



Original Article

Use of Corruption Defense by Host States in Investor-state Arbitration

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Abstract: Concerns about corruption have significantly grown in international investment law. Although foreign investment may boost the social and economic development of the host country, investment tainted by corruption has adverse effects, such as rising transaction costs and declining confidence in the business climate. As a result, there is a contentious argument over whether an investor who used bribery during their investment can file a claim against the host State in international investment arbitration. When investors are involved in corruption to facilitate their investment, the question of how to use corruption defense is crucial for respondent States, particularly those engaged in a ferocious fight against corruption like Vietnam. Therefore, this paper seeks to answer this question. It reveals that in investment arbitration, host States can use corruption defense in diverse ways: as an objection to jurisdiction, a challenge to the admissibility of the claims, or a substantive defense. Further, this paper evaluates the viability of these options by examining how arbitral tribunals have dealt with host States' corruption claims in the past and how the current treaty reforms may affect tribunals' decisions in future disputes. Based on this analysis, the author provides recommendations for countries like Vietnam to effectively use corruption defense in investment disputes.

Keywords: Corruption, bribery, corruption defense, investor-state arbitration, international investment law.

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1. Introduction

Corruption issues have raised increasing concerns in international investment law. While foreign investment can contribute to the social and economic development of the host State, investment tainted with corruption may lead to severe side effects: increasing costs of transactions and weakening confidence in the business environment. Accordingly, the issue of whether an investor who engaged in bribery during their investment can bring claims against the host State before international investment arbitration is subject to heated debate. On the one hand, it is argued that corruption-tainted investment should not be protected because it fails the legality requirements for establishing the arbitral jurisdiction [1]. On the other hand, some scholars contended that the tribunal's declining to hear corruption-related disputes would provide an unfair advantage to respondent States, generating an incentive for States to overlook corruption practices [2].

In this context, the question of how to use corruption claims to defend the States' interests before investor-State arbitration is critical for host States, particularly those in fierce combat against corruption like Vietnam. Therefore, this paper seeks to shed light on this issue through a case law analysis. It first reveals that in investment arbitration, host States can use corruption claims in various ways: to object to the arbitral jurisdiction, challenge the admissibility of investors' claims or make a substantive defense. This paper evaluates the viability of each option by examining how arbitral tribunals have dealt with host States' corruption claims in practice. Further, the author provides recommendations for respondent States to exploit corruption defense to protect their legitimate interests before investor-State arbitration.

2. Corruption as a Basis to Object to Jurisdiction

It would be desirable for host States if their corruption arguments could succeed in the

jurisdiction phase. In this way, the State can close the case from the preliminary stage, escaping any liability while saving a significant amount of time and budget.

To successfully challenge the tribunal's jurisdiction, examining the basis for establishing investment arbitration jurisdiction is critical. Generally, investment arbitral tribunals can find their jurisdiction based on two grounds. First, in investment contracts between foreign investors and the host State (or the host State agencies), the parties may agree to bring any disputes related to the contracts to arbitration. Second, under investment treaties, contracting States make a unilateral offer to arbitrate, under which they agree that any disputes between one State and investors of another State can be resolved by arbitration. The arbitration agreement will then be created upon the investor's acceptance of this offer by submitting a notice of arbitration. The typical feature of investment treaty arbitration is that the economic interests underlining the dispute and the conclusion of the arbitration agreement are separated in time and space in investment treaty arbitration. To be eligible to accept the host State's offer to arbitrate, which is also stated in the investment treaty, the foreign national must already have assets in the host State that meet the criteria of an investment specified in the treaty. The acquisition of the pertinent assets and the completion of the arbitration agreement did not coincide [3]. This fundamental difference between contract-based arbitration and treaty-based arbitration leads to different consequences of corruption allegations on jurisdictional issues in the two situations.

2.1. Corruption Allegations to Challenge Contract-Based Arbitral Jurisdiction

When the investment arbitral tribunal is established following an investor-State contract, the parties' consent is central to the issue of jurisdiction, which is often expressed in the form of an arbitration clause in the main contract. In this sense, contract-based investment arbitration shares standard features

with commercial arbitration: the dispute arises out of a contractual relationship, and the arbitration jurisdiction largely depends on the arbitration clause's validity. Therefore, a case analysis of commercial arbitration dealing with corruption defense would provide a helpful starting point. The beginning of this discussion is marked by the often-cited ruling of Judge Lagergren in an International Chamber of Commerce (ICC) Case decided more than a century ago. In this case, although neither party objected to jurisdiction, the arbitrator found that the contract at issue was made for the purpose of bribing, therefore, rejected hearing the case. According to the arbitrator, corruption was an "international evil", or "gross violations of good morals and international public policy; therefore, parties engaging in such conduct must realize that "they have forfeited any right to ask for the assistance of the machinery of justice (national courts or arbitral tribunal) in settling their disputes" [4].

