Chapter 16
Towards a More Harmonised Asian Approach to Corruption and Illegality in Investment Arbitration

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Abstract In parallel with their strong economic growth, Asian jurisdictions have scaled up campaigns against bribery and other illegal misconduct by foreign investors by adopting international anti-corruption frameworks. Nonetheless, corruption remains common in many places and there is also still a lack of consensus on the influence of corruption and illegality over foreign direct investment (FDI), as well as in investor–state arbitration cases. There is also a paucity of literature considering how Asian countries have dealt with such serious misconduct by foreign investors. The foregoing chapters have started to fill the gaps, finding that there are some 'Asian approaches' to corruption and bribery in investment arbitrations: some individual jurisdictions have started to address the issues of corruption and illegality through treaty (re)drafting and/or investment disputes. However, a uniform Asian approach towards corruption and illegality in investment arbitration has not yet been established. Thus, this chapter proposes a roadmap for a more harmonised regional approach to corruption and illegality in Asian investment arbitration. It recommends that Asia should (1) establish a forum for all jurisdictions to discuss corruption and other serious misconduct involved in FDI, (2) develop more unified rules on corruption and illegality specifically in Asian investment arbitration and (3) consider creating an independent institution or permanent court to better handle Asian investment disputes—not necessarily limited to allegations of corruption and illegality.

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N. Teramura et al. (eds.), *Corruption and Illegality in Asian Investment Arbitration*, Asia in Transition 22, https://doi.org/10.1007/978-981-99-9303-1_16

16.1 Introduction

Over the last three decades, Asia has experienced a steady increase in foreign direct investment (FDI) inflows and outflows. Between 1990 and 2021, the annual amount of FDI inflows across all of Asia recorded a 30-fold growth, increasing from USD21,933 million to USD618,938 million, whereas annual FDI outflows grew 40-fold from USD9,943 million to USD394,118 million.[1] Similar or more dramatic FDI growth trends can be seen in East Asia (USD8,099 million–USD328,918 million annual FDI inflows; USD8,521 million–USD244,389 million annual FDI outflows), Southeast Asia (USD12,821 million–USD175,314 million annual FDI inflows; USD2,328 million–USD75,838 million annual FDI outflows) and South Asia (USD213 million–USD52,417 million annual FDI inflows; USD65 million–USD15,986 million annual FDI outflows).[2] Correspondingly, these regions' share of global gross domestic product (GDP) based on purchasing power parity constantly increased between 1990 and 2020—from 15.36 to 25.23% for East Asia, 4.46 to 6.37% for Southeast Asia and 4.86 to 8.85% for South Asia.[3] Multiple commentators confirm the overall positive impact from this FDI for economic growth.[4]

In parallel, international and regional organisations have stepped up their campaigns against bribery and other serious misconduct in Asia and beyond. Asian states have reacted positively to such initiatives, although the chapters in this volume show that corruption is still a serious problem regionally. Prompted by the Foreign Corrupt Practices Act two decades earlier in the United States, and opened for signature in 1997 (in force from 1999), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) became the first multilateral international treaty requiring member states to criminalise the bribery of foreign public officials. A 2009 Recommendation for improving the Convention's operation was updated over 2018–2021.[5] As large net FDI exporters since the 1980s and 1990s respectively, Japan (which joined the OECD in 1964, three years after its establishment) and South Korea (which joined in 1996) have adopted this Convention, thus subjecting themselves to periodic 'peer reviews' regarding enforcement of these obligations,[6] which target the 'supply side' of corruption. However, although eight states beyond the 38 (developed economy) OECD member states have acceded to the Convention, none are from elsewhere in North, East, South or Southeast Asia (the main focus for this book).[7]

In 1999, following the Asian Financial Crisis and concerns about 'crony capitalism' and poor corporate governance,[8] the OECD nonetheless created with the Asian Development Bank (ADB) the Anti-Corruption Initiative for Asia and the Pacific (ACIAP). This aimed to provide a regional forum for policymakers, practitioners, experts and private sector representatives to exchange opinions on anti-corruption and business integrity. Today, 23 Asian states and jurisdictions have become members of that forum.[9] The OECD also includes the avoidance of corruption in its Guidelines for Multinational Enterprises, developed from the 1970s. Significant revisions in 2011 added wider recommendations from member states towards their transnational corporations in line with the 2011 United Nations Guiding

Principles on Business and Human Rights.[10] A system of 'national contact points' has developed allowing complaints about firms from OECD and non-OECD states violating the Guidelines to be filed for investigation and mediation.[11]

Moreover, all Asian countries (excluding North Korea) have ratified the United Nations Convention against Corruption (UNCAC), opened for signature in 2003 (in force from 2005), addressing corruption from both the supply side and demand side domestically.[12] However, there is no pan-Asian treaty against corruption, in contrast to other parts of the world. It seems that Asia still prefers various 'soft law' best practices and capacity-building initiatives regionally,[13] perhaps because of the socio-political diversity and sensitivities around corruption and governance structures around the region. This is despite international economic integration, and to a lesser extent other aspects of the evolving architecture of the Association of Southeast Asian Nations (ASEAN), developing more treaty-based 'hard law' as well as institutional coordination and networking.[14] Despite some significant initiatives, international rankings suggest that corruption and poor governance remain serious problems in most parts of Asia.[15] Many commentators remain concerned about the negative influence of such serious misconduct for the effectiveness of FDI in Asia, and the region's attractiveness for sustainable investment.[16]

One of the most significant mechanisms promoting investment protection and liberalisation is investor–state dispute settlement (ISDS), particularly investment arbitration procedures offered to foreign investors (usually nowadays through investment treaties with their home states) to more credibly enforce host state substantive commitments such as non-discrimination or adequate compensation for expropriation. Yet such investment arbitration has addressed questions of bribery and other serious illegal conduct by foreign investors only sporadically, despite corruption allegations being raised increasingly in cases over the last 10–15 years.[17] Offering a neutral, enforceable and fair forum for dispute resolution between foreign investors and host states, ISDS arbitration is mostly administered through a World Bank affiliate under the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), or conducted by tribunals under ad hoc arbitration rules (underpinned by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards). Those rules are offered by host states under a standalone bilateral investment treaty (BIT) or an investment chapter within a free trade agreement (FTA), collectively sometimes referred to as international investment agreements (IIAs).

