made according to the procedure agreed to by the parties and the arbitral tribunal, and if unsuccessful, the party may apply to the court within the statutory period for a final determination.

In ad-hoc arbitration, the United Nations Commission on International Trade Law UNCITRAL Arbitration Rules[40] creates a mechanism for designating an appointing authority. The appointing authority is designated by the Secretary-General of the Permanent Court of Arbitration, who will be in charge of any challenge against an arbitrator, even if the panel was not constituted with the help of an appointing authority. If it is ad-hoc arbitration, where UNCITRAL rules are not adopted, the challenge will be referred to the court of the place of arbitration.[41]

Court's intervention in the arbitral process cannot be excessive or parasitic;[42] it is to facilitate efficient conduct of the arbitral process.

[40] UNCITRAL Arbitration Rules as revised 2013, Art8(2)

[41]AJ Bělohlávek, 'The Court or Which Authority Decides on the Challenge' in AJ Bělohlávek, N Rozehnalová and F Černý (eds), *Czech (& Central European) Yearbook of Arbitration 2014: Independence and Impartiality of Arbitrators* (Juris Publishing 2014). <https://books.google.com.ng/books?hl=en&lr=&id=jnZVBAAAQBAJ&oi=fnd&pg=PR13&dq=AJ+B%C4%9Blohl%C3%A1vek,+%27The+Court+or+Which+Authority+Decides+on+the+Challenge%27+&ots=_4LP9vwey1&sig=5YVhC5CbQd5OwQVmOCufqlm46is&redir_esc=y#v=onepage&q&f=false> accessed 17 May 2026

[42]Deepika Mohnani, 'A Study on Judicial Intervention in Arbitration' Balancing Autonomy and Accountability in India' (2023)8(1) *Indian Journal of Law and Research* 8438 <https://ijirl.com/wp-content/uploads/2023/06/A-STUDY-ON-JUDICIAL-INTERVENTION-IN-ARBITRATION> accessed 13 June 2026

Hence, the issue of arbitrator's misconduct is within the jurisdictional scope of the court. Misconduct of an arbitrator should receive more than a cursory treatment because it is an issue premised on integrity, transparency, fairness and good faith. It goes beyond the regime of competence-competence belief to which arbitrators are accustomed, as an escape route for their inadequacies. The contention is that issues of immunity against civil/criminal liability of arbitrators should not be raised because immunity shields arbitrators from personal liability for actions taken by them.[43] Again, it is necessary that justice must not only be seen to have been done but must be done to all concerned.

The courts, however, are charged with reviewing awards of arbitrators, particularly in the event of a challenge by an aggrieved party. Article 12(1) & (2) UNCITRAL Model Law (2010) stipulates that impartiality and bias are grounds for challenging an arbitrator. This is just, to say the least, more so than Section 10(a) (1) & (2) of the U.S.C. of the Federal Arbitration Act (FAA), which also outlined four statutory grounds for which an arbitrator can be challenged:

a. Where that award was procured by corruption, fraud, or undue means

b. Where there was evident partiality or corruption in the arbitrator or either of them

c. Where the arbitrator was guilty of misconduct in refusing to postpone hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy; or any

[43]Agata Cevc, 'Civil Liability of Arbitrators' (2019) 3 EU and Comparative Law Issues and Challenges Series <https://ojs.srce.hr/eclic/article/view/9009> accessed 24 July 2026

other misbehavior by which the rights of any party have been prejudiced; or

d. Where the arbitrator exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Better still, the FAA statutory grounds for vacating an arbitration award are designed to correct a good faith error of fact or law by the arbitrator, no matter how egregious.[44] The US District Court has not failed to add one more ground of challenge when it concluded that 'manifest disregard' of law doctrine is a ground for vacating an award.[45]

The English Arbitration Act (AA) allows challenges to the court by a party[46] if there is a serious irregularity that affects the tribunal, the proceeding and the award. Once this irregularity can be established, on one or more grounds, the court can either remit the award back to the tribunal or set aside the award partially or as a whole. The court can even declare the award as a nullity in part or as a whole. The requirement by the court is that there must be a serious irregularity[47] that substantially affects the party. In such circumstances, the court is left with nothing but to set the award aside in the absence of any commensurate relief. However, setting aside is reserved for the worst

[44]Oxford Health Plans LLC v Sutter (2013)569 U.S. 564 <https://tile.loc.gov/storage-services/service/ll/usrep/usrep569/usrep569564/usrep569564> accessed 23 May 2026

[45]Helm, Katherine A, 'The Expanding Scope of Judicial Review of Arbitration Awards: Where Does the Buck Stop?'(Arbitration 2006) <https://www.dechert.comhttps://www.stblaw.com/docs/default-source/cold-fusion-existing-content/publications/pub1124> accessed 14 March 2026.

