



CONNECTING FUTURES



Session 3B: Breakout Session

II. Do Anti-Corruption Investigations and Anti-Bribery Legislation Influence or Affect International Arbitration?

Scene Setter

Christopher Stephens, *Asian Development Bank*

Chair

Robert Pé, *Orrick, Herrington & Sutcliffe*

Speakers

AB Mahmoud, *Dikko & Mahmoud*

Justice Ellen Gracie Northfleet, *Independent Arbitrator*

Kate Yin, *Fangda Partners*

Rapporteur

Catherine Duggan, *Harvard Business School*

Domestic Anti-corruption Laws and International Arbitration

Kate Yin
May 13, 2015

FANGDA PARTNERS
方達律師事務所

Topics

- ◆ **Do violations of domestic anticorruption legislations influence the results of arbitrations?**
- ◆ **Should that be the case?**

Domestic Anticorruption Violations in International Arbitrations

◆ International Investment Arbitration

- Corruption allegations made by States: Bribery of a senior member of government (*World Duty Free Co., Ltd. v. Republic of Kenya*); Secret participation of government officials or their families in the investment through a commission or agency agreement (*Wena Hotels Ltd. v. Arab Republic of Egypt*) or through shares in or other benefits from an entity involved in the investment (*Metalclad Corporation v. United Mexican States*)
- Corruption allegations made by foreign investors: Unlawful expropriation or unfair treatment of investor's investment is caused by investor's refusal to comply with demands for bribes from the government officials of the host state. (*EDF (Services) Ltd. v. Romania*)

Domestic Anticorruption Violations in Commercial Arbitrations

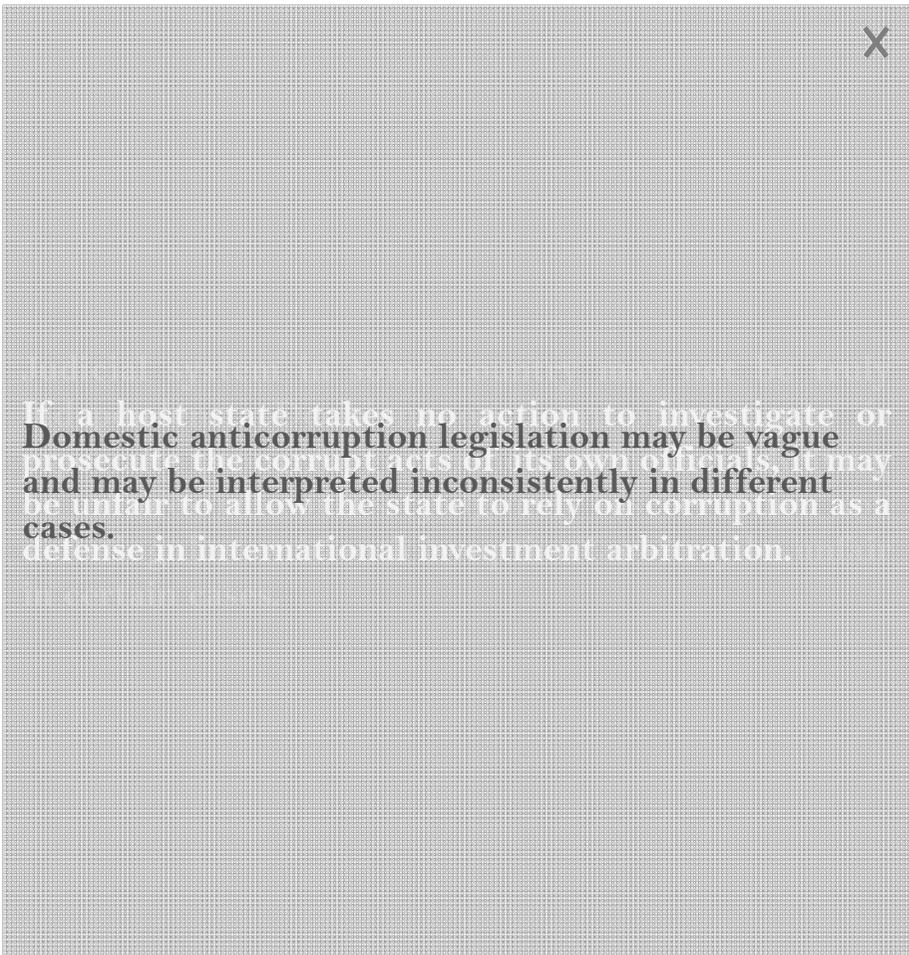
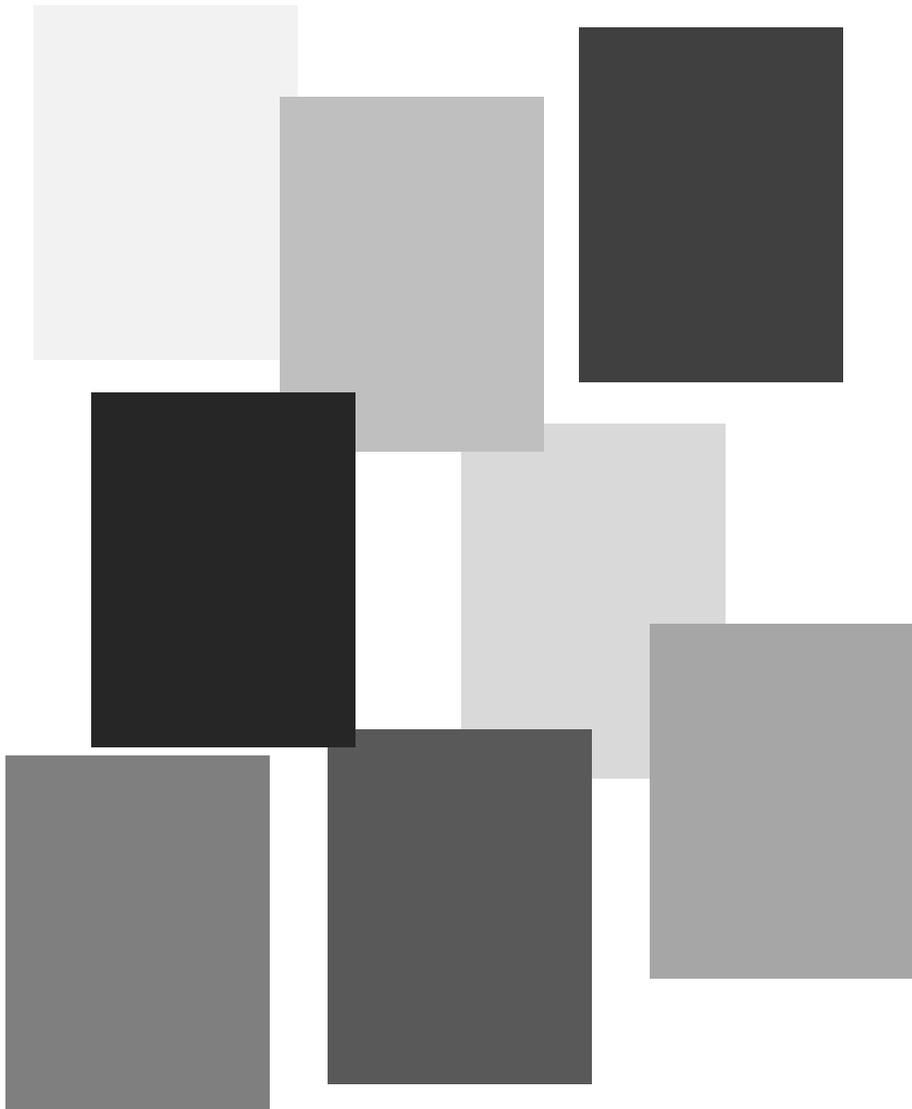
◆ Commercial Arbitration:

