

Research Article

Arbitrability of Economic Crimes Claims Under International Investment Arbitration

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Abstract

Economic crime allegations in international investment arbitration has generated significant doctrinal and systemic challenges for the investor–state dispute settlement (ISDS) regime. As disputes involving bribery, fraud, money laundering, and related misconduct arise with greater frequency, tribunals must balance the protective structure of investment treaties with the imperatives of legality, international public policy, and global anti-corruption norms. This article employs a doctrinal, comparative, and policy-oriented methodology to examine how arbitral tribunals have conceptualised and addressed the arbitrability of economic crime claims. Through an analysis of key awards, the study evaluates jurisdictional approaches, admissibility determinations, evidentiary burdens, and procedural techniques used to assess clandestine and transnational wrongdoing. The principal finding is that arbitral practice remains fragmented and inconsistent. Tribunals diverge on the interpretation of legality requirements, the allocation and standard of proof, and the treatment of misconduct occurring during the operational phase of an investment. These inconsistencies undermine legal certainty, expose the system to strategic misuse by both investors and states, and weaken the coherence of the ISDS framework. The absence of harmonised evidentiary protocols further complicates the adjudication of economic crimes, given their inherent secrecy and the limited investigative powers of arbitral tribunals. To address these challenges, the article proposes a reform agenda centred on clearer treaty drafting, specialised evidentiary methodologies, enhanced tribunal expertise in financial and criminal matters, structured coordination with domestic authorities, and increased transparency. By articulating a principled framework governing the arbitrability of economic crime claims, the article contributes to strengthening the legitimacy, predictability, and normative integrity of the international investment arbitration system.

Keywords

Investment Arbitration, Economic, Money Launderin Crime, Public Policy, Jurisdiction, Treaty Reform, Anti-corruption, Legitimacy

1. Introduction

The intersection between allegations of economic crimes and international investment arbitration remains a prominent and complex area of legal controversy. Traditionally, arbitration, including investor-State dispute settlement (ISDS),

has operated within a framework that privileges the resolution of civil and commercial disputes, while criminal matters have been regarded as non-arbitrable based on public policy considerations and the exclusive prerogative of States to prose-

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Received: 26 November 2025; **Accepted:** 6 December 2025; **Published:** 7 January 2026



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cute crimes [1]. However, investment disputes arising under Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) investment chapters have frequently featured allegations of fraud, corruption, bribery, embezzlement, and money laundering, challenging long-standing assumptions about the limits of arbitral jurisdiction [2].

The relevance of this issue is particularly acute as states increasingly rely on “clean hands” doctrines and “in accordance with law” provisions embedded in investment treaties to defend against claims where economic crimes are alleged. [3] Leading arbitral cases such as *World Duty Free Company Ltd v Republic of Kenya* [4], *Metal-Tech Ltd v Republic of Uzbekistan* [5], and *Inceysa Vallisoletana S. L. v Republic of El Salvador* [5] have illustrated how corruption or fraudulent conduct can deprive investors of treaty protections, affect jurisdiction, render claims inadmissible, or lead to the dismissal of claims on grounds of international public policy.

Despite emerging jurisprudence, there remains considerable doctrinal ambiguity surrounding whether, and to what extent, claims involving economic crimes are arbitrable in investment arbitration.¹ Questions persist regarding the tribunal’s competence to assess criminal behavior, the standard of proof required to establish such conduct, and the broader implications for the enforcement of arbitral awards under instruments such as the New York Convention² 1958 [7]. Moreover, the strategic invocation of economic crime allegations, sometimes in good faith, but at other times abusively, adds complexity to investment disputes, thereby raising concerns about the integrity of the ISDS process and the protection of legitimate investors [8].

From a treaty law perspective, there is also a growing trend of incorporating anti-corruption obligations, legality of investment clauses, and express exclusions of protection for unlawful investments into BITs and other investment agreements [9]. Yet, treaty practice remains inconsistent, and the challenge of reconciling investment protection with the imperative to combat economic crimes remains unresolved.