However, as Teramura, Nottage and Jetin elaborated in Chap. 1, ISDS arbitral tribunals have been struggling to strike a balance between investors and host states in dealing with disputes over FDI allegedly tainted especially by corruption.[18] Sometimes investors raise corruption to further their investment treaty claim for lack of fair and equitable treatment (FET) or other violations. But mostly and increasingly, host states allege bribery particularly regarding the initial investments, so this is a major (though not exclusive) focus throughout this book.[19] Some tribunals have suggested that they should not proceed to hear the merits of any claims if there is evidence presented of any (non-trivial) corruption associated with the initial investment, because such serious misconduct means they lose jurisdiction and investors

therefore lose treaty protections. This ‘zero-tolerance’ approach is likely advantageous for host states if corruption is prevalent in their territory because they may avoid ISDS claims completely by raising a corruption defence to challenge the tribunal’s jurisdiction. The strongest basis for this argument has been where the investment treaty expressly limits its scope to covered investments made in accordance with host state law, but the necessary wording has often been unclear (as several country reports show in this volume).[20]

By contrast, several tribunals have heard corruption-related claims more carefully and have dismissed at least some claims instead for inadmissibility. This may leave scope for other treaty claims to be heard, and also means that procedures to review (especially positive) findings on jurisdiction are no longer available. Accordingly, this ‘closer-look’ approach is somewhat less favourable to host states.

Other tribunals have opted for the ‘it-depends’ approach. They have analysed more closely the nature of corruption or illegality allegations when addressing the merits of individual claims (such as making it less likely for investors to succeed in proving lack of FET, if corruption or related behaviour was involved) and/or adjusting damages or ISDS costs awarded. With such allegations growing, ISDS arbitration tribunals are further divided on other issues, such as burden and especially standard of proof for corruption allegations, as well as the arbitrators’ duty and rights to investigate corruption.[21]

Despite this fragmentation in ISDS tribunals’ attitudes towards corrupt practices involved in FDI projects, reflecting also the limited specific guidance from investment treaties or arbitration rules,[22] there is a paucity of literature on Asian perspectives on corruption and other serious investor misconduct. This book has therefore started to fill that gap. The principal questions posed were:

(1) What are the real impacts of corruption, potentially of very different types, particularly on FDI and local economies in Asian jurisdictions?
(2) Has Asia been and will it remain in general ‘ambivalent’ about international investment law relevant to corruption and illegality?
(3) Have Asian countries dealt with corruption and illegality in relation to foreign investment projects and disputes, and if so how?
(4) Have Asian countries been or are they more likely to become ‘rule makers’ (creating rules on their own initiative) rather than ‘rule takers’ (following primarily Western normative templates) in international investment law, specifically regarding corruption and illegality?[23]

The foregoing 15 chapters have discussed these broad themes from economic and legal perspectives, focusing on developments in China and Hong Kong, India, Japan, Lao Republic, the Philippines, the Republic of Korea and Thailand. This concluding chapter will highlight key findings in the individual chapters, and then outline some recommendations for corruption and illegality issues increasingly arising in Asian investment arbitration.

16.2 Asian Approaches to Corruption and Illegality in Investment Arbitration

The key lesson learnt from this book's chapters is that Asia remains at a very early stage of harmonising its approaches to disputes over corruption and other serious misconduct involved in FDI projects. Asian approaches to FDI-related corruption are diverse, and corruption trends vary across the region; this diversity likely deters Asia from becoming a rule maker in this area of international investment law. This may be linked to the wider challenges for the development of regional models for international investment dispute resolution, alluded to by Amokura Kawharu in her Foreword.[24]

16.2.1 Economic Effect of Corruption on FDI and Local Economies in Asia

Part I of this book has considered the influence of corruption, in particular on FDI and local economies in Asian states and territories. From a macro-perspective, before the jurisdiction-specific studies and closer analyses of specific legal issues that ISDS arbitration tribunals and treaty drafters are now grappling with, two chapters have considered the various manifestations of corruption and how they may impact on economic behaviour and outcomes across the region. If it does or will likely experience patterns different from elsewhere, it is plausible that this will be or become reflected in Asian states' investment treaties or one-off investment contracts concluded with individual foreign investors, as well as the broad approaches and specific decisions of arbitral tribunals dealing with related investment disputes.

First, Khalid in Chap. 2 examined the economic cost and impact of corruption on FDI. After reviewing an extensive theoretical and empirical literature on corruption–growth and corruption–investment relationships in Asia and beyond, Khalid undertook an econometric analysis to test for the 'grabbing hand' and 'helping hand' views on the impact of corruption. The former hypothesises that corruption discourages FDI flows into a host state, which is the assumption of international bodies like the OECD and United Nations promoting instruments and mechanisms to combat all types of corruption, although Commentaries on the 1997 OECD Convention allow the option of a defence against (minor and documented) 'facilitation payments' so this has been retained by some member states (notably Australia, New Zealand and the US).[25] By contrast, the 'helping hand' theory propounded by some economists suggests that bribery can increase procedural efficiency, bypassing excessive bureaucracy or other structural problems, which can therefore increase the flow of FDI into a host state.

Khalid's analysis applied fixed-effects panel estimation statistical analysis to the data between 2000 and 2022 from Transparency International's Corruption Perception Index (CPI), one of the main ways to track corruption (although still hard to

measure). Khalid examined the influence of corruption in the public sector on FDI and economic growth in the top 20 least and most corrupt countries in the CPI, many of which are Asian countries. His analysis first suggests a grabbing hand view for the 20 least corrupt countries, while it claims a helping hand view for the 20 most corrupt countries. Secondly, the relationship among corruption, economic growth and FDI in the 20 most corrupt countries is non-linear. The corruption–growth relationship is an inverted U-shape: growth increases and reaches a maximum level in countries at low to moderate levels of corruption, although it falls in countries at high levels of corruption. The corruption–FDI relationship largely followed suit. He further extends his analysis to a random selection of 33 Asian countries and confirms the helping hand view for the corruption–FDI relationship. In our view, one possible implication of such results becoming more widely appreciated is that arbitral tribunals could become more forgiving of at least some types of corruption when foreign investors engage in some types of economies. However, this will depend on treaty references to corruption, directly or through references to other international instruments, and drafting history. It will also depend on what other empirical studies uncover.

Dovetailing with Khalid's study, Jetin, Saadaoui and Ratiarison in Chap. 3 considered the effect of corruption on FDI in East, South and Southeast Asia and beyond, adopting a panel econometrics investigation analysis with fixed effects. The analysis assessed the relationship between FDI stocks and the World Bank's 'control of corruption' (CC) index—another often-used measure but one that, unlike the CPI, captures the perceived corruption of both public officials and private companies. Jetin, Saadaoui and Ratiarison adopted a regional approach to corruption patterns and disaggregate large regions into smaller sub-regions: East Asia, Southeast Asia and South Asia, plus Australia and New Zealand in Oceania. They also looked at Europe and the EU to contrast with Asian sub-regions.

