



Corruption

Is your contract valid ? – and enforceable?

**What's your
Contract worth?**

**The Dangers in
Arbitration & Litigation**

Thursday +
Friday morning
7/8th of May 2015; Vienna

Friday afternoon +
Saturday morning
8/9th of May 2015; Vienna

- ◆ Get insight into possible contractual scenarios of bribe payment
 - Understanding the complex consequences of indirect bribes
- ◆ Is the contract still valid?
 - Consequences of corruption concerning third party involvement [?]
- ◆ Sanctions by financing institutions
- ◆ In proceedings: To dig or not to dig?
 - Is there a duty to investigate
- ◆ The evidentiary dilemma
- ◆ Case study session: do not miss the chance to submit your cases and get our experts to answer them.

In cooperation with:

BAIER RECHTSANWÄLTE
ATTORNEYS AT LAW

Target Group

- ◆ In-House legal counsel
- ◆ Lawyers/ arbitrators
- ◆ Compliance officers
- ◆ Importers/Exporters, Sales manager
- ◆ Bankers Trade & Project Finance
- ◆ Everyone involved in Internat. Trade

Background & Objective

Corruption - must I pay to play?

...what happens to my contract, my arbitral/civil proceedings if somebody did?

Imagine that your company and/or your client faces the situation, that the **buyer refuses payment** because he alleges that his (purchase) manager has been bribed (directly or indirectly).

Does your company/client have the cash-flow to endure:

- first the non-payment by the buyer;
- then perhaps the stay of the civil proceedings - until the criminal court renders its decision years later;
- perhaps the immediate difficult continuation of the civil proceeding – in spite of the on-going criminal law investigations and proceedings

Or the following scenario: You as counsel, judge or arbitrator have indications that corruption might have occurred in or around the underlying contract the dispute arises from:

- Under which circumstances does the judge/arbitrator have a right or even a duty to actively pick up signs of corruption - without an actual allegation by one of the parties?
- With whom lies the burden of proof?
- Does the judge/arbitrator have an obligation to stay the proceedings – and inform the public prosecutor?
- Does he have to wait until the criminal investigations are finalized - or worse, until the criminal court has made its final decision (perhaps a Supreme Court judgment perhaps 8 years later on)? Is he allowed to continue the civil proceedings? What procedural orders does he have to make?
- What are the sanctions & consequences of corruption? Lack of arbitrability/jurisdiction? Inadmissibility or voidness?
- Can an allegation of corruption hinder recognition & enforcement of an arbitral award / a judgment?

It is important to understand that corruption, in all its varieties, and above all, the investigations related to it can be **crucial to the economic survival of your business**. Keep in mind that a contract that was induced by corruption will inevitably raise the question **what the contract is actually worth**. Furthermore, be aware, that the ultimate beneficiary is finally responsible for all sub (or sub-sub) contractors, agents, consultants and their actions.

These conferences on **“What your contract is worth”** and **“The dangers of alleged corruption in arbitral/civil law proceedings”** will seek to highlight these complexities. In contrast to most conferences which limit the discussion to criminal law aspects only, this ICC Austria event will take you to the **actual civil law consequences, the possible costs for your business and how to handle this complex issue in practice**.

International experts will present the legal issues and discuss real cases. Should you wish to have a special situation discussed – you can anonymously submit your questions to e.treu@icc-austria.org.

Media Partners



Speakers

Erhard Böhm, Partner, Baier Rechtsanwälte, Vienna. Erhard specialises in international commercial and investment treaty arbitration. He has acted as counsel, co-arbitrator, chairman, sole arbitrator in numerous ad hoc and institutional arbitrations, such as under the rules of ICC, LCIA, VIAC, GAFTA etc.

Maximilian Burger-Scheidlin, Executive Director, ICC Austria; specialist on prevention of international corruption by corporates; co-author of several books on anti-corruption, Lecturer on anti-corruption in Russia, India, China, Kazakhstan etc.

Sam Eastwood, Partner & Head of Business Ethics & Anti-corruption, Norton Rose Fulbright, London; Sam, a dispute resolution lawyer advises major corporations on anti-corruption in connection with internal compliance policies, international business transactions & internal corporate investigations.

Gustav Flecke-Giammarco is a Counsel at the Secretariat of the ICC International Court of Arbitration. He heads the case management team dealing mainly with cases from Germany, Austria, Switzerland, Italy, Benelux and Nordic countries and supervises up to 220 pending arbitration cases at any given time.

Günther Horvath, MCJ, Partner, Head of Dispute Resolution, Freshfields Bruckhaus Deringer, Vienna. He specialises in international commercial arbitration with a focus on energy, corporate law, post-M&A matters, industrial engineering, construction. He is a former member of the ICC International Court of Arbitration and Vice President of the VIAC Arbitral Center.