The article adopts a doctrinal and comparative legal methodology to analyse the arbitrability of economic crime claims within the framework of international investment arbitration. The primary focus is on identifying the extent to which allegations of corruption, fraud, money-laundering, illicit enrichment, and related economic offences can be ad-

judicated by arbitral tribunals constituted under BITs, MITs, and the ICSID Convention.

First, the study conducts a doctrinal analysis of relevant treaty provisions, arbitral rules, and general principles of international law to determine the legal foundations governing arbitrability. This includes an examination of jurisdictional clauses, admissibility thresholds, public policy exceptions, and treaty-based legality requirements. Key arbitral jurisprudence—such as *World Duty Free v Kenya*, *Metal-Tech v Uzbekistan*, *Kardassopoulos v Georgia*, and *Inceysa v El Salvador*—is analysed to trace the evolution of tribunals’ reasoning on the scope and limits of their competence to decide economic crime claims.

Second, the article employs a comparative approach by evaluating how different legal systems and arbitral fora treat economic crime allegations, including ICSID, UNCITRAL, SCC, and ICC arbitrations. This comparison helps identify divergence in doctrinal treatment, standards of proof, evidentiary burdens, and the interaction between host-state criminal law and investment treaty obligations.

Third, the analysis integrates policy-oriented evaluation by assessing the implications of tribunals’ approaches for the integrity of the investment regime, host-state regulatory autonomy, and global anti-corruption frameworks. This involves drawing on secondary literature in international criminal law, anti-corruption studies, and public international law to evaluate whether current arbitral practice aligns with broader public policy objectives, including the UNCAC and FATF standards.

Finally, the research adopts a qualitative, interpretative method in synthesising doctrinal findings, case law patterns, and policy considerations to propose a coherent framework for determining when economic crime claims should be considered arbitrable. This methodological structure enables the article to move beyond descriptive analysis and offer a principled normative assessment of how investment tribunals ought to approach economic crime claims. By exploring the theoretical underpinnings of arbitrability within the investment arbitration context, the article identifies key jurisdictional, admissibility and evidential challenges facing tribunals in handling allegations of economic crimes.

Finally, the article proposes a reform agenda centred on clearer treaty drafting, specialised evidentiary methodologies, enhanced tribunal expertise in financial and criminal matters, structured coordination with domestic authorities, and increased transparency, with a view to enhancing legal certainty while upholding anti-corruption and rule-of-law objectives within the ISDS system.

2. Doctrinal and Scholarly Perspectives on Economic Crimes in Investment Arbitration

The arbitrability of disputes involving economic crimes

1 See for instance, Zachary Douglas in his work *The International Law of Investment Claims* (Cambridge University Press 2009) 145–147, discusses the jurisdictional and admissibility challenges raised by illegal investments and the uncertainty over whether tribunals possess the authority to determine issues involving criminal wrongdoing. Similarly, Andrea Bjorklund in his work ‘The Diversity of International Investment Arbitration – the Case of Bribery’ in Christina Binder and others (eds), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (OUP 2009) 307, examines the divergent arbitral approaches to bribery and the conceptual tensions that arise in determining arbitrability. Finally, UNCTAD, *World Investment Report 2020: International Production Beyond the Pandemic* (United Nations 2020) 126–129 highlights the absence of a uniform doctrine in arbitral practice and the systemic ambiguity that continues to surround the treatment of economic crimes in investor-state arbitration.

2 See Art V(2)(b)

remains a highly contested issue in the literature on international investment arbitration. Scholars are divided on whether claims tainted by allegations of corruption, fraud, bribery, or money laundering can properly be adjudicated by arbitral tribunals, given the traditional view that criminal matters fall within the exclusive domain of national courts and the public policy prerogative of states [10].

Early doctrinal approaches, such as those advocated by Redfern and Hunter, emphasized a sharp division between civil-commercial disputes, which are generally arbitrable, and criminal matters, which are not, owing to concerns about public order and State sovereignty [11]. This distinction was reinforced by classic interpretations of the New York Convention 1958, particularly Article V(2)(b), which allows recognition and enforcement of an arbitral award to be refused if it would be contrary to the public policy of the enforcing State [7].