They concluded as follows. First, at the world level, the control of corruption is lenient, which nevertheless has a positive effect relative to FDI, justifying the 'helping hand' thesis. Second, in East Asia, the control of corruption is strict, which has a positive effect on FDI, in conformity with the 'grabbing hand' theory. East Asia being composed mostly of upper-middle-income and high-income countries, this conclusion is consistent with Khalid's finding that the grabbing hand prevails in the top 20 countries. Third, in South Asia, corruption stimulates FDI, but caution should prevail because the correlation is not significant. Again, this weak result somewhat confirms Khalid's finding that corruption is a helping hand in low and lower-middle countries, because South Asian countries belong to these categories. Fourth, in Southeast Asia, there is a significant correlation between the control of corruption and FDI in that when these countries curb corruption, FDI increases. Thus, corruption is a grabbing hand, as in East Asia. These results contradict the traditional portrayal of Asia as a region of widespread cronyism, where corruption may often stimulate FDI.[26] Things have likely changed thanks to better control of corruption in recent decades. Finally, the chapter showed that corruption is a grabbing hand in Australia and New Zealand, which again confirms the conclusion that in high-income countries, corruption is associated with less FDI. However, this finding cannot be generalised to all high-income countries because in the EU-15 (the 15 pre-2004 EU

member states), Jetin et al. find that corruption is a helping hand. This conclusion invites close scrutiny into how the rule of law works in practice and its interaction with public and private senior officers.

16.2.2 Legal Issues Related to Corruption and Illegality in Asian ISDS Arbitration

Part II of this book examined broad legal issues pertaining to corruption and investment arbitration in Asia and beyond. It considered how disputants, tribunals and commentators, especially in Asia, may already or could in future tackle those issues.

Chapter 4 by Reyes and Haechler suggested that arbitral tribunals should adopt a nuanced approach to treating corruption in international investment law. They first reviewed multilateral and bilateral international agreements on corruption, including the OECD Convention and UNCAC, as well as some indicative references to corruption more recently in the Japan–Philippines Economic Partnership Agreement (as an example of a bilateral FTA) and the CPTPP (a major mega-regional FTA). They then examined how these international agreements have been implemented in the domestic laws of Asian jurisdictions, and whether differences in implementation cause uncertainty as to the scope of corruption offences under Asian anti-corruption laws. They demonstrated the uncertainty by illustrating the fragmentation of the treatment of 'facilitation payments' across Asian jurisdictions. Such uncertainty may unreasonably favour the host state if the ISDS tribunal adopts an 'all or nothing approach' to jurisdiction (i.e., the 'zero-tolerance' approach) because the host state may take advantage of that uncertainty to defend itself from the tribunal's jurisdiction, especially where its high-ranking officials actively demanded bribes at the outset of the investment, as found in *World Duty Free v. Kenya*[27] and *Metal-Tech v. Uzbekistan*.[28]

Thus, Reyes and Haechler compellingly concluded that the 'zero-tolerance' approach can be abusive to foreign investors. To limit the possibility of abuse, inspired also by developments in English law related to illegality, they encourage investment tribunals to adopt a nuanced approach that 'balance[s] all relevant factors to assess whether an investor should be entitled to a remedy in whole, in part, or not at all'. This range of factors approach was signalled in *Vladislav Kim and others v. Uzbekistan*,[29] in which the tribunal decided whether illegality allegations oust its jurisdiction by applying a three-step test that considers: (1) the significance of the legal obligation with which the investor is alleged to have violated; (2) the seriousness of the investor's (mis)conduct; and (3) whether and to what extent the combination of (1) and (2) compromises a significant interest of the host state, making the loss of tribunal jurisdiction a proportionate outcome.[30]

Going into further detail in some respects, Chap. 5 by Yan and Liu examined international and regional soft and hard law instruments against corruption in Asia and elsewhere, and anti-corruption provisions in IIAs concluded among Asian states

(extending to Central and West Asia). As well as the UNCAC and OECD Convention, and regional treaties against corruption, they outlined the ADB/OECD Anti-Corruption Action Plan, the G20 Anti-Corruption Action Plans and the ASEAN Member States' Memorandum of Understanding on Cooperation for Preventing and Combating Corruption. Asian countries have strived to eliminate corruption by adopting such international frameworks, but they are not always effective for curbing corruption in international investment activities.

Asian states' general lack of interest in fighting corruption in FDI through investment treaty redrafting (except for Japan) is somewhat discernible from the number of intra-Asian IIAs containing an express anti-corruption clause—45 out of 2584 IIAs concluded before 2012, and 16 out of 89 IIAs signed after 2012.[31] Moreover, Yan and Liu examined those 16 IIAs concluded after 2012, finding that (1) none of them directly impose an anti-corruption obligation on investors, (2) only two IIAs preclude corrupt investors from accessing arbitration, (3) 13 IIAs require the contracting state's general commitments to enforcing anti-corruption measures and (4) only one IIA has a corporate social responsibility provision explicitly referring to corruption. Yan and Liu then recommend that 'Asian countries reinforce the legal framework of anti-corruption in the region and insert more commitments for corruption deterrence and prevention into IIAs'. On the latter, they encourage Asian states to incorporate in their future IIAs anti-corruption provisions with 'real teeth', such as provisions establishing foreign investors' anti-corruption obligation or rules limiting corrupt investors' access to the ISDS system. We also note that Asian economies are also starting to conclude anti-corruption provisions in IIAs with non-Asian states,[32] which may provide more momentum for including such provisions in intra-Asian IIAs. Another new development is the agreement, in principle reached in July 2023 at the World Trade Organization (WTO), regarding investment facilitation, which also contains anti-corruption provisions, although the text and membership of this new WTO treaty was only finalised on 25 February 2024.[33]

Chapter 6 by Hwang and Chang provided a closer look at potential legal issues investors and host states may experience in raising or being confronted with a corruption allegation in ISDS arbitrations, particularly under investment treaties. Those issues include (1) the meaning of corruption, (2) evidentiary problems such as a tribunal's *ex officio* investigations into corruption and the burden or standard of proof for corruption allegations, (3) the attribution of responsibility between the foreign investor and host state, and (4) the legal consequences flowing from a finding of corruption (already sketched above).