[46] Arbitration Act 2025, s68

[47] ibid.

scenario, exceptional circumstances like procuring an award through fraudulent means and when the fundamental notion of fairness or justice is offended.[48] Noteworthy is the fact that courts' intervention is to preserve the integrity and propriety of the arbitration procedure.

4.0 ARBITRABILITY OF CORRUPTION

In its narrowest meaning, arbitrability refers to whether mandatory law in a given jurisdiction disallows arbitration of disputes dealing with a particular subject matter as infused with high -order public policy concerns.[49] Arbitrability is a limit to the autonomy of parties and defines the confines of the arbitral tribunal.[50] It is submitted that arbitrability is an abstract concept,[51] with a lot of variation in its perception. A dispute that is capable of settlement by arbitration under the law of a country where the arbitration took place may not be arbitrable in the place of enforcement of the award.[52] Domestic anti-corruption laws have traditionally been confined to conduct within national borders, with extraterritorial application remaining the exception.[53] Yet despite this fragmented legal landscape, corruption is

[48]Lesotho Highlands Development Authority v Impregilo SPA (2002) EWHC2435 <https://doi.org/10.1093/alrr/2002.1.285> accessed 18 May 2026

[49]Mark Aronson, *The Growth of Substantive Review* (University of New South Wales, 9 October 2014, *SSRN* Scholarly Paper No 2507613) https://ssrn.com/abstract=2507613> accessed 24 July 2026.

[50]David Tarh Akong Eyongdni, 'Arbitrability and Doctrine of Party Autonomy Under Nigeria Arbitration Law: Same or Strange Bed Fellows <https://www.scribd.com/document/619574790/ARBITRABILITY-AND-THE-DOCTRINE-OF-PARTY-2>

[51] Natalje Freimane, 'Arbitrability: Problematic Issues of the Legal term (LLM Thesis Riga Graduate School of Law 2012) Jurisdka Augstskola University <https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/arbitrability-problematic-issues> accessed23 June2026

[52] ibid

[53] Evan Forbes, 'Extraterritorial Enforcement of Foreign Corrupt Practices Act: Asserting U.S. Interest or Foreign Intrusion'? (2020) 93 *Southern California Law Review PostScript* <https://southerncalifornialawreview.com/wp-content/uploads/2020/04/Forbes-Final.docx> accessed 15 June 2006

widely recognized as a threat to national and global security, economic development, and the rule of law. Several international arbitral tribunals recognized a global consensus against corruption.[54] This development has led to an increase in support against corruption at an international level.[55]

Essentially, dealing with international corruption has been a bit difficult because of emerging issues such as the competence-competence doctrine in international arbitration.[56] This doctrine gives power to arbitrators to exercise jurisdiction over issues that are criminal in nature, because of the existence of an arbitration agreement between parties. The tribunal's jurisdiction over corruption issues was debated following a landmark decision in ICC arbitration.[57] This is supported by the provision of Art.16 (1) of the UNCITRAL Model Law, as well as Art. 6(4) of ICC Rules of Arbitration of 1998 that provides interalia 'The Arbitral Tribunal shall continue to have jurisdiction to determine the respective rights of the parties and to adjudicate their claims and pleas even though the contract itself may be non-existence or null and void.' Also, assimilation of separation and competence doctrine by several international rules has legitimized

[54] Martin A Timothy, 'International arbitration and corruption: an evolving standard' (2004) *Transnational Dispute Management*1(2) <https://icsid.worldbank.org/sites/default/files/parties_publications/C3765/Respondent%27s%20Rejoinder%20%28redacted%20per%20PO10%29/Pièces%20juridiques/RL-0090.pdf> accessed 12 January 2026

[55] C B Lamm, B K Greenwald, and K M Young, 'From World Duty Free to Metal-Tech: A Review of International Investment Treaty Arbitration Cases Involving Allegations of Corruption' (2014) 29 (2) *Icsid* Review *Foreign Investment Law Journal* 328, 349.

[56] Moses (n14) 208.

