

“Academic Perspectives on Corruption and Foreign Direct Investment in the Asia-Pacific Region”

Date: 29 May 2023

Venue: ILIA Conference Room at UBD

Corruption is condemned in any society. However, scholars and practitioners have not reached a consensus on the consequences of corruption in foreign direct investment (FDI). Thus, Asian countries have adopted different approaches to FDI-related corruption. Brunei has been fighting against corruption successfully, as evidenced by its high ranking in the *Corruption Perceptions Index*. In 2020, the Sultanate ranked second in ASEAN after Singapore. The result is impressive, and Brunei’s rigorous attitude towards corruption suggests further improvement is plausible. This symposium’s invited speakers will analyse and discuss the mechanism of FDI-related corruption from legal and economic perspectives, using case studies from countries in the Asia Pacific. Through the sharing of experiences and best practices, the symposium contributes towards a deeper understanding of corruption in FDI and its mitigation.

8:00-8:20	Arrival of Guests and Speakers
8:20-8:30	Arrival of the Guest of Honour
8:30-8:35	Recital of Surah Al-Fatihah and Dua
8:35-8:45	Opening Remarks by Dr Nobumichi Teramura (IAS, UBD)
8:45-8:50	Welcome Message by Dk Dr Noor Hasharina binti Pg Hj Hassan (Director of IAS)
8:50-9:30	Keynote Lecture by Professor Luke Nottage (Sydney Law School)
9:30-9:35	Presentation of Token of Appreciation
9:35-9:50	Group Photo
9:50-10:10	Networking Tea
10:10-11:00 (10min presentation x 3 + 20min Discussion and Q&A)	First Session: Business and Economic Issues Relating to Corruption <ul style="list-style-type: none"> - Professor Ahmed Masood Khalid (SBE, UBD): Does corruption hinder FDI and growth in Asia and beyond?: The grabbing versus helping hand revisited. - A/Professor Bruno Jetin (IAS, UBD): Correlation between the level of corruption in host states and the amount of foreign investment into Asian nations. - Dr Mohd Hairul Azrin Haji Besar (SBE, UBD): The accounting measures to crackdown on corruption in the Asian states. <p>Moderator: Dr Sazali Zainal Abidin (SBE, UBD)</p>
11:00-12:10 (10min presentation x 4 + 30min Discussion and Q&A)	Second Session: Legal Issues Related to Corruption and ISDS in Asia <ul style="list-style-type: none"> - Dr Martin Jarrett (Max-Planck Institute): Rebalancing asymmetries between host states and investors in Asian ISDS. [online] - Professor Justice Anselmo Reyes (Doshisha University; Singapore International Commercial Court): The use of domestic law to curb corruption in Asia & elsewhere. - Professor Dr Colin Ong KC (Academy of International Dispute Resolution & Professional Negotiations): The standard of proof for corruption allegations in Asian ISDS.

	<ul style="list-style-type: none"> - Dr Yueming Yan (Chinese University of Hong Kong): Multi-Tiered International Anti-Corruption Cooperation in Asia: Treaties Review and Prospects. [online] <p>Moderator: Professor Luke Nottage (Sydney Law School)</p>
12:10-14:00	Working Lunch (on site)
14:00-16:30	Third Session: Country Reports on Corruption and FDI in the Asia-Pacific Region
14:00-15:00 (10min presentation x 3 + 30min Discussion and Q&A)	<p>Part 1: East Asia</p> <ul style="list-style-type: none"> - South Korea: Professor Joongi Kim (Yonsei Law School) [online] - Japan: Professor Luke Nottage (Sydney Law School) and Dr Nobumichi Teramura (IAS, UBD) - China: Professor Vivienne Bath (Sydney Law School) <p>Moderator: Professor Justice Anselmo Reyes (Doshisha University; Singapore International Commercial Court)</p>
15:00-15:10	Short Break
15:10-16:50 (10min presentation x 5 + 50min Discussion and Q&A)	<p>Part 2: South and Southeast Asia</p> <ul style="list-style-type: none"> - India: Professor Prabhash Ranjan (Jindal Global Law School) [online] - Thailand: Professor Sirilaksana Khoman (Thammasat University; National Anti-Corruption Commission) Professor Sakda Thanitcul (Chulalongkorn University [online]) and Professor Luke Nottage (Sydney Law School) - Indonesia: Professor Simon Butt (Sydney Law School) [online], Mr Antony Crockett (HSF Hong Kong) and Professor Tim Lindsey (Melbourne Law School) [online] - Lao Republic: Dr Romesh Weeramantry (Melbourne Law School; National University of Singapore; Clifford Chance); Ms Uma Sharma (National University of Singapore) - The Philippines: A/Professor Jocelyn Cruz (De La Salle University) <p>Moderator: Dr Nobumichi Teramura (IAS, UBD)</p>
16:50-17:00	Concluding Remarks by A/Professor Bruno Jetin