However, modern scholars have challenged this binary view, noting that investment arbitration often straddles the boundary between public and private law, especially where the legality of an investment is questioned. Schreuer argues that in ICSID arbitration, tribunals are not courts of criminal law but are nonetheless empowered to consider allegations of illegality when it relates to the existence and validity of an investment under a BIT [10]. Similarly, Newcombe and Paradell emphasize that issues of corruption or fraud must be assessed through the lens of treaty interpretation, consent to arbitration, and the “in accordance with law” provisions often found in BITs [12].

Several empirical studies of arbitral jurisprudence suggest that tribunals are increasingly willing to address allegations of economic crimes directly, albeit within a civil law framework. For instance, in *Metal-Tech v Uzbekistan*, the tribunal declined jurisdiction after finding that corruption tainted the investment, despite the absence of a criminal conviction, relying instead on a balance of probabilities standard [5]. Similarly, *World Duty Free v Kenya* illustrates how acts of bribery, even if not prosecuted domestically, can result in the denial of treaty protections on grounds of international public policy [4].

At the same time, other scholars caution against tribunals overstepping their mandates. Cordero-Moss warns that arbitrators are ill-equipped to conduct full-fledged criminal investigations and may lack the procedural tools necessary for fact-finding in cases of serious economic crimes [8]. Consequently, some propose that arbitral tribunals should defer such matters to competent criminal authorities or decline jurisdiction where the core of the dispute revolves around criminal conduct [13]. Further, the literature has increasingly explored the relationship between the enforcement stage and public policy concerns. Born notes that awards tainted by findings of corruption face significant risks of annulment or non-enforcement, even if the underlying tribunal was willing to proceed on the merits [1]. This creates uncertainty for investors and States alike and underscores the need for greater

consistency in how economic crime allegations are handled in ISDS.

In more recent years, policy-oriented scholars, including UNCTAD reports, have recommended that States adopt clearer treaty language addressing corruption, fraud, and money laundering, both to preserve the legitimacy of ISDS and to deter illicit conduct by investors and State officials [9]. While the doctrinal consensus is shifting towards permitting tribunals to engage with economic crimes within a civil adjudicative framework, significant tensions remain regarding the limits of arbitral competence, standards of proof, and the balance between investment protection and public interest imperatives. This article builds upon this evolving scholarship by offering a critical analysis of how these issues manifest in practice and proposing reforms to enhance clarity and legitimacy in the treatment of economic crimes under international investment arbitration.

2.1. Intersection of Investment Arbitration and Criminal Law and Its Emerging Challenges

The intersection of investment arbitration and criminal law presents profound procedural challenge. Criminal prosecutions and administrative sanctions imposed by host States may run parallel to investment claims, creating risks of procedural fragmentation and inconsistent outcomes [14, 15].³

Arbitral tribunals are not criminal courts. They lack coercive powers (such as subpoena powers) and criminal investigative tools. Consequently, they must rely on civil standards of proof, typically “balance of probabilities,” rather than “beyond reasonable doubt.” This raises concerns about whether tribunals can fairly and effectively adjudicate serious allegations of criminal conduct [8]. In some instances, the tribunal has undertaken independent investigation of corruption allegations, ultimately dismissing the claim for lack of jurisdiction, despite no criminal conviction by national courts.⁴ This illustrates how tribunals are increasingly forced to grapple with issues traditionally reserved for criminal courts, challenging their procedural capacities and legitimacy.

2.2. Treaty-based Legality Requirements and the Arbitrability of Economic Crimes

An increasingly common feature in BITs is the inclusion of “legality” or “compliance with host state law” clauses as

³ See for instance the works of Christoph Schreuer, ‘Interaction of International Investment Law with Other Branches of International Law’ in Christina Binder and others (eds), *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer* (OUP 2009) 9–11, which highlights jurisdictional and procedural complexities that arise when domestic criminal enforcement intersects with investor-state arbitration. Also, OECD’s *Investor-State Dispute Settlement Public Consultation: 2012–2014* (OECD 2015) 33–34 notes the risk of procedural fragmentation and inconsistency when parallel proceedings unfold in different legal fora.

