



Paris, 24 November 2014 | 34th Annual Meeting of the ICC Institute of World Business Law

ADDRESSING ISSUES OF CORRUPTION IN COMMERCIAL AND INVESTMENT ARBITRATION

PROGRAMME

Chairman of the ICC Institute of World Business Law:

- **Yves Derains**
Founding Partner, Derains & Gharavi, France; Former Secretary General, ICC International Court of Arbitration; Chairman, ICC Institute of World Business Law

Co-Chairs of the 2014 Annual Meeting of the ICC Institute:

- **Domitille Baizeau**
Partner, LALIVE, Switzerland; Member, Arbitration Court of the Swiss Chambers' Arbitration Institution; Member, ICC Institute of World Business Law; Councillor, European Users' Council of the LCIA
- **Richard Kreindler**
Partner, Cleary Gottlieb Steen & Hamilton LLP, Germany; Council Member, ICC Institute of World Business Law

09.00-09.05 Introduction

- **Yves Derains**, Founding Partner, Derains & Gharavi, France; Former Secretary General, ICC International Court of Arbitration; Chairman, ICC Institute of World Business Law

09.05-09.20 Definitions and scope of the issues

Corruption vs money laundering, fraud or other illegal conduct; relevant law(s) in the definition of corruption; current trends and key challenges in commercial and investment arbitration

- **Domitille Baizeau**, Partner, LALIVE, Switzerland; Member, Arbitration Court of the Swiss Chambers' Arbitration Institution; Member, ICC Institute of World Business Law; Councillor, European Users' Council of the LCIA

09.20-10.20 The impact of corruption on gateway issues of arbitrability, jurisdiction, admissibility and procedural issues

When should evidence or allegations of corruption be considered non arbitrable? When should or must they deprive the arbitrator of jurisdiction over the subject matter and/or the parties? When are corruption issues more properly addressed as a question of admissibility rather than of jurisdiction? When can or should "equal fault" or "mutual fault" in the sense of "unclean hands" result in a lack of jurisdiction or admissibility, and when not? What is the law applicable to these issues? What is the impact of ongoing or completed criminal or state investigations? When is bifurcation of these issues from the merits or a stay of the proceedings appropriate? What are the relevant differences between commercial and investment treaty arbitration?

- **Yas Banifatemi**, Partner, International Arbitration Group, Shearman & Sterling, France
- **Aloysius Llamzon**, Senior Legal Counsel, Permanent Court of Arbitration, The Hague
- **Hiroyuki Tezuka**, Partner, Nishimura & Asahi, Japan; Committee Vice Chairperson, Dispute Resolution and Arbitration, Inter-Pacific Bar Association

Moderated by Antonio Crivellaro, Of Counsel, Bonelli Erede Pappalardo Studio Legale, Italy; Council Member, ICC Institute of World Business Law

10.20-10.50 Questions and discussion

10.50-11.15 *Coffee Break*

11.15-12.15 Proving corruption: burden of proof and standard of proof

Should the burden and standard of proof be adjusted for allegations of corruption generally? Or in the case of corruption of government officials? Does the characterization of these issues as procedural versus substantive under the law applicable make a difference? Is there a basis for a "plea for more precision" from arbitrators as to burden and standard of proof in the case of corruption? What should be the impact of ongoing or completed criminal or state investigations? What are the relevant differences between commercial and investment treaty arbitration?

- **Vladimir Khvalei**, Partner, Baker & McKenzie, Russian Federation; Vice-President, ICC International Court of Arbitration
- **Andrea J. Menaker**, Partner, White & Case LLP, United States
- **Sébastien Besson**, Partner, Python & Peter, Switzerland; Member, Arbitration Court of the Swiss Chambers' Arbitration Institution

Moderated by Hi-Taek Shin, Professor, Seoul National University School of Law, Korea; Chairman, Executive Committee, Seoul International Dispute Resolution Center

12.15-12.45 Questions and discussion

12.45-14.15 *Lunch Break*

- 14.15-15.15 Addressing allegations and findings of corruption: the arbitrators' investigative and reporting rights and duties**
 What are the sources and boundaries of the arbitrators' right or duty to investigate corruption? What are the sources and boundaries of the arbitrators' right or duty to report corruption admissions, findings or suspicions, and report to whom? What are the relevant differences between commercial and investment treaty arbitration?
- **Nassib G. Ziadé**, Chief Executive Officer, Bahrain Chamber for Dispute Resolution (BCDR-AAA), Bahrain
 - **Thomas K. Sprange**, Partner, Solicitor Advocate, King & Spalding International LLP, United Kingdom
 - **Edoardo Marcenaro**, Head of International Legal & Corporate Affairs, Enel SpA, Italy
- Moderated by Eduardo Zuleta-Jaramillo**, Partner, GPZ Abogados, Colombia; Member, ICC Institute of World Business Law
- 15.15-15.45 Questions and discussion**
- 15.45–16.15 Coffee Break*
- 16.15-17.15 Consequences and effects of allegations or of a positive finding of corruption on:**
- **The dispute on the merits:** Should the underlying contract and/or the arbitration agreement be deemed void or voidable? If so, what other remedies are available? What are the approaches under different applicable laws? What is and what should be the approach in investment treaty arbitration?
 - **The enforceability of awards:** To what extent are “public policy” principles relevant to assessing the consequences of a finding of corruption on enforceability, and what are these consequences? What are the relevant differences between commercial and investment treaty arbitration?
- **Matthew Gearing QC**, Partner, Global Co-Head, International Arbitration Group, Allen & Overy, Hong Kong; Council Member, Hong Kong International Arbitration Centre
 - **Juan Fernández-Armesto**, Founding Partner, Armesto & Asociados, Spain
 - **Sophie Nappert**, Arbitrator, 3 Verulam Buildings, United Kingdom
- Moderated by Carita Wallgren-Lindholm**, Partner, Lindholm Wallgren, Attorneys Ltd., Finland; Member, ICC International Court of Arbitration
- 17.15-17.45 Questions and discussion**
- 17.45-18.00 Concluding remarks**
 Is anything broken or otherwise worth fixing? What are the prospects for the future? What is realistic and feasible?
- **Richard Kreindler**, Partner, Cleary Gottlieb Steen & Hamilton LLP, Germany; Council Member, ICC Institute of World Business Law
- 18.00-19.00 Cocktail reception*