This view, however, raised growing concerns among scholars and practitioners. First, due to the judge's rejection to hear the claim from the outset, the questions of whether the corruption allegation was well founded and how it might affect the contract's validity remain unanswered [5]. Second, the tribunal's denial of jurisdiction would force the parties to bring their disputes before a national court, posing risks of bias, inefficiency, and obstacles to enforcement. This would ultimately undermine the purpose of arbitration to provide an efficient alternative dispute resolution method [6].

Therefore, in modern arbitration, tribunals tend to depart from this approach, relying on the well-recognized doctrine of separability to retain jurisdiction to hear corruption claims [7]. The separability doctrine generally states that the arbitration agreement is "presumptively distinct and independent from the parties' underlying contract, and is supported by the separate consideration of the parties' exchange of promises to arbitrate" [8]. Accordingly, the grounds for invalidity of the main contract do not necessarily extend to the arbitration

agreement. Of course, in some instances, the reasons which render the main contract invalid may be identical to those which impair the validity of the arbitration agreement, such as where the contracts are executed under threats, duress, or forgery [9]. Even if the contracts were procured by corruption, it would be challenging to establish that the arbitration agreement was executed due to the bribe [10].

The reasonings based on the separability doctrine are also applicable to investment arbitration. In *World Duty Free Company Limited v. Kenya*, the investors relied on an arbitration clause under their investment contract with Kenya to bring contractual claims against the State under the ICSID Convention [11]. The tribunal found that the claimant had paid a substantial bribe to the President of Kenya to procure the investment contract, but "no evidence was adduced... to the effect that the bribe specifically procured (the arbitration agreement)" [12]. Accordingly, the tribunal proceeded to determine the impact of corruption on the underlying contract, assuming that the arbitration agreement remained valid and effective. Interestingly, the respondent State in this case did not raise corruption claims to challenge the tribunal's jurisdiction but successfully argued against the admissibility of the investor's claims. Detailed analysis of the admissibility arguments in case of corruption will be provided in Part 2 of this paper.

Accordingly, given the wide acceptance of the separability doctrine, jurisdictional defense based on corruption allegations would be unlikely to succeed in investment contract-based arbitration. In the case of contract-based arbitration, what would be a better alternative for the States to raise corruption defense? Would the situation be different in the case of investment treaty arbitration? These questions will be answered in the following sections.

2.2. Corruption Allegations to Challenge Treaty-Based Arbitral Jurisdiction

Unlike in contract-based arbitration, corruption-based objections to jurisdiction in

treaty investment arbitration would have more chance of success. *First*, investment treaty arbitration seems unaffected by the doctrine of separability because the agreement to arbitrate is based on a treaty [5]. Under investment treaties, contracting States provide a unilateral offer to arbitrate with certain conditions that foreign investors must satisfy to be in a position to accept that offer. The arbitration agreement is completed upon an investor's unconditional acceptance of the States' offer. Therefore, whether alleged corruption acts can be a bar to jurisdiction primarily depends on how States have structured the treaty at issue.

Second, many investment treaties include language stating that an investment must be carried out in accordance with local laws [9]. Such a legality condition is often featured under the investment definition of a treaty, which defines investment as any sort of assets accepted or made in accordance with host states' laws [13]. In arbitral practice, respondents have frequently invoked this legality clause to challenge the jurisdiction in case of investment tainted with illegal acts such as fraud and corruption. In *Metal-Tech v. Uzbekistan*, for example, when sued by an Israeli investor before an ICSID Convention, Uzbekistan objected to the tribunal's jurisdiction on the grounds that the claimant made its investment through bribery, therefore failing the legality condition under the Israel-Uzbekistan Bilateral Investment Treaty (BIT). Article 1 (1) of the BIT defined investment as "any kinds of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made". The tribunal interpreted this provision as limiting the scope of arbitrable disputes only to those arising from an investment implemented in compliance with local laws. In other words, this legal condition precluded an illegally established investment from the treaty protection. Having found that the claimant had paid bribes to government officials to facilitate its investment establishment, the tribunal held that such

payments violated Uzbek laws and rejected jurisdiction [14].