FIRST SESSION: BUSINESS AND ECONOMIC ISSUES RELATING TO CORRUPTION

Does Corruption Hinder FDI and Growth in Asia and Beyond? The Grabbing Versus Helping Hand Revisited.

Professor Ahmed Masood Khalid (SBE, UBD)

Abstract: Corruption is considered a major issue globally, particularly for developing countries as it takes away important resources resulting in huge cost to the economy. This is especially true in case of attracting foreign direct investment (FDI) in the host country. However, theoretical literature has counter arguments, some scholars agreeing with the above argument while others suggesting that in some cases, corrupt practices facilitate business transactions, thus helps to attract FDI. This chapter makes an attempt to further explore this literature. We, first provide a review of theoretical and empirical literature on corruption-growth and corruption-investment relationships. We also provide interesting details on the cost of corruption as reported in the literature. Later, we perform some econometrics analysis to verify the ‘grabbing hand’ and ‘helping hand’ views on the impact of corruption. The empirical findings of this paper support a grabbing hand view for the top 20 (least corrupt) countries while the evidence suggest a helping hand view for the bottom 20 (most corrupt) countries. We also find evidence supporting a non-linear corruption-growth and corruption-investment relationship for the sample of 20 most corrupt countries. We believe, these are interesting findings and could have important policy implications.

Ahmed M Khalid holds a PhD in economics from Johns Hopkins University, USA. He joined Universiti Brunei Darussalam in 2015 as a Professor of Economics. Previously, he worked at the Bond Business School, Australia and the National University of Singapore. Ahmed has also worked as a consultant with the World Bank and many international institutions as well as holding visiting faculty positions in different universities. His research interests include applied macroeconomics/monetary economics with a focus on financial reforms, regional integrations and globalization. He currently serves as Editor-in-Chief of the Journal of Business and Economic Analysis and Associate Editor of the Singapore Economic Review as well as member of editorial boards of a number of regional and international journals.

The Effect of Corruption on Foreign Direct Investment in Asia: “Helping Hand” or “Grabbing Hand”?

A/Professor Bruno Jetin (IAS, UBD), Jamel Saadaoui and Haingo Ratiarison

Abstract: Our presentation looks at the effect of corruption on Foreign Direct Investment (FDI) at the world level, in East, South, and Southeast Asia. The academic literature is inconclusive because the nature of corruption can be different from one country to another and because various other factors can decide a foreign

company to invest in a country or region despite a relatively high level of corruption. To shed light on the effect of corruption, we proceed to a panel econometrics investigation that assesses the relationship between the stock of FDI and the “control of corruption”, published by the World Bank, for a sample of 180 countries over the period 2002-2019. The “control of corruption” is an index, combining 23 different assessments and surveys capturing perceptions of the extent to which public power is exercised for private gains. A low score means that the authorities do not fight corruption or are not effective in fighting corruption, and therefore corruption is high, and vice-versa. We include two control variables (real GDP and secondary school enrollment) to better estimate the specific role of corruption. Our results show that at the world level, the control of corruption is low and it has a positive effect on FDI, which means that corruption is a stimulus to FDI. However, in Asia, the control of corruption is higher, and it has a positive effect on FDI, which means corruption is a “grabbing hand”. It is particularly the case in East Asia, but not in South Asia, where corruption “helps” foreign investments. In Southeast Asia, there is no significant relation at the regional level, although for some countries a high level of control of corruption is associated with a higher level of FDI.

Bruno Jetin is Associate Professor at Universiti Brunei Darussalam (UBD) where he was Director of the Institute of Asian Studies (2018-2022). Prior to joining UBB, he was a researcher at the Institute for Research on Contemporary Southeast Asia (IRASEC, CNRS-MAEE, Bangkok) and Associate Professor at the University Sorbonne Paris Nord where he was Deputy Director of the Research Center in Economics. He holds a PhD in economics from the University of Sorbonne Paris Nord. His current research areas include ASEAN and the Belt and Road Initiative, foreign investment and trade in Asia-Pacific, income distribution and growth. He is also an expert of the automobile industry and the electric car.

