Corruption
An Overview of Select Issues in ICSID Arbitration

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### ICSID

**MISSION:**
- Provides facilities for conciliation and arbitration of international investment disputes

### IBRD (International Bank for Reconstruction and Development)

**MISSION:**
- Lends funds to governments of middle and low-income countries

### IDA (International Development Association)

**MISSION:**
- Provides interest-free loans and grants to governments of countries with the lowest incomes

### IFC (International Financial Corporation)

**MISSION:**
- Provides loans, equity and technical assistance to stimulate private sector investment in developing countries

### MIGA (Multilateral Investment Guarantee Agency)

**MISSION:**
- Guarantees for investors in developing countries against non-commercial risk

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ICSID is part of the World Bank Group
The notion of corruption in the ICSID Convention and investment treaties

The ICSID Convention

- No definition of corruption in the ICSID Convention
- One express reference in relation to the annulment of awards

Investment treaties

- Express legality requirements
- Express references to corruption
Issues arising out of allegations of corruption before ICSID Tribunals

- Allegations by the host State
- Allegations by the investor

1. Corruption as a defense / objection to jurisdiction
   - ICSID jurisdictional requirements
     - A legal dispute
     - A national of a Contracting State
     - Another Contracting State
     - Arising directly out of an investment
     - Consent in writing from the disputing parties

2. Corruption as a sword / violation of investment treaty standards
Issues arising out of allegations of corruption before ICSID Tribunals

Proving corruption
- The Tribunal’s duty to investigate facts suggesting corruption?
- Standard and Burden of Proof

Legal consequences of a finding of corruption
- Corruption as a defense - dismissal of the investor’s claims
- An issue of “asymmetry”?
- Allocation of costs
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