

Kluwer Arbitration Blog

2025 PAW: Red Flags: Trends and Tools for Addressing Corruption

Mohamed Murad Mohamed Hamaima, Dalal Ziad Eljishi · Saturday, April 12th, 2025

As part of Day 2 of the 9th edition of [Paris Arbitration Week](#) (“PAW”) 2025, [Navacelle](#) hosted its third panel titled “[Red Flags in Arbitration: Trends and Tools for Addressing Corruption](#)”, this year partnering with [Forensic Risk Alliance](#) (“FRA”). The session gathered a distinguished group of leading legal and compliance experts to delve into the changing landscape of corruption within the context of international arbitration.

This panel was moderated by [Stéphane de Navacelle](#) (Navacelle). It featured, as panelists, [Yousr Khalil](#) (Forensic Risk Alliance), [Karl Hennessee](#) (Airbus), and [Vladimir Khvalei](#) (Mansors).

The [2023 ICC Dispute Resolution Statistics report](#) served as the basis of this panel’s considerations. Discussed were the varied intricacies in the identification and mitigation of corruption, as well as the complex ethical and practical considerations therein confronting arbitrators and counsel. As the name alludes, the panel primarily focused on highlighting corruption and indicating red flags, as well as green flags that imply a lack thereof. A key factor highlighted by the discussion is that corruption has increasingly been moving towards the forefront of arbitral scrutiny. This in turn induces a reevaluation of ethical limitations and procedural strategies.

Case Law: Largest Corruption Settlement in the History of Mankind

Karl Hennessee started the discussion with a reference to [Airbus’s involvement in a record-setting US\\$3.6 billion bribery and corruption fine](#). A root cause in the escalation of this case to this size was the heavy reliance on commercial intermediaries. Due to the intertwined nature of the business practice, and therefore risks of corruption, within a corporation of great magnitude, purging all said intermediaries was believed to be the only way of guaranteeing a stop to this. Hennessee furthered that the landscape of corruption and the application of the “red flags” test is currently evolving, with even notable bridges being present in the interpretation standard held by courts of the same jurisdiction. France’s lower courts are being described as reluctant to act without clear proof, whilst the *cours d’appel* and *cours de cassation* are far more nuanced in their approach and application of the “red flags” test. Swiss and English courts have adopted the more reluctant approach, similar to the lower French courts.

Shifting Role of Arbitral Scrutiny: From Passive to Active Investigation

Vladimir Khvalei discussed the increasing standard of arbitral scrutiny expected from tribunals. He referred to an instance from his own career where he had personally submitted a draft award for scrutiny during his time as Vice President of the [ICC International Court of Arbitration](#). Present were clear doubts of bribery and corruption from the structuring of payments and agency agreements. Khvalei provided that arbitrators are generally not in the practice of policing or investigating the proceedings, but stressed that they have a duty to do so. He provides Switzerland and Germany as examples, as these states were in the practice of not delving into possible matters of corruption, no matter how blatant, if no allegations were made. Common practice has been for arbitrators to remove themselves from questionable proceedings or blindly attempt to address the issues. Track 3 of the [ICC Task Force Addressing Issues of Corruption in International Arbitration's](#) recent [report](#) provided guidelines for the clear identification of the signs, red flags, or corruption, and their mitigation.

Red Flags – Examples

Regularly apparent red flags, per Khvalei, stem from the corruption risk of a particular case's country or industry. For example, contracts with State-owned entities are at a higher risk of constituting a red flag than contracts with private companies. Contracts of an unspecified nature constitute red flags as well, along with unusually high fees or irregularities in the fee-receiving agent's business practice. Irregular practices of concern can be as simple as not having a corporate website. The lack of this now-expected practice may suffice in triggering a more in-depth investigation. Khvalei posited that arbitrators when identifying such red flags, should ask the parties to provide further documentation to quash these concerns.