On the first issue, Hwang and Chang point out that the broad definitions of public and private corruption as well as other forms of corruption can be found in the UNCAC and other anti-corruption conventions, but they note how such concepts are nonetheless deployed in investment arbitration. On the second set of issues discussed, they suggest that most tribunals have started to apply a higher than usual standard of proof, similar to that adopted in national criminal proceedings alleging corruption. (This could reflect the very serious flow-on effects on individuals for corruption findings, even by investment tribunals, especially in some countries in Asia recently.)

However, they suggest that ISDS arbitration should apply a single balance of probabilities standard, albeit with nuancing, requiring greater evidence for more unlikely allegations of corruption. Further, on this and their remaining sets of issues, such as attribution,[34] Hwang and Chang succinctly set out the key problems and indicate where further research is needed as:

> Evidential issues concerning burden and standard of proof frequently come to the fore due to the difficulties of obtaining direct evidence of corrupt dealings. This may even prompt a more proactive approach from the tribunal, though any such approach will be subject to limitations inherent in the arbitral process. However, it is not enough to simply establish proof of corruption, as the presence of a host state as a party and the involvement of corrupt public officials will necessarily require a tribunal to engage in questions of attribution of responsibility. Even where the issues of evidence and attribution of responsibility are overcome, there remains the difficulty of deciding what legal consequences should apply to a finding of corruption, which is especially thorny in situations where both parties had been complicit in the corruption.

This analysis sets the stage for further scrutiny of these major legal issues (and some others) in the subsequent country reports.[35]

Dovetailing with the concerns raised especially by Reyes and Haechler, Chap. 7 by Jarrett discussed asymmetries between host states and investors in Asian investment arbitration, focusing on 'systemic corruption' in host states in which bribes are not only asked for but expected. He claims systemic corruption should be treated differently from other forms of corruption—such as individual or institutional corruption—because the wrongfulness of investor participation in systemic corruption is limited. If corruption is part of the government's everyday administration, the investor would have no choice but to pay bribes. If so, even express investment-legality requirements in investment treaties (such as requiring investments to be 'in accordance with host state laws' protected) would work on the investor too unfavourably, as the tribunal may adopt those requirements to dismiss virtually any claim filed by that investor. (We add that this could even lead perversely to the host state ensuring—or assuming—that someone requests and takes a bribe, expecting furthermore that such an official is not prosecuted, which could be evidenced later in an ISDS arbitration to deprive the tribunal of jurisdiction and the investor of all treaty protections.)

Accordingly, Jarrett proposes an innovative solution for arbitral tribunals to redress this imbalance. He suggests they could adopt and adapt the doctrine of duress under applicable international law, inspired by developments in English law as an influential law in Asia and elsewhere. He argues that if the investor successfully established that its participation in corruption had been caused by duress, the tribunal should not activate the investment-legality requirement to simply and completely nullify the legal effect of that investor's conduct. In our view, this is a novel approach because duress is usually used to void a claim, not a defence. It might also substitute one all-or-nothing approach (namely the 'zero tolerance' approach of some tribunals so far) with another (instead overly favouring the foreign investor).

16.2.3 'Asian Approaches' to Corruption and Other Serious Misconduct in Investment Arbitration

Despite some growing awareness of the legal issues and possible solutions through investment treaty (re)drafting or developments in reasoning applied by tribunals, as outlined in Part II, it remains to be seen whether Asian jurisdictions can collectively deal with those legal issues in the ways suggested by those contributors. The country reports in Part III uncover further challenges by surveying how a variety of Asian states—net FDI exporters and importers, developed and developing economies, democratic and authoritarian political regimes—have approached corruption in investment arbitration.

The countries detailed are diverse in overall governance and corruption control, investment treaty trajectory (including in the specific context of corruption) and experience of ISDS arbitration cases involving alleged bribery or other serious investor misconduct, based on an investment treaty or occasionally on a one-off investment contract. The reports cover the selected Asian states and territories in alphabetical order—China and Hong Kong, India, Indonesia, Japan, Lao Republic, the Philippines, South Korea and Thailand. Collectively, they cover Asia's most populated and economically prosperous sub-region. The diversity of approaches found in this subset of jurisdictions suggests that similar trends may exist across Asia more broadly.

First, Bath and Gu have reported on China and Hong Kong, the world's largest communist regime and a special administrative region that remains a major financial centre. Both have performed differently in international rankings, as can be seen from the CPI in 2022: China and Hong Kong had global rankings of 65th and 12th, respectively.[36] Underpinned by their international treaty obligations, both have established a comprehensive system of laws and regulations to curb official and commercial corruption at a domestic level. However, the omnipresence of the Chinese Communist Party (CCP) in mainland China raises concerns about implementing that system in politically sensitive cases. For instance, recent practice and legal authorities have adopted various excuses—business secrets, personal information and national security—to avoid open trials. A small number of ISDS cases have been brought against China, with corruption seemingly not constituting a major issue, but there has been little transparency on the claims and evidence presented. Moreover, despite its huge FDI outflow, neither China nor Hong Kong is keen to pursue criminal convictions through the court system for bribery outside China. Somewhat mirroring this hesitance, China's vast network of IIAs does not currently contain any provision specifically against corruption other than in the RCEP.

Next, Ranjan examined the issue of corruption in India, the world's most populous democracy. The CPI in 2022 ranked India 85th despite the country's several laws to regulate corruption, money laundering and undisclosed foreign income and assets.[37] The country signed approximately 80 BITs between 1990 and 2010, most of which contained nothing specifically on corruption issues, although often including an 'in accordance with domestic law' clause. After losing the case of *White Industries v. India*,[38] however, the country terminated the BIT with Australia that was relied on

in that case as well as dozens of other BITs, and is trying to conclude new BITs following the 2016 Indian Model BIT. This contains an illegality clause, as well as a provision on corporate social responsibility (CSR, also discussed by Yan and Liu) that obliges foreign investors and their enterprises to observe the anti-corruption principle. However, only a handful of countries have concluded new BITs based on the 2016 Model.

Moreover, among a burgeoning number of ISDS arbitration claims,[39] India has experienced two BIT claims brought about by the foreign investors of Devas, India's multimedia services provider.[40] Yet the Indian government curiously failed to raise the argument of fraud and corruption before the arbitral tribunals. This was despite several government officials involved in Devas's project being prosecuted for committing various offences under the Prevention of Corruption Act.