In addition to the investment definition, express legality requirements may also be found in other treaty provisions. In *Inceysa v. El Salvador*, the tribunal recognized that the legality condition could be expressed in various treaty provisions, such as the definition of investment, the precepts related to "Protection" or the chapter on "Promotion and Admission". In this case, although the investment definition in the relevant BIT did not include "in accordance with law" language, the tribunal instead found such language in two other different treaty provisions: first, the "Protection" provision, where contracting States commit to protecting the investments made in accordance with its legislation and second, the provision extending BIT protection to investments made before the entry into force of the treaty "in accordance with the laws of the other Contracting Party". Based on these provisions, the tribunal concluded that an investment made illegally was not within the consent of the contracting States and outside the tribunal's jurisdiction [15]. The *Inceysa* tribunal's decision has been followed by subsequent tribunals [16], providing host States with various means to exclude disputes involving illegal investments from the scope of their consent to arbitrate.

Third, even when a treaty is silent on the legality requirement, respondent States have successfully argued for the implicit inclusion of this requirement in a BIT or the ICSID Convention. In *Cortec v. Kenya*, the States claimed that even without an express provision under the BIT, the investment must be established in compliance with local laws to access the treaty protection. Upholding this argument, the tribunal concluded that (for an investment to be protected on the international level, it has to be in substantial compliance with the significant legal requirement of "the host state") [17]. Likewise, in interpreting the ICSID Convention, the tribunal in *Phoenix Action v. Czech Republic* found an implicit legality

condition under Article 25 (1) of the Convention despite an absence of express provisions in the concerned BIT. The tribunal in this case explained that "States could not be deemed to offer access to arbitration to investments made in violation of their laws" as it would be inconsistent with the purpose of the arbitration mechanism under the ICSID Convention [18].

Several ICSID tribunals have also endorsed this reasoning. As observed by the tribunal in SAUR v. Argentina, the requirement of not violating local laws is an implicit condition inherent in every BIT, as it cannot be understood under any circumstances that a State would protect investment arbitration for investors who had engaged in illegal conduct to receive that protection [19].

It has been shown that corruption claims based on legality requirements would bestow upon the respondent States certain advantages in challenging arbitration jurisdiction. There are, however, several issues to be considered when States invoke this defense. The first one is the temporal scope of the legality requirement. In the Metal-Tech case, the respondent State argued that the BIT provision requiring investment to be implemented in accordance with national laws should be interpreted to exclude any investment "made, carried out, or operated in an unlawful manner". The tribunal rejected this position, holding that the legality requirement referred only to the initial establishment of an investment, not its operation [14]. A similar conclusion was reached by the arbitrators in Kim v. Uzbekistan when they interpreted the "made in accordance with law" clause in the relevant BIT, observing that the word "made" limits the legality test only to the initiation of investment. While the tribunal acknowledged the possibility that an illegal act by investors may occur after establishing their investment, this would not be a jurisdictional matter but a merit one [20]. Thus, while corruption may happen at any phase of the project, the legality requirement can hardly be

used as a jurisdictional defense in case of corruption in the post-establishment stage [1].

The second problem arises when the host State relies on the treaty's implicit legality requirement, as the arbitral practice has shown a divergent approach. While several tribunals embraced the legality principle as an implied condition under investment treaties, others refused this interpretation. In Saba Fakes v. Turkey, the tribunal commented, albeit in dicta, that "the principles of good faith and legality cannot be incorporated into the definition of Article 25(1) of the ICSID Convention without doing violence to the language of the ICSID Convention". In their view, an investment, whether legal or illegal, made in good faith or not, remains an investment [21].

Similarly, in the Metal-Tech case, the tribunal found that whether a treaty requires investment to be made in compliance with national laws depends on the treaty wording, and they should not incorporate an additional jurisdiction requirement into the treaty [14]. Given the divergence in arbitral practice, it would be unpredictable for host States in a case where they relied on implicit legality requirements to make a jurisdictional defense.