Richard Kreindler, Partner, Cleary Gottlieb, Frankfurt, focuses on international arbitration and litigation. Richard is a recognized arbitrator, mediator and counsel in international law and disputes and provides regular advice on compliance and anti-corruption programs and policies

Bianca Löcken, Inhouse-Lawyer, Compliance-Officer, Lahmeyer International, Frankfurt am Main, Germany

Jelena Madir, Principal Counsel, EBRD, London, Jelena focuses on large international financing transactions. She has published a number of articles and books on anti-corruption, capital markets and corporate law issues

Irina Nazarova, Partner, Engrade Attorneys, has more than 15 years' experience in dispute resolution, international arbitration and mediation. Irina is regularly active as arbitrator and counsel in fighting corruption. She is also a member of the ICC International Court of Arbitration.

Andrea Pinna, Partner, De Gaulle Fleurance & Associates, Paris. He is specialist for international arbitration. Andrea has been counsel in over 40 arbitration proceedings including M&A Transactions, joint-venture agreements, oil & gas, mining. Mr. Pinna's practice also concerns combating fraud & corruption.

Nada Sramek, Compliance Case Handling Legal, Siemens AG is a criminal lawyer, who previously worked as prosecutor specialized in organized crime and corruption in Zagreb, Croatia. Now she is positioned in Austria working as part of the Siemens Corporate Compliance Team in charge for compliance investigations in the CEE region.

Corruption: what's your contract worth?

THURSDAY 7 May, 2015 8:30am – 6pm	Speaker
Registration and Morning networking session. Meet fellow delegates over a cup of coffee	
Must you pay – to play ?	Max Burger
<ul style="list-style-type: none"> • Introduction & Key risks 	
Session 1: Where it occurs: Corruption – possible contractual scenarios <ul style="list-style-type: none"> • Direct bribes through direct relations/local request • Indirect bribes <ul style="list-style-type: none"> ○ Agents, Consultants, Third Parties ○ Subsidiaries ○ Seemingly unrelated third parties ○ Joint Ventures • Paying methods are: <ul style="list-style-type: none"> ○ subcontracts – e.g. gravel supply, “leasing” of construction equipment; “activities” will be paid/overpaid ○ Political donations, etc. ○ Memorandums of understanding with seemingly unrelated third parties 	Bianca Löcken, & Nada Sramek
<i>Contact Break</i>	
Session 2 Is your contract still valid ? <ul style="list-style-type: none"> • Corruption in the simple bilateral contract • In contracts with third party involvement <ul style="list-style-type: none"> ○ Agents, Consultants, Third Parties ○ Subsidiaries ○ seemingly unrelated third parties 	Sam Eastwood & Günther Horvath
<i>To be continued after the break</i>	
<i>Lunch</i>	
Session 2 continued:	
Is your contract still valid?	
Session 3 Corruption in complex legal structures – Is your contract still valid? <ul style="list-style-type: none"> • Corruption in joint ventures • Corruption in part of consortia structures • Political donations – direct – indirect 	Sam Eastwood & Günther Horvath
<i>To be continued after the break</i>	
<i>Contact Break</i>	
Session 3 continued:	
Corruption in complex legal structures	
Q&A Round Table Discussion & Discussion of cases submitted by participants	All speakers
<i>End of Day 1</i>	

FRIDAY 8 May 2015 9:00am – 12:00pm	Speaker
Session 4: Sanctions by Financing Institutions <ul style="list-style-type: none"> • Payment stops • Consortia <ul style="list-style-type: none"> ○ among financier ○ among contractors (e.g. civil, engineering) ○ effects on only one or all financiers Debarment from future business (e.g. EBRD sanction regimes)	Jelena Madir
<i>Contact Break</i>	
Session 5: Will you go to jail ? <ul style="list-style-type: none"> • Influence of US FCPA and UK Bribery Act on contracts between third countries • Penalties: Can parties losing a contract sue for damages 	Sam Eastwood
Session 6: Other legal consequences <ul style="list-style-type: none"> • Will your court/arbitration award be enforceable? 	Gustav Flecke-Giammarco
Summary and end of conference “what is your contract worth	
Lunch	