As we note below also in the context of a recent ISDS claim against Thailand, coordination among different parts of government involved in corruption allegations is likely to be particularly acute in developing economies. This suggests the need for greater harmonisation and capacity-building both domestically and internationally. India's new Model BIT, and the quite transparent public process that generated it, can also help to highlight the issue and potential treaty provisions related to corruption in investment arbitration. However, the unwillingness so far of counterparty states to agree to the Model BIT as the overall basis for new treaties dampens the potential for India to become a more prominent 'rule maker' in this field.[41]

Butt, Crockett and Lindsey evaluated Indonesia, the most populous Islamic country in the world, as 'notorious for high levels of corruption'. Indeed, the CPI has consistently rated Indonesia among the most corrupt countries.[42] To deal with the situation, the country adopted several reforms after the Asian Financial Crisis and the following fall of the authoritarian Soeharto regime in 1998. These included the 1999 Corruption Law, the powerful new Anti-Corruption Commission, and the Anti-Corruption Court, so investigating and prosecuting corruption could become more efficient than in the past.

However, the political elites and 'judicial mafia'—with judges often taking bribes and occasionally being prosecuted for this—have undermined those reforms through legislative amendments and, ironically, corruption. Thus, avoiding the national courts of Indonesia is the norm among foreign investors. Instead, they conclude contracts providing for arbitration, especially seated abroad, and they also may access ISDS through Indonesia's BITs and FTAs (with some newer ones containing treaty provisions addressing corruption). The government nonetheless announced its intention to terminate its BITs after experiencing high-profile ISDS cases on corruption and FDI, due to adverse media reporting. This is similar to India, but Indonesia ultimately defended such claims very well, including one where the claim was dismissed because the tribunal found the foreign investors to be 'wilfully blind' about their local partner's forgery of underlying mining licences.[43]

Nonetheless, it remains to be seen whether the new treaty practice initiative will materialise since Indonesia maintains a good success rate in ISDS proceedings, having prevailed in seven out of eight cases. Meanwhile, in contrast to India it has not developed a Model BIT and has concluded new treaties on a rather similar template

as before, although for example a new treaty with Australia signed in 2019 (replacing an old BIT) adds an innovative ISDS requirement for foreign investors to attempt mediation if requested by the host state before proceeding to arbitration.[44] In our view, it is possible but unlikely that Indonesia may innovate further by advocating for new types of treaty provisions, in its own or ASEAN-wide agreements, directly targeting corruption and serious investor misconduct.

Nottage and Teramura turned to Japan, which is instead a large net FDI exporter and one of the least corrupt countries in Asia (ranked by CPI as the third least corrupt Asian jurisdiction in 2022),[45] although high-profile bribery scandals have been reported occasionally. Japanese law is rigorous concerning bribery and other serious misconduct. The Penal Code, the National Public Service Ethics Act, the National Public Service Ethics Code and the Political Funds Control Act effectively deal with domestic corruption in general. Furthermore, the Unfair Competition Prevention Act criminalises bribery of foreign public officials based on the OECD Convention, although there have not been many prosecutions.[46] In addition, as it has belatedly become more active in concluding BITs and FTAs, Japan has incorporated both anti-corruption provisions (perhaps most actively and consistently, among Asian states, from around 2007) and illegality clauses (albeit less consistently, which advances the short-term interests of its outbound investors as express clauses would likely deprive them completely of jurisdiction in treaty-based ISDS arbitration claims). However, none of the (very few) Japan-related ISDS cases seem to be related to bribery and other serious misconduct, which reduces the salience of this problem and so may also dampen scope for Japan to take a leadership role towards more harmonised regional developments in related international investment law.

Weeramantry and Sharma examined corruption and FDI in the Lao PDR, which is known to have a very high level of corruption. The country is not active in cracking down on corruption and bribery related to FDI, as two intertwined BIT arbitrations involving Sanum have also demonstrated.[47] The Lao PDR alleged that all claims should be entirely dismissed on the grounds of the claimants' engagement in illegal conduct including bribery, embezzlement and money laundering in the investment's inception and operation. The tribunals adopted a nuanced approach that nevertheless went into the merits of the claims, after holding that the standard of proof for corruption requires 'clear and convincing evidence'. The standard was not met, but could have been on the lower 'balance of probabilities' standard, and the investor's misbehaviour influenced the decision on the FET claim. The tribunal highlighted that, aside from the criminal investigations of the foreign investors (i.e., alleged bribers), no investigation or prosecution had been made by the Lao government against any other persons, such as government officials, who had allegedly accepted bribes in relation to the investment projects. More generally, anti-corruption efforts have been made in the country, with the support of the United Nations agencies and other non-profit organisations, but they have largely been aspirational.

Mondez and Cruz have commented that '[c]orruption is deeply rooted in Philippine culture'. This is attributable to the oligarch-and-clan system governing the Philippines and the relatively low salaries of civil servants. In 2022, the country ranked 116 among 180 states in the CPI,[48] being only ahead of Laos, Cambodia and

Myanmar among ASEAN members. The Revised Penal Code, the Anti-Graft and Corrupt Practices Act and other domestic laws penalise virtually all corrupt practices involving Filipino public officials, although their perceived legitimacy and effectiveness are somewhat dubious. For instance, there have been two ICSID cases brought by *Fraport AG Frankfurt Airport Services Worldwide* against the Filipino government, pertaining to the construction of the Ninoy Aquino International Airport's Terminal 3.[49] In both cases, the government raised a jurisdictional objection based on Fraport's alleged engagement in fraud and corruption, but its attempt was not successful. The tribunal in the first case accepted the objection at first, but the award was ultimately set aside by an ad hoc Committee. In the second case, the tribunal rejected the jurisdictional objection for the Philippines' failure to produce clear and convincing evidence. According to Mondez and Cruz, '[the ICSID tribunal in the second case] prevented the establishment of a precedent for successfully using corruption as a defence in investment arbitration proceedings involving the Philippines, thus maintaining investment contracts under BITs as attractive options for foreign investors'.

Kim surveyed the investment treaty regime of South Korea, a leading exporter and (to a lesser extent) importer of FDI. Corresponding to a commendable result in the CPI in 2022 (31 among 180 states),[50] after a dip around 2016 when a corruption scandal developed that eventually led to removal of the President, South Korea is developing a rigorous and comprehensive legal regime monitoring and punishing domestic corruption and bribery based on the Criminal Code, which is implemented and enforced by the Anti-Corruption and Civil Rights Commission and the Corruption Investigation Office for High-ranking Officials, among others. The country also criminalises foreign bribery through legislation implementing the OECD Convention and the UNCAC.