3. Corruption as a Bar to Admissibility of Investors' Claims

If arbitration jurisdiction cannot be challenged, the question arises as to whether other grounds exist to dismiss claims tainted with corruption in the preliminary stage. Arguments against the admissibility of claims may provide a possible answer. As traditionally explained by the International Court of Justice in the Oil Platforms case, admissibility concerns situations where a court or a tribunal has jurisdiction over a case but does not proceed to an examination of the merits for legitimate reasons [22].

Challenges to jurisdiction and admissibility involve fundamentally different questions. Jurisdiction concerns the scope of the tribunal

authority, primarily based on the parties' arbitration agreement. In contrast, admissibility deals with the issue of whether the tribunal should hear a particular claim [1]. Keith Highet rightly pointed out the difference in his Dissenting Opinion in *Waste Management v. Mexico*: "Jurisdiction is the power of the tribunal to hear the case; admissibility is whether the case itself is defective-whether it is appropriate for the tribunal to hear it" [23].

Accordingly, as a 'gateway' issue, the question of jurisdiction needs to be answered first, and tribunals may conduct this inquiry without substantially analyzing the merits. By contrast, depending on the facts of each case, tribunals may decide to deal with the claim of admissibility either in the preliminary phase or jointly in the merits stage (particularly if it requires a substantial examination of complex factual issues) [1].

Using corruption allegations to object to the admissibility of investors' claims can serve as a viable alternative to jurisdiction defense in certain circumstances. This would be a costly and time-efficient strategy. In fact, unlike in commercial arbitration, investment arbitral tribunals, given the influence of public international law, are more willing to decide on the parties' preliminary objections (whether concerning jurisdiction or admissibility) before furthering the procedures on the merits [5]. Further, as noted in the previous section, there are certain circumstances where it would be difficult for respondents to challenge jurisdiction based on corruption claims. For example, in contract-based arbitration, tribunals are eager to accept jurisdiction despite corruption allegations due to the doctrine of separability. A similar decision may be reached in treaty arbitration if the relevant treaty did not include an express legality requirement, or the alleged corrupt conduct was not related to the establishment of investment. In such cases, however, the

respondents may challenge the admissibility of investors' claims tainted by corruption on the ground of violation of international public law or the 'unclean hand' doctrine.

3.1. *Transnational Public Policy*

Several tribunals in commercial and investment arbitration have relied on transnational public policy to dismiss claims tainted with corruption. In many ICC cases, the arbitral tribunals have repeatedly referred to transnational or international public policy to dismiss contractual claims tainted with corruption. In ICC case No 1110, for example, Judge Lagergren observed that "corruption is an international evil; it is contrary to good morals and to an international public policy common to the community of nations" [4].

Investment tribunals unsurprisingly follow this approach in contract-based cases. In the *World Duty Free* case, the claimant had given a two-million-dollar 'personal donation' to the President of Kenya to procure the contract, justifying it as customary practice and a matter of protocol by the Kenyan people. The tribunal considered the payment as a bribe, which was not only in breach of the Kenyan and English laws as applicable contract laws but also contrary to transnational public policy. The tribunal found a general condemnation against corruption practices by examining domestic laws and international conventions. Further, through an extensive examination of cases decided by domestic courts and commercial arbitration, the tribunal concluded that "bribery is contrary to the international public policy of most, if not all, States or, to use another formula, to transnational public policy." Accordingly, they declined to hear claims based on contracts of corruption or contracts obtained by corruption [12].

The argument of transnational public policy is also applicable by analogy in treaty cases involving corruption for several reasons. First, almost all legal systems consider corruption to be against public policy. As noted by the

tribunal in the World Duty Free case, the argument that corruption is against transnational public policy is well grounded on the notion that this universal condemnation of corruption is expressed in local legislation, international treaties, case law, and scholarly opinions alike [12].

Second, tribunals should consider the issue of transnational public policy for the enforceability of their awards in cases involving corruption claims. One ground for refusing to enforce arbitration awards is that it violates public policy under the jurisdiction where the enforcement is sought. This principle is expressed in Article V.2 of the New York Convention 1958 on Recognition and Enforcement of Foreign Arbitral Award and Article 36 of the UNCITRAL Model Law. Given the broad consensus that corruption is against public policy in almost all legal systems, granting treaty protection to corruption-tainted claims would threaten the enforceability of the arbitral award under the mechanism of the New York Convention.