Jamel Saadaoui is a lecturer and researcher in social sciences, specialized in several topics related to international economics. Since 2013, he has been a Senior Lecturer with Habilitation in Economics at the University of Strasbourg, and has been affiliated to the BETA laboratory for his research activities. Furthermore, he teaches Economics and Statistics at the Faculty of Economics and Management, FSEG, of the University of Strasbourg. His recent works in applied economics explore the interactions between geopolitical tensions and the economy, the nature of long-run economic growth, the flattening of the Phillips curve in the EU regions, or the buffering effects of the international reserve holdings.

Haingo Ratiarison is currently a student at the University of Strasbourg and is following a double training in Master 1 "Macroeconomics and European policies" and a selective diploma course allowing advanced initiation to research called “Magistère”. She holds a Bachelor in Economics at the Faculty of Economics and Management from University of Strasbourg. In addition, she is one of the research assistants of Jamel Saadaoui, Senior Lecturer and researcher affiliated to the BETA-CNRS laboratory in Strasbourg. Her research interests

are corruption and tax evasion and their macroeconomic effects. She is also interested in development economics and European macroeconomics.

The Accounting Measures to Crackdown on Corruption in the Asian Context

Dr Masairol Masri and **Dr Mohd Hairul Azrin Besar** (SBE, UBD)

Abstract: Accounting and financial reporting is part of the corporate governance mechanism tools available in ensuring transparent and fair reporting to the shareholders and the stakeholders in general. Financial reports provide relevant meaningful quantitative and qualitative information for the users in assisting them to make proper decisions on their investments and relations with the respective corporate entities. The act of recording the financial transactions per the available international or local financial reporting standards provides a control mechanism ensuring the corporation's financial dealings are properly reported and activities such as corruption will be hindered with the reporting requirement. The paper focuses on the impact of financial reporting standards in curbing corrupt practices by corporations in business dealings through a review of the literature on accounting standards and corruption. It is observed that the implementation of financial reporting standards, especially the International Financial Reporting Standard (IFRS), has a positive impact on combatting corruption in business dealings and serves as a tool for deterring unlawful financial transactions, notably in countries rated with low corruption index.

Masairol Haji Masri earned his Ph.D. in Business Administration from Manchester Business School, University of Manchester, UK. While in Universiti Brunei Darussalam, he has held various administrative position such as the Deputy Director for Office of Studies, the Deputy Dean of Academic and Administration at the School of Business and Economics and the Accounting Programme Coordinator. He was also a member of the Brunei Darussalam Accounting Standard (BDASC) working committee for Non-Public Interest Entities and a member of the Brunei Darussalam Public Accountant Oversight committee (PAOC) and under Ministry of Finance and Economics. He is currently a member of the Income Tax Board of Review under Ministry of Finance and Economics and the Dean of UBD School of Business and Economics.

Mohd Hairul Azrin is currently serving as the Director of Sultan Omar 'Ali Saifuddien Centre of Islamic Studies (SOASCIS) and a faculty member at the School of Business and Economics, Universiti Brunei Darussalam. He has an interest in the field of Accounting, Governance and Islamic Finance. Prior to this he had been involved in the Brunei Islamic Banking Industry entrusted in Shariah Governance and Audit since the year 2000 and is currently a member of the Shariah Financial Supervisory Board (SFSB). On the academic front, he has published works and presented papers at several conferences in Governance, Islamic Banking and Finance,

Takaful and Financial Reporting. He is also part of the editorial team for the Journal of Islamic Accounting and Business Research (JIABR).

SECOND SESSION: LEGAL ISSUES RELATED TO CORRUPTION AND ISDS IN ASIA

Rebalancing Asymmetries between Host States and Investors in Asian ISDS: An Exception for Systemic Corruption

Dr Martin Jarrett (Max-Planck Institute) [Online]

Abstract: Consider the following case. An investor is building an apartment-complex. Halfway in, a government department demands a bribe, which is business as usual for it. The investor initially resists, but eventually caves in. Years later, the host state seeks to use the investor's participation in this corruption against it in an investment-treaty arbitration. The applicable investment treaty stipulates that only lawfully made investments are protected, with the result that the investor must fail.