Nonetheless, Kim suggests that corruption and illegality provisions in South Korea's IIAs and practice surrounding these provisions are underdeveloped. Among the country's 84 BITs and 22 FTAs in force, the only major agreements that contain explicit anti-corruption clauses are the 2014 Canada–Korea FTA and the 2012 US–Korea FTA. Many Korean IIAs contain legality requirements, but there is fragmentation in how they require foreign investments to be made in accordance with the host state's laws. Korea and Korean investors are active players in ISDS, and the Korean government reportedly experienced corruption and illegality issues in the claims raised by Lone Star,[51] and especially Mason/Elliot.[52] Kim concludes that there is no strong sign showing South Korea may become more proactive in the development of anti-corruption provisions in IIAs, except perhaps in adding more and consistent explicit legality provisions in recent years. Such provisions may bring more scope for host state defences and thus be advantageous for the national interest of Korea that has a significant number of inbound ISDS claims (linked perhaps to its still larger IIA network) as well as more corruption domestically than Japan.

Finally, Khoman, Nottage and Thanitcul reported on Thailand, traditionally a large net FDI importer (albeit open mostly in manufacturing rather than the services sector), but recently emerging as a significant FDI exporter especially around Southeast Asia. Exacerbated by multiple military coups, corruption remains a persistent problem compared say to Japan, despite new laws and institutions established from

around the time of the Asian Financial Crisis in 1997.[53] There have been a few contract-based arbitrations embroiling the Thai government where corruption allegations were raised, resulting in awards being set aside at the seat in Thailand, but there have been only two major treaty-based claims against Thailand. The ISDS arbitration initiated by Kingsgate since 2017, under the FTA with Australia after a forced closure of the Chatree gold mine joint venture allegedly due to environmental pollution, is paralleled by media reports of 2015 investigations and 2020 indictments for corruption by a senior Mining Department official and the joint venture company's managing director. Yet the gold mine has recently resumed operations, so it seems that the dispute has nonetheless been settled or may be formally over 2024, despite the FTA containing an express legality provision (Article 901(1)).

Nottage, Khoman and Thanitcul concluded firstly by emphasising from this case study, and other contract-based arbitrations where corruption is suspected, that investigations and convictions domestically often take even longer than international arbitrations, and coordination may be lacking among different parts of the government responsible for domestic and international proceedings. (This may also be a factor behind India's *Devas* case management, mentioned above.) One solution may be for ISDS arbitration tribunals to defer proceedings until local proceedings are resolved. However, this may take far too long and those proceedings may themselves be suspect. Instead, they propose that arbitral tribunals examine corruption allegations more carefully and slowly, perhaps even adopting a higher standard of proof (like or closer to that adopted in domestic criminal proceedings, or the *Sanum* dispute with Laos), despite this exacerbating the general problem of delays and costs in ISDS proceedings. However, they acknowledge (as do Hwang and Chang, for example) that this question remains quite finally balanced. The second main conclusion is that ISDS arbitrations should be made more transparent, through various proposed mechanisms, particularly for states like Thailand (or, we might now add, India and Vietnam in Asia), that have not yet ratified the ICSID Convention.

To summarise, Part III showed that there are indeed some 'Asian approaches' emerging which are related to corruption and bribery in investment arbitrations, in the narrow sense of individual Asian countries having dealt with the issues of corruption and other serious misconduct in some treaties and/or (occasionally high-profile) disputes. However, those experiences are still far from creating a uniform Asian approach towards corruption and illegality in investment arbitration. One commonality, at least, is the acceptance of dispute resolution through ISDS arbitration—even in principle by India under its 2016 Model BIT. Yet countries like India and Thailand have maintained some scepticism by not ratifying the ICSID Convention, leaving foreign investors to rely on ad hoc arbitration rules offered in their investment treaties or one-off contracts with those host states. Moreover, although prominent Asia-based ISDS arbitrators are emerging along with more Asia-related treaty claims after a slow start compared to other parts of the world,[54] those from Western Europe still dominate in ICSID proceedings.[55] This may make it even more difficult to turn Asia into a 'rule maker' on any investment arbitration issues including bribery and other serious misconduct.

16.3 A Roadmap for an Asian Approach to Corruption and Illegality in ISDS

On the 'dawn of an Asian century in international investment law', Schill suggested that 'Asian actors still face considerable hurdles in assuming leadership in shaping the future of global investment governance, in particular when not acting in concert, but based on purely national interest'.[56] This book has demonstrated that Asia is not yet assuming leadership in forming 'Asian' international investment law governance around the issues of corruption and illegality due to Asian states' diverse backgrounds and some disagreements on those issues. Thus, this chapter concludes by identifying a roadmap for Asia to establish a more unified approach to corruption and illegality in Asian investment arbitration, reducing uncertainties and transaction costs as well as providing more scope to influence ongoing debates globally.

First, Asia is encouraged to establish a forum where all states and jurisdictions may discuss corruption and illegality involved in FDI. As this book has demonstrated, Asian countries and territories show significant disparity in their practical engagement with global anti-corruption initiatives. Some countries are ambivalent about international law prohibiting corruption and illegality in FDI, while others are not. Asian jurisdictions need to have more scope for dialogue on how they address such differences in the context of ISDS, especially treaty-based arbitration. They do not have to build such a forum from scratch as they may take advantage of the ACIAP, which is currently joined by 23 Asian economies and operated under the joint secretariat of the ADB and OECD.[57] If the ADB and OECD allow it (although this might be challenging), those 23 member economies may invite the non-member Asian economies of the ACIAP, such as Brunei Darussalam, Myanmar and Laos, to discuss anti-corruption initiatives for Asian ISDS. As well as expanding the scope of the ACIAP focused on corruption, the ADB and OECD should be encouraged to link that work with the growing work it has been doing in international investment law and arbitration, especially in recent years after the setback experienced in the late 1990s with the failed Multilateral Agreement on Investment.[58]

Furthermore, the ADB and OECD should coordinate such a combined initiative with efforts from the United Nations and other international organisations, like the OECD did in 2011 with its Guidelines on Multinational Enterprises (already highlighting corruption, as mentioned above). The United Nations itself needs better coordination, as corruption is being addressed mainly through the parts interested in human rights, while the United Nations Conference on Trade and Development (UNCTAD) deals with investment policy and treaties generally, and the United Nations Commission on International Trade Law (UNCITRAL) since 2019 has been discussing dispute resolution reform related to ISDS arbitration. UNCTAD seems to have focused some attention on Asia as a whole, but the UNCITRAL reform discussions on ISDS have reflected interests primarily of (some) individual Asian states rather than regional perspectives.[59] The ADB and OECD should also collaborate with ASEAN, which has reaffirmed its anti-corruption commitments on many occasions,[60] and the WTO, given its new agreement on investment facilitation.