⁴ See for instance *Metal-Tech Ltd v Republic of Uzbekistan* (Award) ICSID Case No ARB/10/3 (4 October 2013)

conditions for treaty protection. These provisions stipulate that only investments made "in accordance with the laws and regulations" of the host state qualify for treaty protection.⁵ Such clauses have significant implications for arbitrability. If an investment was procured through fraud or corruption, it may fall outside the tribunal's jurisdiction altogether. As Douglas notes, tribunals must assess whether illegality relates to the making of the investment or to its subsequent operation, and whether it warrants a denial of protection [3]. This approach places tribunals in the position of adjudicating allegations of economic crimes as a gateway issue, rather than merely considering them as defenses on the merits.

Older BITs typically granted broad protections to "any investment," without expressly conditioning treaty coverage on the investment's compliance with domestic laws. As a result, arbitral tribunals were often left to infer legality requirements from general principles or public policy. In this context, tribunals adopted varying approaches where some emphasized the legality of the establishment of the investment, while others examined the operation phase or applied public policy standards *ex post*.

Modern BITs, such as those signed by Canada, India, Morocco, and the UAE, mark a shift toward more explicit and stringent legality clauses. These treaties not only reference legality in defining protected investments but often expand the scope to include operation-phase compliance and even ongoing obligations tied to anti-corruption norms. For instance, the Canada Model FIPA (2021) goes beyond initial compliance by requiring investments to be "made and operated in accordance with applicable law," thereby authorising tribunals to scrutinise conduct throughout the investment's life cycle.⁶

Furthermore, modern treaties increasingly avoid ambiguity by defining what constitutes illegality (e.g., referencing specific areas such as corruption, fraud, and money laundering), and in some cases, outline procedural consequences such as denial of benefits or exclusion from jurisdiction. This evolution reflects a broader trend toward regulatory realism and public policy alignment in investment treaty practice, thereby aligning treaty protections with global standards on transparency, legality, and sustainable development. Thus, recent trends suggest a gradual doctrinal shift toward the acceptance that tribunals may, and sometimes must, address economic crimes where they affect the existence, validity, or operation of the investment. This is particularly the case where no effective domestic remedies are available, or where the criminal

justice system itself is implicated in the dispute.

At the same time, caution persists against tribunals becoming "criminal courts by proxy." Some scholars advocate procedural bifurcation, where tribunals suspend proceedings pending the outcome of national criminal investigations, while others recommend soft law mechanisms, such as IBA guidelines, to help tribunals navigate corruption allegations more systematically [16]. In any case, the landscape is evolving toward greater engagement by investment tribunals with economic crime allegations, albeit with due regard for limits on procedural capacity, public policy, and sovereign prerogatives.

Therefore, the arbitrability of economic crimes claims in international investment arbitration stands at the intersection of private dispute settlement and the public interest in combating corruption and financial misconduct. While doctrinal and jurisprudential developments increasingly recognise that arbitral tribunals must address such issues where necessary, substantial challenges remain concerning jurisdictional limits, standards of proof, and enforcement risks. Understanding arbitrability in this context requires a nuanced appreciation of treaty language, arbitral practice, public policy, and criminal law principles. These issues shall now be explored in greater detail in the subsequent sections of this article.

3. Arbitrability, Public Policy and Economic Crimes

3.1. Arbitrability

Arbitrability refers to the question of whether a specific type of dispute is capable of settlement by arbitration under the relevant legal system. Traditionally, arbitration is confined to matters that are of a private law nature and can be disposed of by the parties without implicating sovereign prerogatives. As Redfern and Hunter explain, the concept of arbitrability imposes substantive limits on the types of disputes that may be subject to arbitration, beyond issues of the parties' consent [11]. Arbitrability has both an objective and a subjective dimension. Objective arbitrability concerns the subject matter of the dispute: whether the law permits certain issues (e.g., criminal matters, family law, insolvency) to be decided by private arbitration. Subjective arbitrability, by contrast, concerns the parties themselves and whether they possess the legal capacity to submit the dispute to arbitration [2].