- Agency contracts are the most common type of commercial agreements giving rise to allegations of corruption. The dispute usually arises when the principal refuses to pay commission claiming that the agent involved in corrupt acts.
- China International Economic and Trade Arbitration Commission ruled that the two supplemental trademark agreements were invalid since Guangzhou Pharmaceutical' original general manager Li Yiming accepted payment of 3 million HK dollars from Chan Hung To, the chairman of the board of Hung To Group, before signing the two agreements, thus Hung To Group and JDB had no right to use “Wanglaoji” trademark after the valid trademark agreement expired. (*Wang Laoji v. Jia Duo Bao*)

Should That be the Case?

- ◆ **International public policy and morality**
- ◆ **“Clean hands doctrine”**
- ◆ **The contract is void under domestic laws**
- ◆ **International arbitrators may do a better job in redressing corruption than prosecutors or judges in some jurisdictions**

Should That be the Case?



If a host state takes no action to investigate or prosecute the corrupt acts of its own officials, it may be unfair to allow the state to rely on corruption as a defense in international investment arbitration.

Contact



Kate Yin 尹雲霞

Ms. Yin, a leading lawyer in anti-corruption practice in China, has extensive experience in corporate internal investigation, government enforcement, and regulatory compliance. Ms. Yin has extensive experience in U.S. Foreign Corrupt Practices Act (the FCPA) and Chinese Anti-commercial Bribery Law. She participated in many high-profile cases, such as FCPA monitorship of Siemens in helping Siemens establish a golden-standard compliance system, GSK's Chinese commercial bribery case. She authored the First Blue Book of China Anti-commercial Bribery, which is jointly published by CLA under Chinese Ministry of Justice and LexisNexis. Ms. Yin leads the compliance practice at Fangda Partners.

Email: kate.yin@fangdalaw.com

Tel: +852-3976-8867

Mobile: +852 9682-2037

Address: 30/F One Exchange Square 8 Connaught Place Central Hong