Second, after identifying what they may agree and disagree with in that forum, Asian states and jurisdictions are recommended to develop more unified rules to deal with corruption and other serious misconduct in Asian investment arbitration. As suggested by Yan and Liu, a starting point would be to promote a regional convention on anti-corruption in Asia, and then incorporate more specific references to its principles in investment treaties as well. The baseline for the regional treaty is likely to be the UNCAC,[61] which has been ratified by all Asian countries apart from North Korea. The OECD Convention may be useful only as a point of reference because Asian countries—other than Japan and South Korea—have not adopted the legal instrument. A 'peer review' mechanism similar to that under the UNCAC could also help with implementation. Enhanced implementation could also come by incorporating agreements in advance to inter-state dispute settlement processes (as under the latter's Article 66) in the new regional convention and/or for example under an FTA (as occurred with the CPTPP, building on US FTA practice, for cross-referenced environmental protection treaties with otherwise weak enforcement mechanisms).[62]

However, even the UNCAC (and OECD Convention) leave discretion for member states as to how to incorporate provisions in their local laws (e.g., regarding facilitation payment defences) and especially as to enforcement activities. Investment treaties could therefore add more detail, if and when member states are willing. In addition, even if their anti-corruption obligations on states remain quite weak (as in Japan's suite of treaties from around 2007) this could provide a 'hook' for countries to seek funding from respective governments to beef up capacity-building and joint anti-corruption enforcement efforts.[63]

Establishing such unified rules is not easy for Asia, where states and jurisdictions have diverse legal and governance systems, and different attitudes towards international hard and soft law on corruption and illegality. There is also an investor–investee divide in Asia. For example, large economies like China may pursue their interests as FDI investors, whereas small economies like Laos may be willing to protect their interests as capital-importing countries. This could influence the calculus of states if they debate issues such as specifying a particular standard of proof for ISDS arbitration tribunals to apply when faced with defences alleging bribery, especially given that arbitration rules and soft law tend to leave that issue to the discretion of tribunals. Nonetheless, it should not be impossible for Asian countries and jurisdictions to establish some more uniform anti-corruption rules and those should interface with ISDS proceedings, as they all know that corruption and illegality often do more harm than good to FDI and local economies once those have developed sufficiently.[64] Such rules may also serve as effective tools for Asia to remove its stereotypical reputation as the place with a weak rule of law, improve its FDI attractiveness and contribute to IIA reforms.[65]

Third, Asia should consider establishing an independent institution or permanent court to better deal with allegations of corruption and other serious misconduct in relation to Asian investment disputes. This idea is not very new. The European Union has proposed a permanent investment court as a means to address concerns about the current global system of ISDS that is centred around the ICSID, although this proposal has faced pushback from Asian countries (notably Korea and Japan).[66]

Some commentators put forward the creation of a multilateral investment court balancing 'merit choices with forms of regional, legal and diversity representation'.[67] Calamita and Giannakopoulos propose establishing the ASEAN Investment Tribunal, a regional investment court system consisting of a first instance chamber, an appellate chamber, a joint committee of the contracting parties and a secretariat.[68] Asia as a whole should similarly investigate establishing a more permanent independent body, likely better able to deal more transparently with FDI disputes involving controversial issues of corruption, illegality and other matters than ad hoc ISDS arbitral tribunals, to shift the current paradigm of Asian ISDS—rather than diverting most cases to ICSID Convention arbitration mainly in Washington DC, where Asia remains rather weakly represented.[69]

Creating an independent Asian investment court or tribunal is not a straightforward project as it is a matter of diplomatic, (geo)political and practical feasibility.[70] Neither the Asia–Pacific Economic Cooperation (APEC) nor the ADB appears keen to pursue such a project, or indeed to be very aware of the growing intersection between corruption and investment arbitration—even though they have considered each topic separately.[71] However, including these prominent regional bodies in such an initiative would further undergird the growth of international investment law and arbitration into the Asian region, paralleling the earlier spread of international commercial arbitration.[72]

Notes

1. UNCTAD 2023; Chap. 1 in this volume.
2. UNCTAD 2023.
3. IMF 2023.
4. Azis 2018; Chaudhury et al. 2020; Kotrajaras et al. 2011.
5. OECD n.d.-f.
6. See OECD n.d.-c.
7. The eight states are Argentina, Brazil, Bulgaria, Croatia, Peru, Romania, Russia and South Africa: see OECD n.d.-b.
8. Also, around this time, the OECD–Asia Roundtable on Corporate Governance was established, aiming to contextualise and implement more effectively in the region the 1999 OECD Corporate Governance Principles; see OECD n.d.-e.
9. Namely Afghanistan, Bangladesh, Bhutan, Cambodia, China, Hong Kong, India, Indonesia, Japan, Kazakhstan, Korea, Kyrgyzstan, Macao, Malaysia, Mongolia, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand, Timor-Leste and Vietnam; see OECD n.d.-a.
10. See United Nations 2012 and generally Choudhury 2023.
11. For a recent example (filed 15 December 2022), involving an Australian firm complaining about an Indian firm not adhering to the Guidelines, see http://mneguidelines.oecd.org/database/instances/au0028.htm.
12. See United Nations n.d. See also generally Chaps. 4 and 5 in this volume.
13. See Chap. 5 in this volume; and Hsieh 2021 (advocating for a 'new Asian regionalism' in international economic law.
14. See generally Nottage et al. 2019; Pekkanen 2016.
15. Transparency International 2023; WJP 2022. See also e.g., https://www.transparency.org/en/news/cpi-2022-asia-pacific-basic-freedoms-restricted-anti-corruption-efforts-neglected.