Any arbitral tribunal would be uncomfortable with this outcome. The degree of wrongfulness of the investor's conduct pales in comparison to the host state's, which has let many of its governmental departments become dens of corruption. But the arbitral tribunal's hands are apparently tied. The applicable investment treaty is clear: the investor's claim must be denied, with an asymmetric outcome that effectively benefits the state.

This contribution unties arbitral tribunals' hands. It lays down another path for arbitral tribunals to follow in such cases, one which avoids this outcome, yet remains honest to the tenets of international investment law.

Martin Jarrett is a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law. He is qualified as a Solicitor and Barrister in New South Wales, Australia and obtained his doctorate from the University of Mannheim (summa cum laude). His main field of research is international investment law, particularly the topic of investor misconduct. He has published extensively on this topic, including the monograph *Contributory Fault and investor Misconduct in Investment Arbitration*.

The Use of Domestic Law to Curb Corruption in Asia & Elsewhere

Professor Justice Anselmo Reyes (Doshisha University; Singapore International Commercial Court)

Abstract: There are multiple international agreements that require states to criminalise corruption. This chapter deals with the effects of such international anti-corruption agreements in the field of investment treaty arbitration. Focus will be placed on Asia. This Asian perspective is pertinent given the continued prevalence of corruption in many Asian jurisdictions, despite their growing economic importance. International agreements on corruption and their implementation in domestic law can have an unintended consequence in the field of investment treaty arbitration. This is because anti-corruption laws can provide states with an effective defence against an arbitral tribunal's jurisdiction. This paper will conclude with a proposal on how this consequence can

be tempered by applying to international investment law, the more nuanced approach to illegality established in recent common law jurisprudence. The article will be divided into four parts. Part 1 will survey multilateral and bilateral international agreements on corruption. Part 2 will discuss how international agreements on corruption have been implemented in the domestic laws of various Asian jurisdictions. It will consider differences in anti-corruption laws of Asian states and comment on whether such differences give rise to uncertainty as to the scope of corruption crimes. Part 3 will look into how host states can use anti-corruption laws as a means of evading the scrutiny by arbitral tribunals of confiscatory conduct. Part 4 will argue that the “all or nothing” approach to investments tainted with corruption should be replaced with a balancing approach to illegality.

Anselmo Reyes practises as an arbitrator. He is currently an International Judge at the Singapore International Commercial Court and a Guest Professor at Doshisha University (Kyoto). He was Professor of Legal Practice at Hong Kong University from October 2012 to September 2018. Before that, he was a judge of the Hong Kong High Court from 2003-12, when he was in charge of the Construction and Arbitration List (2004-8) and the Commercial and Admiralty Lists (2008-12). He was Representative of the Hague Conference on Private International Law's Regional Office Asia Pacific from April 2013 to July 2017. He became an International Judge of the Singapore International Commercial Court in January 2015 and an Overseas Bencher of the Inner Temple in October 2015.

The Standard of Proof for Corruption Allegations in Asian ISDS

Professor Dr Colin Ong KC (Academy of International Dispute Resolution & Professional Negotiations)

Abstract: The talk focuses on the issue of pure corruption allegations in Asian ISDS as opposed to the money laundering issues which take on a different dimension of considerations. Corruption is usually invoked by the state as a defence against performance of the contract. In the event that it is proven to be true that a claimant investors procured its original investment through bribery, this may lead to some tribunals, especially in ICSID cases, denying the investor’s claims. Arbitral tribunals confronted with allegations of corruption face difficult challenges. They have to balance their duties to the parties with public policy rules but at the same time lack the investigative powers of a state. An arbitral tribunal will, in the first place, need to decide which laws or rules apply to the burden and standard of proof. No arbitral institutions clearly defines corruption nor provide guidelines on how to deal with evidence of corruption. The Basel Institute on Governance 2019 tool kit is inadequate to deal with the issue of standard of proof for corruption. This paper will discuss the different approaches and why it is safer to adopt the higher standard of proof of “clear and convincing evidence” test in Asian ISDS matters.

Colin Ong is a Chartered Arbitrator, King's Counsel; Civil Law professor; and Brunei/Singapore lawyer. He was the 1st ASEAN practising lawyer to be a Master of the Bench of the Inner Temple and Queen's Counsel(now KC). *Who'sWhoLegal* ranks him *Thought Leader* in Arbitration/Construction/Litigation. *Legal500 English Bar*(Asia-Pacific) ranks him a Tier-1 English KC in Energy/Construction. He has sat as arbitrator or acted as lead counsel in over 380 arbitrations in seats across the World. *Who'sWhoLegal Thought Leaders* describes him as "One of the most highly regarded arbitration practitioners in Asia. He is extremely well known as arbitrator and counsel."

