

# CONTENTS

<i>Table of Cases</i>	xix
<i>Table of Legislation</i>	xxiii
<i>List of Abbreviations</i>	xxvii

## **1: Introductory Chapter: Arbitrating Transnational Corruption**

A. The Decision-maker's Dilemma	1.01
B. The Subject of Study	1.03
C. The Phenomenon	1.08
D. Anti-Corruption: Formal Laws and Informal Codes	1.15
E. Investor Protection in International Investment Arbitration	1.22
F. Arbitral Attitudes	1.26
G. Competing Legal and Policy Questions	1.30
H. Overview of the Book	1.37

## PART I: TRANSNATIONAL CORRUPTION AND INTERNATIONAL EFFORTS AT ITS CONTROL

## **2: The Nature of Transnational Corruption**

A. A Working Definition of Corruption	2.01
B. The 'Inevitability' of Corruption in Social Development	2.13
C. Perspectives from Economics	2.20
D. Prohibited Corruption vs. Permitted Inducement	2.27
E. The Natural Habitat of Transnational Corruption	2.38

## **3: A Typology of Corruption in Foreign Investment**

A. Introduction: Taxonomic Distinctions	3.01
B. Governmental Action Purchased: Transaction vs. Variance Bribery	3.04
C. Corruption as Risk-Abatement: Political vs. Economic Risk	3.20

## **4: International Efforts to Combat Corruption in Foreign Investment**

A. An Overview	4.01
B. National and International Anti-Foreign Corruption Instruments	4.06
C. Efforts to Utilize International Arbitration for Enforcing Anti-Corruption Norms	4.74
D. Conclusion: The Limits of the International Anti-Corruption Consensus	4.80

PART II: THE JURISPRUDENCE ON CORRUPTION IN  
INTERNATIONAL INVESTMENT ARBITRATION:  
CASE AND TREND ANALYSIS

<b>5: The Scope of Inquiry: Treaty vs. Contract ‘Investment Arbitration’</b>	
A. Background to the Commercial/Investment Arbitration Dichotomy	5.01
B. Similarities in Procedure and Personalities	5.06
C. Investment and Commercial Arbitration: the Differences	5.10
D. Protected ‘Investments’ and the Host State’s Economic Development	5.17
E. Contract-Based International Investment Arbitration	5.30
F. A Note on the Cases Selected for Analysis	5.39
<b>6: The Cases</b>	
A. Cases where Corruption was Outcome-Determinative	6.01
B. Cases where Corruption Allegations did not Prosper	6.71
<b>7: Emergent Trends</b>	
A. Introduction	7.01
B. Corruption Allegations are Almost Never Outcome-Determinative	7.03
C. Corruption is Raised Mostly by Host States as a Complete Defence	7.10
D. Investors Sometimes Raise Corruption, Without Success	7.14
E. <i>Who</i> Alleges Corruption Tends to Affect its Treatment by Tribunals	7.16
F. Elevated Evidentiary Standards Have Frequently Been Required for Corruption	7.20
G. Corruption is Sometimes Pursued through Other Means	7.23
H. Few Tribunals Have Inquired into the Host State’s Prosecution of Corrupt Public Officials	7.26
I. <i>When</i> Corruption Occurs Affects its Legal Consequences	7.29
J. Corruption is Alleged Increasingly, with Preclusive Effect	7.33

PART III: TOWARDS A *JURISPRUDENCE CONSTANTE* IN  
INVESTMENT ARBITRATION  
DECISION-MAKING ON CORRUPTION

<b>8: Mere Corruption? On the Reluctance to Decide Corruption Issues</b>	
A. Avoiding Corruption Issues: An Overview	8.01
B. The Importance of Investment Arbitration Decisions in the Progressive Development of International Law	8.04
C. Mere Corruption? Understanding the Scarcity of Corruption-Related Arbitral Reasoning	8.10
D. The Reasons Requirement and Operational Codes in Investment Arbitration Decision-making on Corruption	8.30

<b>9: Proving Corruption</b>	
A. Introduction: The Difficulty of Proving Corruption	9.01
B. Tribunals as Inquisitors? The Duty to Pursue Corruption Allegations	9.04
C. Burdens of Proof, Presumptions, Inferences, and ‘Red Flags’	9.08
D. Standards of Proof	9.15
<b>10: State Responsibility for Corruption: The Attribution Asymmetry</b>	
A. Introduction: The Bilateral Nature of Corruption, International Law and State Responsibility	10.01
B. State Responsibility in International Investment Arbitration	10.09
C. The Salient Investment Arbitration Decisions: An Analysis	10.19
D. State Responsibility and Transnational Corruption	10.34
E. Conclusion: Principles on State Responsibility for Corruption	10.93
<b>11: Concluding Chapter: Legal and Policy Tensions Underlying Anti-Corruption Decision-making</b>	
A. The Scope of Arbitral Decision-making on Corruption	11.01
B. Competing Policy Goals	11.10
C. Distinguishing Political Risk from Economic Risk	11.36
<i>Appendix</i>	305
<i>Index</i>	321