[57] Yoanna Schuch. 'Tackling Corruption in International – Key Issues and Challenges'(2011) 32 *Young Arbitration Review* <https://www.wilmerhale.com/-/media/13f16ca46ccf41e38020d3e51a5e9734>

the tribunal's power to arbitrate allegations of corruption as well as exercising power to examine the merits of such allegations.[58]

Arbitration of fraud and corruption is considered contrary to public decency and morality, as found in the Argentine case when Judge Lagergren in ICC Arbitration Case No 1110.[59] This dispute arose out of a contract procured by bribery, which the court held cannot be arbitrated upon, stating that the parties to such contract have forfeited the right to ask for assistance of the court. The view has been criticized as not having regard for the question of the validity of a contract and whether the claim of corruption is founded or not. The decision of Judge Lagergren is a sharp contrast to the doctrine of separability, which distinguishes the claim of corruption from the arbitration agreement.

Separability doctrine, on one hand, makes it practically possible for the tribunal to determine the allegation of illegality.[60] In essence, an arbitration agreement forming part of a contract is not affected by the nullity of the main contract as a consequence of corruption,[61] where the House of Lords held that the doctrine of separability requires direct impeachment of the arbitration agreement before it can be set aside.[62] This means that an arbitration agreement is autonomous, so an arbitral tribunal has jurisdiction to hear the claim. That is, an arbitral tribunal

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[58] Emilia Onyema, 'The Doctrine of Separability Under the Nigerian Law' Apogee Journal of Business, Property & Constitutional Law (2009) 1(1) <https://ssrn.com/abstract=1621383> accessed 13 June 2025; UNCITRAL Model Law 2010, s16
[59] ibid.
[60] Onyema, (n58)
[61] AMA 2023, s14(2)
[62] Premium Nafta v Fili Shopping Company Limited and Others (2007) UKHL 40 otherwise known as Fiona Trust and Holding Corp v Privalol < https://www.trans-lex.org/312142/_/fiona-trust-holding-corp-v-privalov-%5B2007%5D-ukhl-40>accesed 16July 2025

is not deprived of the power to hear issues bordering on fraud, bribery, and corruption. “This conclusion is supported by section 7 of the Arbitration Act of 1996,[63] which reiterated that the doctrine of separability is intended to enable courts to give effect to the reasonable commercial expectations of the parties about the questions which they intended to be decided by arbitration.

In reality, the question is not so much posed in terms of the power of the arbitrators, but in terms of the available procedural heading under which arbitrators may dismiss a claim tainted with fraud. What is paramount again is the question of proof of the impropriety. That is, how is corruption going to be proved, and what standard of proof is required to establish corruption? Thus, in proving the allegation of fraud and corruption, the tribunal must be determined in procuring evidence to establish the allegation. This conduct could be ultra vires, but it seems proper to do so in the circumstance. In reality, if there is an allegation of fraud before the tribunal,[64] it can assume jurisdiction to examine the merits of such an allegation that is tainted with fraud.

5.0 BURDEN AND STANDARD OF PROOF

There is controversy surrounding the questions of whether the burden and standard of proof are procedural, substantive matters, or even subject to an international standard.[65] The consensus is that rules relating to the burden and standard of proof are intertwined with substantive legal rules.[66] Thus, the law that governs the merits of the dispute should also govern the burden and standard of proof.[67] UNCITRAL Arbitration Rules is one of the rules that provide that each party shall have the burden of proving the facts relied upon to

[63]Arbitration Act 2025, s 6A.
[64] Fiona Trust and Holding Corp v Privalol (n62)
[65] Schuch (n57)
[66] ibid.
[67] ibid.

support its claim or defense.[68] Invariably, in international arbitration, the burden of proof is on each party who asserts to prove facts relied upon to support its claim or defense, just as is evident in other allegations levied against the opposing party.[69] The standard of proof is always on a balance of probabilities for default commercial claims, whilst allegations of corruption require a higher degree of probability tending towards a compelling circumstantial 'Red Flag Approach'. Under English law, there must be an exceptional cogent evidence to tilt the balance.[70] In Nigeria, corruption must be proved beyond reasonable doubt.[71]