Multi-Tiered International Anti-Corruption Cooperation in Asia: Treaties Review and Prospects

Dr Yueming Yan (Chinese University of Hong Kong) and Ms Tianyu Liu (Leiden University)

Abstract: Effective international cooperation is essential for combating the pervasive and far-reaching problem of transnational corruption. This chapter focuses on the anti-corruption commitments and cooperation among Asian countries, particularly in the context of international investment. It firstly examines the legal framework against corruption in Asia at both the international and regional levels, encompassing both 'hard law' and 'soft law' instruments. The specific provisions of the United Nations Convention against Corruption (UNCAC) are also analyzed, including the establishment of domestic anti-corruption agencies and the role of mutual legal assistance by Asian countries. In addition, this chapter presents a comprehensive analysis of the anti-corruption provisions in bilateral investment treaties (BITs) concluded by Asian countries. The treaty review reveals that provisions of direct anti-corruption obligations imposed on investors are rare among Asian BITs, whereas provisions that demonstrate states' general commitments to combatting corruption and promoting corporate social responsibility are more common. This chapter highlights the importance of nuanced intra-Asian cooperation in addressing corruption, as well as the need to align commitments made under BITs with those of other international instruments aimed at tackling corruption.

Yueming Yan is an Assistant Professor at Faculty of Law, Chinese University of Hong Kong (CUHK). Her research areas cover international economic law, sustainable development, China's law, and empirical legal studies. She has published in the *Journal of International Economic Law* and the *Asian Journal of WTO & International Health Law and Policy*. Before joining CUHK Law, she was a Visiting Assistant Professor at Singapore Management University Yong Pung How School of Law. Yueming is currently serving as a Co-Chair of the Asia-Pacific Interest Group of the American Society of International Law. Yueming received her PhD from McGill University.

Tianyu Liu obtained her LL.B. degree with honors from Tsinghua University School of Law. She pursued her LL.M. with the Global Leaders Scholarship at Duke University School of Law, where she was a board member

of the International Law Society. She once interned at law firms specializing in dispute resolution and international arbitration and worked as a research assistant at Singapore International Dispute Resolution Academy. She has great interests in public international law and is reading an advanced LL.M. in International Dispute Settlement and Arbitration at Leiden University in The Hague. Her research currently concerns investor-state arbitration and investment treaties.

THIRD SESSION: COUNTRY REPORTS ON CORRUPTION AND FDI IN THE ASIA-PACIFIC REGION

South Korea

Professor Joongi Kim (Yonsei Law School)

Abstract: This chapter provides an overview of Korea's investment treaty regime and what type of provisions it has concerning corruption and illegality and further analyzes how corruption and illegality issues have featured in cases related to Korea and Korean investors. Korea has become a leading major exporter and importer of foreign direct investment (FDI). To protect and promote inbound and outbound investment, Korea has established one of the most wide-ranging and extensive regime of international investment agreements. Korea's investment treaty practice related to corruption and illegality is generally not developed. For instance, most Korea's treaties do not include an explicit requirement for the host states to take measures against corruption. Korean treaties also vary in terms of how they require foreign investments to be made in accordance with host state laws. At present, there is no indication that Korea may pursue clearer legality provisions. This remains the case even though foreign investors have increasingly brought cases against Korea in recent years and Korean investors have also been more active in bring claims as well. While the extent that corruption or illegality features in cases brought by Korean investors remain largely unknown, some of the cases against Korea have corruption or illegality related elements. It is foreseeable that Korea might become more proactive in promoting anti-corruption and legality provisions in its future treaties as part of its ongoing commitment to transparency.

Joongi Kim is a Professor of Law at Yonsei University. His research focuses on international dispute resolution, international trade and investment, corporate governance and good governance. He sits on the editorial boards of *International Investment Law and Arbitration* (Brill), *Asian Journal of Comparative Law* (Cambridge University Press), *Dispute Resolution International* (IBA) and *Korean Arbitration Review*. He has been a visiting professor at ESADE, Georgetown, Keio, the National University of Singapore, National Law School of India University (Bangalore), University of Florida and University of Hong Kong.