Third, several investment tribunals have relied on transnational public policy in case investors commit fraud or illegal conduct. For example, in *Plama v. Bulgaria*, the relevant treaty - the Energy Charter Treaty (ECT) did not impose "in accordance with law" requirements on investments. However, the tribunal rejected the interpretation that the protections under the ECT could cover investments that were made contrary to domestic or international law. Finding that the claimant had purposefully withheld information on its former partners' withdrawal from their consortium from the competent local authority during negotiations, the tribunal determined this conduct as "a deliberate concealment amounting to fraud". According to the tribunal, the investor's fraudulent misrepresentation in establishing its investment breached not only local laws but also principles of international law, including the principle of good faith. Therefore, the tribunal concluded that granting the claimant's investment the protections under

the ECT would be "contrary to the basic notion of international public policy" and they should not enforce a contract obtained by wrongful means (fraudulent misrepresentation). The tribunal further requested the investor to compensate the host State over US\$ 7 million for its arbitration fees, legal fees, and other costs [24].

The transnational public policy argument is also invaluable if the corruption act arises during the investment performance. In such cases, because the investment is legally established, even if the treaty contains a 'made in accordance with law' requirement, this would be unable to bar the jurisdiction [25]. Respondents, however, can argue that the corrupt conduct of claimants renders their claims inadmissible as a matter of public policy. In this sense, the awards in *Churchill Mining and Planet Mining v. Indonesia* may provide helpful guidance, although these cases concern the claimants' fraud and forgery, not corruption. The tribunal held that while the initial investment was sound, there was evidence of massive fraud committed during the investment performance. Accordingly, they determined the claims inadmissible "as a matter of international public policy" [26].

3.2. *Unclean Hand Doctrine*

Another argument that can be raised as corruption defense relies on the unclean hand doctrine. Traditionally rooted as an equitable defense from common law, this doctrine provides that the court will not lend its aid if a claimant's cause of action is based on an unlawful act [27]. Where an investor has engaged in some form of corruption to facilitate their investment, the respondent State may invoke this doctrine to claim that the claimant comes with 'unclean hands'; therefore, his claims should be barred. This argument seems attractive to respondents, mainly where the relevant treaty does not contain an express legality requirement [28]. In such a scenario, the tribunal might refuse to grant treaty

protection to corruption-tainted claims if the unclean hand doctrine was applicable.

When raising a defense based on the unclean hand doctrine, the respondents should be well-noticed that the application of this doctrine has yet to receive support from investment tribunals. In *Yukos Universal v Russia*, where the concerned treaty, the ECT, did not provide an explicit legality requirement, Russia sought to invoke the unclean hand doctrine to challenge the admissibility of claims. The tribunal, however, denied this position because neither could the ECT be read to include the unclean hand doctrine nor could this doctrine be applied as a general principle of law recognized by civilized nations within the meaning of Article 38(1)(c) of the ICJ Statute. As the *Yukos* tribunal pointed out, the unclean hand principle in international law in general and investment law in particular remains controversial [29]. In *Niko v. Bangladesh*, a treaty case involving corruption allegations, the tribunal did not completely discard the applicability of this doctrine when considering the respondent's admissibility argument based on the unclean hand doctrine. Instead, the tribunal endorsed the three-criteria test as set out by the UNCLOS Arbitral Tribunal in *Guyana v Suriname* as follows:

- i) The breach must concern a continuing violation;
- ii) The remedy sought must be the protection against the continuance of that violation in the future, not damages for past violations;
- iii) There must be a relationship of reciprocity between the obligations considered.

Examining the facts of the case, the tribunal found that none of these criteria had been met, therefore rejecting the State's objection [30]. If the approach of the *Niko* tribunal is adopted in future investment cases, corruption claims can hardly meet such a strict test, which represents a nearly insurmountable challenge for respondents.

4. Corruption Claims as a Substantive Defense

As a practical matter, respondents often take every chance to raise preliminary objections to stop the claims from going into the merits phase. Therefore, using corruption allegations to challenge the claims' jurisdiction or admissibility would be a desirable strategy. The success of these arguments depends on certain factors: first, whether the dispute is a contractual arbitration or treaty arbitration; second, if it is a treaty case, whether there exists a legality requirement under the relevant treaty; third, whether the alleged corruption arises in the initiation or performance of the investment; and fourth whether the tribunal is willing to take in account the transnational public policy or the unclean hands doctrine.

So, what if the preliminary objections fail? In this case, can respondents raise corruption issues in the merits phase to defend themselves? This part will show how respondents can invoke corruption as a substantive defense by analyzing the potential impacts of corruption conduct on the merits or quantum of damages.