In the context of international investment arbitration, the notion of objective arbitrability becomes particularly complex. Disputes involving allegations of economic crimes, such as bribery, fraud, and money laundering, historically fall within the domain of public law and sovereign criminal enforcement, leading to the presumption that they are non-arbitrable [1]. Yet, given that investment treaties routinely define "disputes arising out of or relating to an in-

5 See the following BITs: Morocco–Nigeria BIT (signed 3 December 2016) art 1, requiring investments to be made "in accordance with the laws, regulations, and policies of the host state"; Slovakia–Iran BIT (signed 19 January 2016) art 1(1), conditioning protection on compliance with host state law; Brazil–India BIT (signed 25 January 2020) art 2, restricting coverage to investments made in accordance with domestic law; Canada Model Foreign Investment Promotion and Protection Agreement (FIPA) (2021) art 2, requiring legality at both the entry and operation phases; Rwanda–United Arab Emirates BIT (signed 1 November 2021) art 1, limiting coverage to investments admitted in conformity with host state law.
6 See Canada Model Foreign Investment Promotion and Protection Agreement (FIPA) (2021) art 2.

vestment" broadly, the question arises as to whether, and how, economic crime allegations affect the tribunal's competence to hear investment claims.

3.2. Public Policy

Public policy, both at the national and international levels, constitutes a crucial limit on the arbitrability of disputes. The New York Convention 1958, under article V(2)(b) permits the refusal of recognition and enforcement of arbitral awards if such enforcement would be contrary to the public policy of the enforcing State [7]. Public policy is generally understood as encompassing fundamental principles of law and morality considered essential to the legal system's integrity.

In investment arbitration, the public policy exception operates in two key ways: First, *jurisdictionally*, tribunals may refuse to exercise jurisdiction if the investment was made through illegal means, such as corruption or fraud, invoking "in accordance with law" clauses in treaties. Second, *at the enforcement stage*, national courts may refuse to recognize or enforce an arbitral award that violates the public policy of the forum State. As Born notes, allegations of corruption, if substantiated, create a strong presumption against the enforceability of awards [1]. Public policy considerations loom large at the enforcement stage of arbitral awards involving allegations of economic crimes. National courts possess broad discretion under Article V of the New York Convention to refuse enforcement of awards that are contrary to public policy.

In *World Duty Free v Kenya*, the tribunal concluded that the claimant could not recover under an investment contract procured by bribery because bribery "offends the public policy and international public policy of most, if not all, States" [4]. Similarly, national courts have refused to enforce awards tainted by corruption, even where the tribunal did not find corruption conclusively proven. The International Law Association's Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards suggests that public policy grounds should be interpreted narrowly but acknowledges that corruption constitutes a core violation of international public policy [17]. Thus, the presence of corruption or serious economic crime allegations presents a real risk to the finality and enforceability of investment arbitration awards. However, the precise scope and content of public policy remain highly variable across jurisdictions [18]. What constitutes an essential public policy principle in one legal system may be treated more leniently in another [17]. This divergence complicates the treatment of economic crimes allegations in international arbitration.

3.3. Economic Crimes

Economic crimes refer to unlawful acts committed with the objective of obtaining financial gain or advantage [19]. In the context of international investment, the most relevant eco-

omic crimes include bribery, fraud, money laundering, and embezzlement [20]. These crimes threaten not only the integrity of investment regimes but also the credibility of legal systems and markets. Economic crimes also encompass a broad spectrum of unlawful activities involving financial misconduct, abuse of trust, corruption of public functions, and distortion of market integrity. They are characterised by their economic motive, impact on economic systems, and frequently transnational nature.

Andrew Newcombe and Lluís Paradell observe that compliance with host State law, including laws prohibiting bribery and fraud, is often a jurisdictional precondition for investment protection under BITs. Serious breaches of law at the establishment phase, particularly acts of corruption, may deprive the tribunal of jurisdiction [12]. Thus, allegations of economic crimes strike at the jurisdictional foundations of investment arbitration, rather than merely affecting the merits of claims.

3.3.1. Bribery

Bribery involves offering, giving, receiving, or soliciting something of value as a means of influencing the actions of an individual holding a public or private position of trust [21, 22]. In the investment context, bribery typically manifests during the acquisition of licenses, concessions, contracts, or other governmental approvals necessary for investment activities.⁷

The international legal framework condemns bribery unequivocally. Instruments such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)⁸ and the United Nations Convention against Corruption (UNCAC) (2003) impose obligations on states to criminalise and effectively combat bribery [21]. Under these frameworks, bribery is regarded as a serious threat to economic development, governance, and fair competition.