Japan

Professor Luke Nottage (Sydney Law School) and Dr Nobumichi Teramura (IAS, UBD)

Abstract: Japan has high outbound and low low inbound FDI (Part II), low corruption (Part III), and a belatedly accelerating program of ISDS-backed investment treaties (Part IV.1). Japan's investment treaty practice on corruption and illegality is comparatively interesting for two reasons (Part IV.2). First, from around 2007, its treaties have often required host states to take measures against corruption. This should help Japan's

outbound investors, but these obligations are generally weakly phrased. Secondly, Japan's treaties have been less consistent in expressly limiting their protections to foreign investments made in accordance with host state laws (including against corruption). This may be due to treaty drafters from Japan and counterparty states being less aware of the significance of such express legality provisions, which will often lead tribunals to decline jurisdiction if corruption is established, thus leaving foreign investors without treaty protections. Such outcomes may also incentivise host states to ensure a bribe is taken, to use as a treaty defence if foreign investors ever launch treaty claims, whereas other outcomes for tribunals are possible if there is no express legality provision. Another possibility is that this drafting is deliberate, again to benefit Japanese outbound investors as claimants because the absence of a legality provision renders more difficult defences from host states, which typically have more corruption than in Japan.

Japan may adopt more and clearer legality provisions if it becomes subject to more inbound ISDS arbitration claims, and/or if claims by Japanese outbound investors are mostly against well-governed host states with little scope for corruption. Yet both types of claims remain few (Part V). The shift may therefore come more from other counterparty states pushing for such legality provisions and Japan agreeing in its future treaties to demonstrate its overall commitment to combatting corruption, and to preserve the legitimacy of the ISDS arbitration system (Part VI).

Luke Nottage (PhD *VUW*, LL.D. *Kyoto*) is Professor of Comparative and Transnational Business Law at Sydney Law School, specialising in arbitration, contract and consumer law, and corporate governance, with a particular interest in Japan and the Asia-Pacific. He is founding Co-Director of the Australian Network for Japanese Law (ANJeL), Associate Director of the Centre for Asian and Pacific Law at the University of Sydney (CAPLUS), and Special Counsel with Williams Trade Law. Luke has consulted for law firms world-wide as well as ASEAN, the European Commission, OECD, UNCTAD, UNDP and the Governments of Japan and Saudi Arabia. Luke is also a Rules committee member of ACICA and on the Panel of Arbitrators for the AIAC (KLRCA), BIAC, CAAI, JCAA, KCAB, NZIAC, SCIA and TAI. Luke was Visiting Professor at Universiti Brunei Darussalam in 2020 and 2023.

Nobumichi Teramura is Assistant Professor of the Institute of Asian Studies, University of Brunei Darussalam and Affiliate at the University of Sydney Law School Centre for Asian and Pacific Law, specialising in business law, with a particular interest in arbitration, private international law, contract law and Asian law. He has published and presented his research in various journals and academic conferences in different jurisdictions in English and Japanese. He has taught private international law and commercial law as a Lecturer at the Adelaide Law School (2019). He has also lectured at the College of Law of De La Salle University in the Philippines in 2016, 2017 and 2019 on international arbitration and trade law.

China

Professor Vivienne Bath (Sydney Law School) and Ms Tianqi Gu (Sydney Law School)

Abstract: Since the Chinese government decided in the late 1970s to open mainland China up to investment, foreign direct investment (FDI) into China (and Hong Kong) has rapidly increased. In conjunction with this growth and investment, China has developed a very substantial network of international investment agreements (IIAs), while Hong Kong has also signed a number of IIAs in its own name.

Government and business corruption and bribery has been a problem in both jurisdictions, although both China and Hong Kong have taken active steps to criminalise and to investigate and prosecute corruption, particularly at the governmental level and to participate in major international initiatives relating to corruption. While corruption has, so far, made a limited appearance in ISDS cases against China and cases brought by Chinese or Hong Kong investors, based on existing material, a number of tentative conclusions and recommendations can be made: China should play a more active role in prosecuting bribery by its enterprises outside China and improve transparency in relation to domestic corruption investigations and prosecutions; secondly, China should move towards a higher level of transparency in relation to ISDS cases and, finally, China should consider including provisions relating to corruption in its future IIAs.