Some have advocated that the burden of proof be reversed in corruption cases (that is, requiring a party to rebut its involvement in corruption, where prima facie evidence exists) and at the same time lowering the default balance of probabilities and standard of proof.[72] In these circumstances, a party alleging corruption has the burden of proof and may bring relevant evidence for its allegation, without these elements being really conclusive.[73] The existence of this principle is appropriate to disallow a party from making a frivolous allegation. These allegations most times are baseless and require cogent proof.[74] The tribunal may, in exceptional cases, request the other party to supply counter evidence if available and not burdensome.[75]

[68] UNCITRAL Arbitration Rules 2010, Art.27(1)
[69] ibid.
[70] Re B (Children) (2008) UKSC 35,
[71] Evidence Act, 2023 s 135(1)
[72]Paswan, Nawal K, 'Investment cooperation in Central Asia: Prospects and challenges' (2013) 69(1)13 *India Quarterly* 33
[73] Hwang and Lim (n12)
[74] ibid.
[75] Malik, Deeksha, and Kamat Geetanjali, 'Corruption in International Commercial Arbitration: Arbitrability, Admissibility and Adjudication.' (2018)5(1) *Arbitration Brief* 2

In order to prove corruption, it has been suggested that the standard of proof should be on a balance of probabilities because it can be an onerous task, requiring a party to prove that the event in question is more likely than not to have occurred. Hence, the preponderance of probabilities is sufficient in the circumstances of corruption. The principle of clear and convincing evidence has been proposed in the adjudication of corruption.[76] That is, there must be clear evidence of corruption, not mere suspicion. The tribunal reasoned that proof of corruption should be beyond reasonable doubt,[77] as it is evident in criminal matters.

6. SUMMARY OF FINDINGS

i. Corruption allegations in international arbitration arise in different forms, and the stage or context in which they surface matters a great deal to their legal consequences. An allegation may touch the underlying commercial transaction, the conduct of a party, the independence of an arbitrator, the procurement of evidence, or the enforcement of an award. These are not interchangeable scenarios. Corruption tainting the substance of a contract may go to its very validity, whereas allegations confined to procedural conduct or arbitrator behavior do not automatically vitiate the proceedings themselves. A clear line must therefore be drawn between allegations bearing on the merits of a dispute and those directed at the integrity of the arbitral process.

ii. Contemporary arbitral practice is also better equipped to handle arbitrator misconduct than is often assumed. Institutional rules, ethical codes, and national arbitration statutes already give parties the means to challenge, remove, or replace an arbitrator who falls short of the required standards

[76] Hwang and Lim (n12)
[77] Deeksha and Geetanjali (n75)

of independence, impartiality, or disclosure. Courts, for their part, retain the power to set aside or refuse enforcement of awards secured through fraud, bribery, or serious procedural irregularity. With these mechanisms, there is no need to terminate proceedings the moment an allegation is raised.

iii. A further development is the near-total abandonment of the older view that corruption belongs exclusively to domestic criminal courts. Tribunals today are widely accepted as having jurisdiction to examine corruption in civil and commercial rights in dispute. This move is to curb illicit commercial practice while making arbitration workable.

iv. The real safeguard against abuse, however, lies in the burden and standard of proof. The party alleging corruption must establish it through cogent, credible evidence; given the covert nature of corrupt conduct, tribunals may draw on circumstantial evidence or accumulated "red flags," but suspicion and conjecture cannot stand in for proof. This serves two purposes: it stops corruption from evading scrutiny, and it stops the allegation itself from becoming a tactical weapon — a way to stall proceedings or resist enforcement.

v. Also, treating every unsubstantiated allegation as grounds for automatic suspension or non-enforcement would undermine party autonomy, procedural fairness, finality, and commercial certainty in the process. But indulgence is equally untenable: where evidence is credible, tribunals and courts already have the tools to investigate, withhold relief grounded in an illegal transaction, sanction arbitrators, and refuse enforcement of a tainted award. The better approach, then, is neither reflexive tolerance nor reflexive invalidation, but a disciplined evidentiary framework — one that takes corruption seriously and downplay mere allegation of it.

7.0 CONCLUSION AND RECOMMENDATIONS

Corruption is evident in international commercial arbitration but allegation of corruption is not conclusive evidence of corruption until proven. It is suggested that high evidentiary standard be maintained to curtail unfounded allegations. Due process and fair hearing must be afforded arbitrator(s) alleged of corruption. Transparency in the appointment of arbitrator must not be compromised. Arbitrators must adherence to ethical standards because integrity is key and non-negotiable. In summary, efficient arbitral process is possible only where there is zero-tolerance for corruption and other unwholesome practices.