Corruption: is your contract enforceable in arbitration & litigation

FRIDAY 8 May 2015 1:30pm – 5:30pm	Speaker
Opening Remarks	Gustav Flecke-Giammarco
Session 1: Scenarios of corruption: Who raises corruption allegations in international arbitration? The different contexts in which corruption plays a role <ul style="list-style-type: none"> • Agent vs Principal • Contractor vs State • State vs. Contractor – State refusing to pay • Investor vs State: (a) investor offering bribe; (b) state official demanding bribe • “seemingly unrelated third parties”–request for payment <ul style="list-style-type: none"> ○ Justifications, excuses and defenses for corrupt conduct ○ The non-uniform reaction by arbitrators from “eyes shut”-to - “zero tolerance”: an overview	Richard Kreindler
Session 2: The uncomfortable truth of corruption: What to do with it? <ul style="list-style-type: none"> • To dig or not to dig? • Existence of a duty to investigate? • Un-cooperative parties: what to do? • The pro-active Arbitral Tribunal / The passive Arbitral Tribunal • Arbitrators’ duty to report to authorities? • Pending criminal investigations or court proceedings – effects on litigation or arbitration ? 	Erhard Böhm

*Contact Break***Session 3: Round Table discussion**

All speakers

- Q&A and discussion of cases submitted by participants

End of Day 2

*Adjourned***SATURDAY 9 May 2015 9:00am – 1:30pm****Speaker****Morning networking session:** Meet fellow delegates over a cup of coffee**Session 4: The applicable law: Which law is the right one?**Irina Nazarova,
&
Joseph Tirado

- Party autonomy, choice of law and its limits
- Application of mandatory laws prohibiting corruption
- “Universal” values prohibiting corruption?
- National and international public policy
- Transnational public policy
- Admissibility of evidence obtained through corruption?
- Court judgments, arbitration awards, injunctions obtained through corruption: To ignore or not ?

*Contact Break***Session 5: The evidentiary dilemma**

Joseph Tirado

- Burden and standard of proof
- Potentially relevant elements of facts in a corrupt scheme
- Extent of proof in corruption matters
- The struggle against secrecy in evidence-gathering
- Arbitral activism and impartiality
- Use of presumptions and circumstantial evidence

Session 6: The sanctions and consequences of corruptionBianca Löcken,
&
Andrea Pinna

- Lack of arbitrability ?
- Lack of jurisdiction?
- Inadmissibility or voidness?
- Damages?
 - Cost for Internal Investigations
 - Cost for advisers like lawyer, tax experts
 - Decision of measures regarding employment
 - Reputational costs, in case of published decision
 - Informing staff
 - Informing clients
 - Informing business partners
 - Declaration and explanation in future tenders regarding Public procurement law
 - Disadvantage in recruiting new staff
- Implementing, maintenance and improving a Compliance Program
- Restitutions?
- Effectiveness of sanctions provided by contractual agreement?

Round Table discussion and Summary

All speakers

End of Conference

Registration Form

Mail or Fax to: Mrs. Natascha Mottl ICC Austria
 @ mail: n.mottl.@icc-austria.org
 ☎ Tel.: +43-1-504 83 00-4306
 ☎ Fax: +43-1-504 83 00-3703

For further details please visit: www.icc-austria.org

responsible for the content: **Eleonore Treu**

Registration		ICC CZ
ICC Austria Conference on Corruption Fleming's Hotel Wien-Westbahnhof; Neubaugürtel 26-28, 1070 Vienna, Austria		
I want to register for and agree that my name/ address is regis- tered electronically by ICC Austria who will inform me about further programs by e-mail.	Corruption: What's my contract worth?? Thursday, 7 th of May 2015 9.00 – 17.00 + Friday, 8 th of May 2015 9.00 – 12.00 <input type="checkbox"/>	Corruption: The Dangers in Arbitration & Civil Litigation & Friday, 8 th of May 2015 13.00 – 17.30 + Saturday, 9 th of May 2015 9.00 – 13.00 <input type="checkbox"/>
Participation fee: incl. Seminar documentation, Coffee break, Lunch	EUR 735,-- (excl. 20% VAT)	EUR 490,-- (excl. 20% VAT)
Closing date: 4 working days before Seminar		
Package Prices: both seminars– 10% discount, Once confirmed by ICC Austria, your registration is legally binding! The regular fee shall be paid within two weeks from receipt of invoice- in case of late registration verifiably before the Seminar starts!		
Participant Information		
Family Name: First Name: <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs.		
Organisation / Company:		
Address:		
Postal Code, City: Country:.....		
E-Mail:Telephone: Fax:		
Job Title / Position :		
Invoice data		
Organisation / Company:		
VAT Number (obligatory for invoicing for European participants):		
Address:		
Postal Code: City:.....		
Country:		
Cancellation Policy:		
A full refund will only be given for cancellations received up to 20 working days before the event. Cancellations must be made in writing. Should you be unable to attend you can nominate a colleague as replacement		
..... Date	 Signature