16. See, e.g., Canare 2017; Qureshi et al. 2021; Shaari et al. 2022.
17. Caprasse and Tecqmenne 2022, p. 520; UNODC 2021, p. 6.
18. Reichenbach 2022; Wilske and Obel 2013.
19. Performance-phase corruption, namely after the initial investment, is generally not treated so harshly by tribunals. This is arguably understandable, given that the investor is more 'hostage' to bribe requests from public officials after costs have been sunk into the investment. The volume also does not discuss allegations of corruption regarding arbitrators or arbitral institution staff, as these are rarely made—let alone proven.
20. See generally Reinisch 2018 (critically surveying different phrasings and conclusions reached by tribunals).
21. Caprasse and Tecqmenne 2022; Valle and Carvalho 2022; Chap. 6 in this volume.
22. Pieth and Betz 2019.
23. See Chap. 1 in this volume.
24. See generally Kawharu and Nottage 2017.
25. Senate Economics References Commitee 2018, Chap. 7; see Chap. 4 in this volume.
26. Wedeman 2002.
27. *World Duty Free Company Limited v. The Republic of Kenya*, ICSID Case No. ARB/00/7, Award, 4 October 2006.
28. *Metal-Tech Ltd. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award, 4 October 2013.
29. *Vladislav Kim and others v. Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, 8 March 2017.
30. Weeramantry and Packer 2023, p. 442.
31. Among those 45 IIAs concluded before 2012, ten were concluded by Japan with other Asian countries (broadly interpreted), although Yan and Liu suggest that anti-corruption provisions in Japan's IIAs should contain more details about anti-corruption commitments for states to take and the consequences of a breach of those commitments.
32. See e.g., a new agreement signed between Taiwan and the US: Liang 2023. The negotiated text is available at: https://ustr.gov/sites/default/files/2023-05/AIT-TECRO%20Trade%20Agreement%20May%202023.pdf.
33. WTO 2024.
34. For a further detailed analysis, including discussion of whether the general rules under public international law could be varied in the investment treaty context, see Viñuales 2022.
35. On whether and how arbitrators should themselves raise and investigate the possibility of corruption, see also generally Lojan 2023 and Igbokwe 2023 (albeit mostly in the context of commercial arbitration).
36. Transparency International 2023. For a recent high-profile case of judicial corruption at the highest level in mainland China, see Zhuang 2023.
37. Transparency International 2023.
38. UNCITRAL, Final Award (30 November 2011). See further Claxton et al. 2021 (via https://ijiel.in/).
39. These include *Astro All Asia Networks and South Asia Entertainment Holdings Limited v. India* (2016), PCA Case No. 2016-24/25, which arose out of an allegedly unfair and biased criminal investigation by the Indian government into suspected bribery by claimants of Indian government officials; and *Strategic Infrasol Foodstuff LLC and The Joint Venture of Thakur Family Trust, UAE with Ace Hospitality Management DMCC, UAE v. India* (2016), UNCITRAL Rules, ad hoc arbitration, which concerned the Indian government's alleged non-investigation of allegations of forgery and criminal actions by an Indian construction company.
40. *CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India*, PCA Case No 2013-09, Award on Jurisdiction and Merits, 25 July 2016; *Deutsche Telekom AG v. Republic of India*, PCA Case No. 2014-10, Interim Award, 13 December 2017.

41. Moreover, after a notably more pro-arbitration approach being adopted by India's Supreme Court and legislature from around 2012 (Aragaki 2018), concerns have been raised about further recent amendments to the 1996 Arbitration and Conciliation Act. The amendments extend powers to the Indian courts to stay enforcement of an award unconditionally when they are prima facie satisfied that not only the award making, but also the arbitration agreement or even the underlying contract, was induced by fraud or corruption: Dholakia et al. 2021.
42. See Chaps. 1 and10 in this volume.
43. See, for example, *Churchill Mining and Planet Mining Pty Ltd. v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14.
44. Ubilava and Nottage 2021.
45. Transparency International 2023.
46. OECD 2019; Takamiya et al. 2022.
47. *Lao Holdings NV v. Lao People's Democratic Republic* (the *Lao Holdings* case), ICSID Case No. ARB(AF)/12/6; *Sanum Investments Limited (People's Republic of China) v. the Government of the Lao People's Democratic Republic* (the *Sanum* case), PCA Case No. 2013-13.
48. Transparency International 2023.
49. *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines,* ICSID Case No. ARB/03/25 (Award dated August 16, 2007); *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines,* ICSID Case No. ARB/11/12 (Award dated December 10, 2014).
50. Transparency International 2023.
51. *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No ARB/12/37. The August 2022 award ordered Korea to pay approximately USD215.5 million in damages (out of USD4.7 billion claimed) but it successfully applied for rectification of the award to reduce the amount by USD0.5 million. It also reportedly contemplated annulment proceedings, which have been filed already by the claimant. For details and updates see Charlotin 2023 and https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/37.
52. *Mason Capital LP and Mason Management LLC v. The Republic of Korea*, PCA Case N° 2018-55; *Elliott Associates, LP v. The Republic of Korea*, PCA Case N° 2018-51. The London-seated UNCITRAL Rules arbitration tribunal awarded Elliott around USD53.6 million in damages (out of the USD770 million reportedly claimed originally). Both parties have filed for corrections to the award, and Korea has filed for the award to be set aside. See Bohmer 2023 and https://pca-cpa.org/en/cases/197/.

    For updates, including further on the award rendered in June 2023 in the latter case, see Kim 2023.
53. Wombolt et al. 2018. Reforms in 2015 had introduced corporate liability, introducing an offence for companies benefiting from a bribe by a related person, subject to a reasonable procedures defence based on the UK Bribery Act, as well as prohibiting demand and supply side bribery of foreign public officials and international organisations. Legislation in 2018, replacing the 1999 Act, extended corporate criminal liability to companies registered outside Thailand and bolstered cross-border cooperation. Also in 2018, India, Japan, Singapore, Malaysia, Vietnam and China had all introduced further anti-corruption legislation.
54. Nottage and Weeramantry 2012.
55. Coleman 2016; Langford et al. 2022.
56. Schill 2015, p. 771.
57. OECD n.d.-a; see further Chap. 5 in this volume.
58. See OECD n.d.-d.
59. See generally Calamita and Giannakopoulos 2022 on ASEAN state engagement, and the reports of deliberations including interventions also by other Asian states available via https://www.ejiltalk.org/category/investor-state-arbitration-tribunals/.
60. See further Chap. 5 in this volume. The ADB and OECD may also coordinate with ASEAN Plus Three and ASEAN Parties Against Corruption (joined by anti-corruption agencies of all ASEAN members: http://www.asean-pac.org/). However, they may not expect to have close

cooperation with the East Asia Summit on corruption in Asian investment arbitration as the Summit has significant non-Asian members, such as Russia and the US.

61. Yan 2022, p. 164.
62. Huang and Hu 2021.
63. See e.g., how sparse references to competition law cooperation in the Australia–New Zealand ASEAN FTA have led to a vigorous programme among respective regulators: ASEAN Secretariat n.d.; Australian Competition & Consumer Commission n.d. See also Wombolt et al. 2018.
64. See Chaps. 2and3 in this volume.
65. Yan 2022.
66. Li 2018.
67. Ghori 2018; Lévesque 2019, p. 100.
68. Calamita and Giannakopoulos 2022, pp. 183 ff.
69. Langford et al. 2022, p. 313.
70. Calamita and Giannakopoulos 2022, pp. 214 ff.
71. ADB 2021, 2023; Calamita 2020.
72. See generally Nottage et al. 2021; Nottage 2021.

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