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# Corruption in Arbitration: International Approaches, Ukrainian Perspective

2014 Kyiv Arbitration Days: Think Big  
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2014 Kyiv Arbitration Days: Think Big | November 2014

## Why Corruption?

- “Corruption is one of the biggest global issues of our time. From the Occupy movement to the Ukrainian revolution – all over the world people are taking to the streets. Whilst their grievances are particular to each country, there remains a common thread throughout - corruption.”

Transparency International, 2014

## Definition of corruption:

**No uniform  
international  
definition:**

- Attempts to create universal and regional anti-corruption framework (2003 UN Framework Convention against Corruption), BUT:
- In some states only corruption of public officials is caught;
- In some states “facilitation payments” to foreign officials not deemed corrupt;
- In some states payments to foreign officials with “corrupt purpose” only.

## Many Faces of Corruption:

(Passive and active)  
Bribery

Abuse of office

Trading in influence

Illicit enrichment

Embezzlement and other  
diversion of public funds

## Corruption in international arbitration. Issues.

Is bribing a  
foreign arbitrator  
an offence?

Who is liable  
and for what?

Legal  
consequences of  
bribing an  
arbitrator?



## Is Bribing Foreign Arbitrator an Offence?

**FCPA (15 U.S. Code § 78dd):** Only bribing “foreign officials” is an offence. Foreign arbitrators *prima facie* do not qualify as such.

**2010 UK Bribery Act (section 7):** Only bribing “foreign officials” is an offence. Foreign arbitrators *prima facie* do not qualify as such.

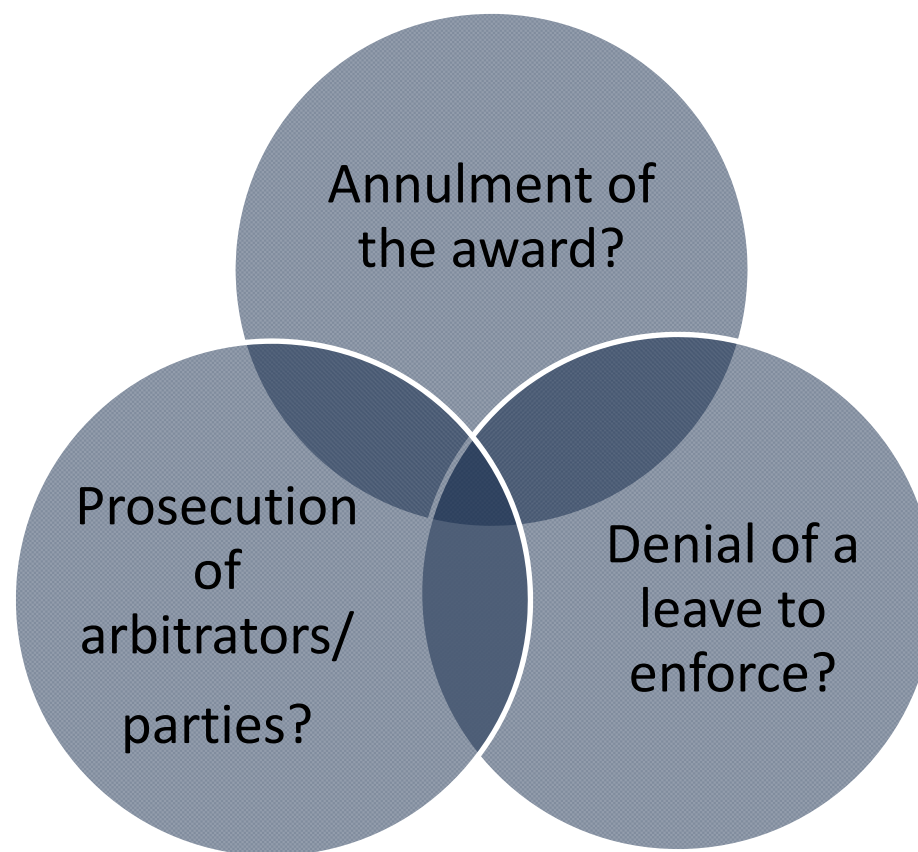
**RF Criminal Code (Article 291):** Only bribing “foreign officials” is an offence. Foreign arbitrators do not qualify.

**Criminal Code of Ukraine (Article 369 as amended):** Bribing a foreign arbitrator is specifically and unambiguously mentioned as an offence.

## Who Is Liable and For What?



## Legal Consequences of Bribing an Arbitrator?





# Corporate Criminal Liability in Ukraine: New Developments

Ukraine introduced corporate criminal liability from 27 April 2014 for corruption offences committed by a corporate entity:

- "*in its interest and on its behalf*"; and
- by "*authorised persons* " (by virtue of statute, contract or charter)

No reported prosecutions to date.

## Corporate Criminal Liability: Totally Liable?

The only specific legal defence available to a legal entity is the statute of limitations.

Generic legal defences (insanity, self-defence, etc.) are not likely to shield the legal entity from liability.

Plain reading of the UA Criminal Code: strict liability for corruption offences!

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