In investment arbitration, allegations of bribery can have severe consequences. As the tribunal noted in *World Duty Free v Kenya*, corruption "is contrary to international public policy," and contracts procured through bribery are unenforceable [4]. When an investment is tainted by bribery, tribunals may decline jurisdiction, dismiss the claim on admissibility grounds, or deny substantive protection to the investor. In assessing allegations of bribery in the context of investment arbitration, tribunals undertake a nuanced inquiry into both the factual and legal dimensions of the alleged misconduct. Central to this analysis is the question of intent: tribunals examine whether the payment or advantage conferred by the investor was intended to induce or influence the

⁷ Bribery has also been described as the provision or solicitation of something of value to improperly influence the conduct of an individual in a position of public or private trust.

⁸ Here, it was recognised that 'bribery is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns and distorting international competitive conditions.

conduct of a public official in a manner that facilitated the establishment or operation of the investment. The identity and function of the official involved are equally relevant, as tribunals often assess whether the individual occupied a position of authority capable of materially impacting regulatory approvals, contractual access, or discretionary state actions [37].

Crucially, tribunals also require a demonstrable causal nexus between the alleged payment and a corresponding benefit or investment-related decision, as mere association or suspicion is insufficient. This causality assessment ensures that findings of corruption are grounded in objective connections rather than conjecture. Overlaying this analysis is the evidentiary threshold applied by tribunals, which, though typically based on the civil standard of balance of probabilities, is often elevated in cases involving serious allegations of corruption to a “clear and convincing evidence” standard. This calibrated approach aims to uphold procedural fairness while safeguarding the integrity of the arbitral process against the misuse of treaty protections by actors engaged in illicit conduct.⁹ The seriousness of bribery allegations demands meticulous procedural handling, as it implicates both the legitimacy of the investment and the integrity of the arbitration process.

3.3.2. Money Laundering

Money laundering refers to the process of concealing, disguising, or legitimising the proceeds of illegal activities to make them appear to originate from legitimate sources [23]. The Financial Action Task Force (FATF) defines money laundering broadly as “the processing of criminal proceeds to disguise their illegal origin” [24]. Money laundering typically involves three stages: placement, layering, and integration. In the investment arbitration context, money laundering issues may arise when investments are funded with illicit proceeds, or when complex corporate structures are used to obscure ownership and origin of funds. In some instances, financial transactions are structured to avoid detection by regulatory authorities. Money laundering is criminalised under a wide range of international treaties, including the United Nations Convention against Transnational Organized Crime (2000) and regional instruments such as the European Union’s Anti-Money Laundering Directives. States have obligations¹⁰ to

prevent their financial systems from being used for laundering the proceeds of crime [31, 32]. If an investment is alleged to be the product of money laundering, tribunals may find that it does not qualify as a “protected investment” under the relevant BIT, especially where “legality” clauses are present [25, 26]. As Douglas explains, an investment that is illegal *ab initio* cannot benefit from treaty protection because it violates the host state’s fundamental legal order [3].

Indeed, investments linked to money laundering raise acute public policy concerns. An arbitral award enforcing rights derived from laundered money could be refused recognition or enforcement under the New York Convention on public policy grounds.¹¹ Arbitral scrutiny of money laundering allegations presents a series of complex jurisdictional and evidentiary challenges that distinguish such claims from more conventional investment disputes [38]. One major difficulty lies in tracing the origins and movements of financial transactions across multiple jurisdictions, often involving layers of shell entities, offshore accounts, and nominee arrangements deliberately designed to obscure beneficial ownership. Establishing a direct and legally significant nexus between an investment and underlying criminal conduct requires not only robust documentary evidence but also a nuanced appreciation of both domestic and transnational financial crime frameworks. Tribunals are frequently called upon to determine whether funds used in the investment were derived from criminal activity or merely breached regulatory compliance norms—an inquiry that demands caution, because the line between administrative infractions and criminal misconduct is not always clearly delineated in practice.