Investigating Corruption Allegations

Yoursr Khalil, through the lens of a forensic accountant and compliance expert, provided that it is of utmost importance to focus on the specific signifier of bribery and corruption relative to the nature of the transaction. Challenges in investigation arise with the lack of evidentiary documents available. Khalil added that it is intrinsic to weigh the ICC's red flags in their totality and provide each apparent red flag with their respect on a case-by-case basis. Khalil elaborated by describing how the use of a third-party agent is not, by itself, a red flag, but, when paired with the fact that the transaction occurred in a state high on the [Corruption Perceptions Index](#) ("CPI"), it could be sufficient to warrant an investigation. Moreover, establishing an intention to corrupt or defraud as well as a clear benefit received by alleged corruption are intrinsic to any assessment of red flags.

Counsel in arbitrations often rely on forensic accountants' support in navigating these uncertain evidentiary waters. A forensic accountant's role is wide-ranging, from direct appraisal of the presence of bribery and corruption to reporting on the adequacy of a company's preventative compliance or due diligence programs. Commentary can also be provided on the investigative techniques used in the assessment of the presence of corruption and bribery. The role in any given case is ultimately decided by the counsel.

Green Flags

On a different note, Stéphane de Navacelle asked the panel whether there are particular green flags that arbitrators should look for.

Khvalei responded by emphasizing how favorably a company is perceived when it has a dedicated compliance office. Adequate due diligence on a prospective intermediary prior to entry into an agency or commission agreement may also imply the absence of corruption. Within the contract itself, the presence of compliance clauses indicates an active effort in the avoidance of questionable business practices. The identification of potential red flags by a company and an internally prompted investigation concluding that no corruption is present may also serve to put a tribunal's concerns to rest. Hennessee interjected, stating that corporations may have all the above green flags merely for show, with the sole purpose of misleading the trust of unwitting inquirers—an observation that reinforces Khalil's emphasis on the need for a holistic evaluation.

Case Example: Technical Technological Documentation

By way of example, Khvalei recalled an encounter he had with a Swedish arbitrator, who had presided over a case involving a Russian party. The claimant in the case had initiated an arbitration against the respondent, demanding payment of US\$2 million for the alleged development of “technical technological documentation”. At first glance, the claim appeared legitimate. The consultant claimed to have provided specialized documentation as part of a service contract, and the respondent had even acknowledged receipt of this documentation but refused to pay. The case proceeded to arbitration, and on paper, everything appeared orderly. However, during the hearing, the arbitrator asked a simple but critical question: “Can you provide us with a copy of this technical technological documentation?”. It turns out that both parties, claimant and respondent, were unable to provide documents—and it appeared that they may have not existed at all.

This example is especially important as it illustrates the importance of the burden of proof and the use of adverse inferences in arbitration. When a party has exclusive access to crucial evidence but fails to present it, tribunals have no choice but to essentially assume the worst about the missing information. Proving corruption, however, is not only about missing documents but the totality of the evidence.

Role of Cross-examination and Witness Credibility

The speakers emphasized the value of in-person cross-examination. In-person hearings allow arbitrators to assess the demeanor, credibility, and consistency of witnesses. Another example used involved a claimant who sought US\$30 million but under questioning, admitted he had no staff or time to find any supporting documents, immediately causing his case to lose credibility.

Growing Role of Forensic Accounting Experts

Forensic accounting experts are playing a bigger role than ever before. Their ability to gather indirect but compelling evidence, piecing together corporate records, trade registries, stock data, and payment flows, is crucial in cases involving corruption. Panelists stressed that forensic specialists should be involved early in the process. If corruption is to be alleged, it must be supported by a well-documented narrative from the start. Waiting until mid-proceedings to build a corruption case is a costly mistake.

Nature of Evidence in Relation to Artificial Intelligence

With the advancement of technology, the way that evidence is used has also shifted. Communication between parties is no longer confined to traditional methods such as emailing or on paper; it has now shifted to encrypted platforms. Furthermore, Artificial Intelligence has become able to investigate patterns and inconsistencies, which will serve as a useful tool for arbitrators.

*This post is part of Kluwer Arbitration Blog's coverage of **Paris Arbitration Week 2025**.*

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