Vivienne Bath is Professor of Chinese and International Business Law at Sydney Law School and Associate Director – International of the Centre for Asian and Pacific Law at the University of Sydney and a Senior Research Fellow of the Asia IP and Technology Law Project at the University of California, Berkeley, School of Law. Her teaching and research interests are in international business and economic law, private international law and Chinese law. She has studied in Australia, the United States, China and Germany and has extensive professional experience in Sydney, New York and Hong Kong, specialising in foreign investment and commercial transactions in China and the Asian region.

Tianqi Gu is a PhD candidate at the Sydney Law School, working on Reforms on Chinese State-Owned Enterprises and Chinese Outbound Investment. She holds an LLB from Dalian Maritime University (China), and LLMs from University College London and the University of Sydney respectively. She is also the holder of an Australian Government Research Training Program Scholarship.

India

Professor Prabhash Ranjan (Jindal Global Law School) [online]

Abstract: In recent times, there have been plentiful instances where corruption has been an important issue in disputes between foreign investors and States in front of numerous investor-State dispute settlement (ISDS)

tribunals. Against this backdrop, this chapter examines the issue of corruption in bilateral investment treaties (BITs) of India, which includes a discussion on one key ISDS case where corruption has been an issue – *Devas v. India*. In this case, India raised the argument of fraud against the investor though towards the fag end of the proceedings. Consequently, it did not affect the ruling against India. The chapter also finds that in the BITs that India signed in the 1990s and 2000s, corruption-related provisions did not figure prominently. This started to change with India’s new investment treaty practice that was inaugurated by the 2016 Model BIT. Given the way the issue of corruption has acquired prominence in international investment law debates in general and in ISDS, this is a welcome development. At the same time, using the case study of *Devas v India*, the chapter argues that corruption should not become a smokescreen for denying a foreign investor to bring an ISDS claim against the State.

Prabhash Ranjan is a Professor and Vice Dean (Continuing Education) at the Jindal Global Law School, O P Jindal Global University (JGU). He is currently on leave from South Asian University where he is an Associate Professor. He holds a Ph.D. in law from King’s College London and is a recipient of the British Chevening Scholarship. Prabhash teaches and publishes in the area of international investment law and international trade law. He has been a Visiting Scholar at Brookings India and a Visiting Fellow at the Lauterpacht Centre for International Law, Cambridge University. He was a member of the team that drafted the 260th report of the Law Commission of India on the 2015 draft model Indian bilateral investment treaty.

Thailand

Professor Sirilaksana Khoman (Thammasat University; National Anti-Corruption Commission), **Professor Sakda Thanitcul** (Chulalongkorn University [online]) and **Professor Luke Nottage** (Sydney Law School)

Abstract: Thailand’s economy has developed strongly by consistently attracting foreign investment especially since the 1980s (Part 2), despite political upheavals and persistent corruption amidst ongoing challenges (Part 3). It has also expanded the numbers and scopes of its investment treaties, including more options for ISDS arbitrations to enforce substantive commitments to foreign investors (Part 4.1), resulting in a few treaty-based arbitrations as well as some contract-based arbitrations involving foreign investors (Part 4.2). A few, and the *Kingsgate v Thailand* claim under TAFTA since 2017, have involved allegations and investigations concerning corruption and other serious illegal behaviour (Part 5). As reiterated in the conclusion (Part 6), corruption investigations and court proceedings are necessarily very lengthy, sometimes more so than the time taken to generate and enforce final awards in large (especially treaty-based) investment arbitrations. To reduce the consequent risk of enforcing an award that later proves to be based on seriously corrupt conduct, one solution may be for investment treaty arbitrators to apply the same higher standard of proof that corruption investigators and criminal courts need to apply, although this will mean more delays and perhaps costs in arbitration. Secondly,

more transparency could be added to Thailand-related investment arbitration proceedings, so that the public at least knows that corruption is being alleged.

Sirilaksana Khoman is Vice Chair of the Foundation for Public Policy and Good Governance (PPGG) and former Advisor to the Commissioner and Chair of the Economic Sector Corruption Prevention at Thailand's National Anti-Corruption Commission (NACC). She was Dean of the Faculty of Economics, Thammasat University, Thailand, and International Consultant for the United Nations Office on Drugs and Crime in Vienna. She received her Bachelor and Master's degrees in Economics from the Australian National University, her Ph.D in Economics from the University of Hawaii, and a Certificate in International Trade Regulation from Harvard Law School.