Significantly, arbitral proceedings, constrained by limited investigatory tools and absence of prosecutorial authority, may struggle to meet the evidentiary burden necessary for such findings, particularly where the standard of proof approaches the “clear and convincing” threshold often applied to allegations of serious wrongdoing. These limitations are further compounded by the fragmented international cooperation mechanisms that inhibit the seamless flow of financial intelligence, thereby rendering the task of verifying and contextualising suspicious transactions especially arduous [1, 9, 27].

4. The Challenges of Jurisdiction, Admissibility, and Proof

When allegations of economic crimes arise in international investment arbitration, they raise intricate jurisdictional, admissibility, and evidentiary challenges. Tribunals must

9 Metal-Tech Ltd v Republic of Uzbekistan (Award) ICSID Case No ARB/10/3 (4 October 2013) paras 237–243, where the tribunal examined the intent behind payments to consultants, their political connections, and the causal link to the investment’s establishment; World Duty Free Company Ltd v Republic of Kenya (Award) ICSID Case No ARB/00/7 (4 October 2006) paras 156–161, where the tribunal found that a gift given to the president of Kenya to secure investment access constituted bribery, disqualifying the claim; Inceysa Vallisoletana SL v El Salvador (Award) ICSID Case No ARB/03/26 (2 August 2006) paras 230–257, where the tribunal stressed the importance of legality and the causal nexus between fraudulent misrepresentations and the host state’s investment consent; Gary B Born, International Commercial Arbitration (3rd edn, Kluwer Law International 2021) 3060–3065, discussing elevated standards of proof in allegations of corruption and the need for clear and convincing evidence in cases of serious wrongdoing.

10 (The FATF Recommendations) (FATF, February 2023) recommendation 1 and

preamble imposes obligations on states to implement measures that prevent the misuse of financial systems for laundering illicit proceeds; Also, United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, particularly art 7 requires states to develop and maintain an effective anti-money laundering regime covering financial institutions and designated non-financial businesses.

11 See Article V(2)(b) of the New York Convention 1958

navigate a complex terrain: deciding whether they possess jurisdiction over claims involving illegality, whether such claims are admissible given public policy considerations, and how allegations of bribery, fraud, or money laundering should be proven within the procedural constraints of arbitration. This section provides a detailed analysis of these critical dimensions, drawing on treaty texts, arbitral jurisprudence, and doctrinal commentary.

In investment arbitration, jurisdiction is fundamentally contingent on the existence of a qualifying "investment." As earlier noted, many Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) condition treaty protection on the requirement that the investment be made "in accordance with the laws and regulations" of the host state. This "legality requirement" is a jurisdictional gateway. As articulated by the tribunal in *Phoenix Action Ltd v Czech Republic*, investments made contrary to the law of the host state are excluded from the protection of investment treaties and thus from the jurisdiction of ICSID tribunals [25]. Similarly, in *Tokios Tokelès v Ukraine*, the tribunal acknowledged that "only investments made in compliance with the law are protected" [26]. Where allegations of bribery or money laundering affect the establishment of the investment, tribunals must scrutinise whether the investment was legally constituted. If an investment is tainted by serious illegality at inception, the tribunal may decline jurisdiction entirely. This was the approach adopted in *Metal-Tech Ltd v Uzbekistan*, where corruption in the establishment of the investment led to a dismissal for lack of jurisdiction [5]. In contrast, when the alleged wrongdoing pertains to the operation of the investment rather than its inception, tribunals are more inclined to assume jurisdiction but may address the illegality at the merits or damages phase.

Beyond jurisdictional objections, allegations of economic crimes may give rise to serious questions of admissibility, even where a tribunal is otherwise competent to hear the dispute. While jurisdiction concerns the formal legal authority of a tribunal to adjudicate a claim, admissibility determines whether the tribunal ought to proceed with the case in light of legal or procedural improprieties associated with the claim itself. In this context, tribunals have increasingly recognised that claims involving serious misconduct—such as corruption, fraud, or money laundering—may be deemed inadmissible on grounds of abuse of rights or incompatibility with international public policy. Abuse of rights arises where a claimant, despite satisfying formal jurisdictional requirements, seeks to invoke treaty protections in bad faith, particularly when the investment has been procured or maintained through unlawful means. In *Phoenix Action Ltd v Czech Republic*, the tribunal rejected the claim as an abuse of process, emphasising that international investment protection cannot be used to shield illegality or to transform a domestic dispute into an international claim solely for strategic advantage [25].