To raise corruption as a substantive defense, it is necessary to distinguish the two scenarios. The first one is where the challenged measures implemented by the host State result from the investor's corruption act. A typical situation is when the State initiates criminal proceedings to investigate the investor's corrupt conduct, leading to the investor's claim of expropriation under the relevant treaty. In this case, the respondent State can argue based on the police power doctrine or States' right to regulate to protect itself from the investors' claim. The corrupt conduct of investors would be a reasonable excuse for the expropriation measures.

The second scenario is where the corrupt conduct is not related to the investor's claims; for example, the corruption is revealed after the dispute arises. Even if the tribunal decides to proceed with the case to the merits, they can still consider the evidence of investor misconduct in their merits analysis [25].

In *Lao Holdings v. Laos*, the investor relied on the BIT between Netherlands and Laos to initiate an ICSID arbitration against Laos. Having made a significant investment in the Laotian casino industry since 2007, the claimants then fell into a dispute with their local partner, who was alleged to maintain a close political connection with the government. The claimant accused the local government of unfair treatment to drive it out of Laos. In response, the host State alleged that the investors were involved in several corruptions while performing the investment. Notably, the State accused the investors of giving a USD 500,000 bribe to a Laotian government official in an attempt to stop an audit of the investors' casino and to force the closing of a rival slot machine club. The tribunal concluded that "it is more probable than not that Madam Sengkeo was used as a conduit to bribe Government officials to stop the E&Y audit, but that this conclusion is not established to the higher standard of clear and convincing evidence". Although the State's preliminary objections based on corruption failed the burden of proof, the tribunal ultimately dismissed the investor's claims on merits. In reaching this conclusion, the tribunal did take into account the evidence of corrupt acts by the investor during the project's performance [25].

5. Some Thoughts for Vietnam

The presence of corruption in Vietnam has long been criticized as a weakness in its investment environment. Several foreign investors have claimed that they were asked to pay bribes as a prerequisite to investment, which results in amplified business costs and negatively impacts the country's reputation in the view of foreign investors [31].

Vietnam has recently put in place a plethora of anti-corruption policies aimed at tackling the issue of corruption within the country, with a focus on both enacting and enforcing the law [32]. While the State is carrying massive

measures against corruption, foreign investors may face greater impacts. On the one hand, anti-corruption measures can positively affect the investment environment and attract long-term investment [33]. On the other hand, those investors who were involved in corruption cannot avoid penalties for their misconduct.

International experiences have shown that policy changes in anti-corruption measures may expose the host State to claims from those affected foreign investors before investment arbitration. Therefore, it is recommended that Vietnam make necessary preparations to defend itself in such situations, especially given the current increase in the number and complexity of disputes with foreign investors related to corruption issues.

Analyzing the experiences of respondent States in investment disputes over corruption-related matters provides valuable lessons for Vietnam. Corruption defense is increasingly being accepted in investment arbitration, and it is important for Vietnam to take steps to protect its interests in cases involving corruption issues.

First, Vietnam should ensure that investment treaties and contracts with foreign investors contain a legality condition on protected investments, which will facilitate the successful invocation of corruption-based jurisdictional defense and prevent corrupt investors from bringing claims before international arbitration. *Second*, the country should develop and enforce comprehensive and robust mechanisms to demonstrate a strong commitment to fighting corruption. This will help strengthen its position when arguing that corruption-tainted claims are inadmissible in contract-based arbitration or under the unclean hand doctrine. *Third*, Vietnam should also be prepared to raise a corruption defense in the merits phase of investment arbitration, even if corruption was not raised in the preliminary phases, as arbitral tribunals may still consider the likelihood of corruption when examining the substantive aspects of the claims. Finally, Vietnam should stay informed about developments in arbitral practice and adapt its

strategies accordingly. By taking these steps, Vietnam can increase its chances of successfully defending itself against corruption-tainted claims brought by foreign investors in investment arbitration.

In conclusion, the increasing acceptance of corruption defense by arbitral tribunals provides an effective tool for host States like Vietnam to protect themselves in investment disputes. The corruption-based argument can be invoked in different phases of investment arbitration, including as a jurisdictional defense and an inadmissibility argument. Despite the reluctance of investment tribunals to protect corruption-tainted claims, corruption defense remains an essential strategy for host States in their fight against corruption.

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