Sakda Thanitcul is currently a professor of law at Chulalongkorn University, Bangkok, Thailand. He teaches competition law, international economic law, tort and product liability law. He is presently serving as a Member of the Committee on Foreign Business Act and a Member of the Committee on Anti-Dumping. Professor Sakda Thanitcul holds a Bachelor of Law degree from Chulalongkorn University, Master of Law degrees from Kyoto University and University of Washington, Doctor of Law degrees from Kyoto University and University of Washington.

Indonesia

Professor Simon Butt (Sydney Law School) [online], **Mr Antony Crockett** (HSF Hong Kong) and **Professor Tim Lindsey** (Melbourne Law School) [online]

Abstract: Indonesia is notorious for high levels of corruption. This has remained the case in spite of significant reforms since the collapse of the Soeharto government in 1998. This chapter briefly introduces some of the key law reforms which have sought to address corruption in Indonesia as well as ongoing concerns regarding high levels of corruption in the judicial system, which is one of the factors leading investors in Indonesia to prefer arbitration for resolving disputes. The chapter then considers the legal framework for international commercial arbitration in Indonesia, particularly relating to enforcement of arbitration awards and recent changes to Indonesia's policy relating to investment treaties and investor-State dispute resolution. The chapter includes consideration of two investor-State arbitrations involving Indonesia which featured allegations of corruption.

Simon Butt is Director of the Centre for Asian and Pacific Law at the University of Sydney Law School (CAPLUS). He also serves on the Executive of the Sydney Southeast Asia Centre (SSEAC). Fluent in Indonesian, Simon has consulted on Indonesian law to the private and public sectors, and has provided advice and expert opinions about Indonesian law for litigation in the US, UK, Hong Kong, Singapore and Australia.

Antony Crockett is a Partner with international law firm Herbert Smith Freehills. From 2015 to 2017 Antony worked in Jakarta as a Foreign Legal Consultant with Hiswara Bunjamin & Tandjung (on secondment from his current firm). He holds the degrees LLM (Distinction) from the London School of Economics and Political Science and LLB (Hons) and BSc from the University of Melbourne. Antony specialises in complex cross-border dispute resolution, including international commercial arbitration and investment treaty arbitration. He has acted as counsel to both investors and States in investor-State disputes. Antony is admitted to practice in Australia (Victoria), England & Wales and Hong Kong SAR.

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Lao PDR

Dr Romesh Weeramantry (Melbourne Law School; National University of Singapore; Clifford Chance) and
Ms Uma Sharma (National University of Singapore; TSMP Law)

Abstract: In recent years, corruption has become prevalent in investment arbitration. This chapter closely examines the issue of corruption in the Lao People's Democratic Republic through the lens of two key investment-treaty arbitration decisions. The decisions place a spotlight on how tribunals address allegations of fraud and corruption, and also the larger systemic issues which plague the Lao People's Democratic Republic. This chapter thoroughly analyses the decisions and discusses their implications on the conduct of arbitral proceedings. It is envisaged that these observations will provide a guide for practitioners navigating allegations of corruption in investment treaty arbitration proceedings while contextualising the socio-political environment within which such grafting is perpetuated.

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The Philippines

Dr Thomas Elliot Mondez (The Court of Appeals, the Philippines) and **A/Professor Jocelyn P Cruz** (De La Salle University)

Abstract: Corruption is deeply rooted in Philippine culture. Much legislation was passed to strengthen the country's legal frameworks to prosecute corruption cases. However, the abundant local anti-corruption laws have yet to produce the desired results. For the most of the latter half of the 20th Century, the Philippines relied on protectionist policies, conducive to corruption, to shelter its domestic economy from the burgeoning highly competitive international markets. The succeeding adoption of trade liberalization policies enabled the country to attract foreign investments to bolster its economy. Unfortunately, it also exposed investors to the pitfalls of local corruption. The country's first major investment dispute involving its main international airport was not a pleasant experience. The Philippines is no longer in a bubble. As an active member of the international community, it must adjust its law enforcement efforts, legal systems, treaty practice, and business culture to match global anti-corruption standards.

Thoams Elliot Mondez is the chief of staff of the Presiding Justice of the Court of Appeals, the second highest court of the Philippines. He is concurrently a professional lecturer at De La Salle University in Manila. He previously worked for the House of Representatives and the Department of Justice. He is the author of the book *Geopolitics and International Law*.

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