Similarly, investments that are fundamentally inconsistent with international public policy, especially those obtained through bribery or in violation of host state laws, may be

inadmissible regardless of the existence of a legality clause. In *World Duty Free v Kenya*, the tribunal refused to hear a claim based on an investment procured through a personal payment to the head of state, holding that corruption was contrary to transnational public policy and rendered the claim inadmissible [4]. These cases underscore the growing convergence between admissibility doctrine and principles of integrity, legality, and good faith, as arbitral tribunals seek to prevent the instrumentalisation of investment law for illegitimate ends [2].

The doctrine of "clean hands" often underpins arguments for inadmissibility. Although there is no uniform standard, several tribunals have referred to it. In *Inceysa Vallisoletana v El Salvador*, the tribunal held that "no legal right can stem from a situation contrary to law" and denied admissibility on the basis that the investment was procured through deceit and misrepresentation [6]. Moreover, the concept of public policy is increasingly invoked to bar the admissibility of claims where economic crimes are alleged. As Born observes, international public policy demands that tribunals avoid granting relief in circumstances that would encourage or reward corrupt or unlawful behavior [1].

One of the most difficult challenges for tribunals concerns the burden and standard of proof required to establish allegations of bribery, fraud, or money laundering. Generally, the burden of proof lies on the party alleging illegality. Host states invoking corruption to defeat an investor's claim must substantiate their allegations. However, once a *prima facie* case is established, the burden may shift to the investor to disprove wrongdoing. The standard of proof is equally critical. In civil proceedings, the standard is typically "balance of probabilities" or "preponderance of the evidence." However, given the seriousness of allegations such as corruption and fraud, tribunals often require "clear and convincing evidence," a heightened evidentiary threshold. In *Metal-Tech Ltd v Uzbekistan*, the tribunal explained that "clear and convincing" evidence was necessary to establish corruption, given the gravity of the allegation [5]. Similarly, the tribunal in *Rumeli Telekom v Kazakhstan* emphasized the need for "compelling evidence" before drawing adverse inferences of corruption [28].

Nevertheless, the evidentiary difficulties inherent in proving corruption, which often occurs in secret, have led tribunals to permit circumstantial evidence, inferential reasoning, and shifts in the burden of proof when direct evidence is unavailable. In *EDF (Services) Ltd v Romania*, the tribunal accepted that proof of corruption may often be indirect and that "the absence of a direct smoking gun" does not preclude a finding based on a pattern of conduct [29].

Given the clandestine nature of economic crimes such as bribery and money laundering, arbitral tribunals often face significant evidentiary constraints in establishing direct proof of wrongdoing. In such cases, tribunals do not require a criminal standard of proof but rely on a civil threshold, typically the balance of probabilities, augmented by the need for

“clear and convincing evidence” where the allegations are especially grave. This evidentiary framework permits the tribunal to draw reasonable inferences from patterns of behaviour and circumstantial evidence.^[36] Indicators commonly relied upon include unexplained payments to third-party intermediaries whose roles lack a legitimate commercial rationale; the absence of documentation or contractual clarity in respect of those payments; and opaque financial structures that obscure the identity of beneficiaries.

A particularly prerogative factor is the existence of close political or familial ties between intermediaries and public officials in positions to influence the granting of licences, permits, or state contracts. In *Metal-Tech Ltd v Uzbekistan*, for example, the tribunal found that a series of substantial, undocumented payments to politically connected consultants, combined with evasive testimony and a lack of legitimate service explanation, constituted sufficiently clear and convincing evidence of corruption ^[5].

Such cases underscore the tribunal’s role not as a criminal court, but as a civil adjudicator equipped to weigh circumstantial evidence in a manner that balances fairness to the parties with the imperative to uphold the integrity of the arbitral process and public international law.

It is however important to note that arbitration involving allegations of economic crimes may raise acute due process concerns. Tribunals must therefore ensure that both parties have a fair opportunity to present their case and respond to allegations. Tribunals must balance the need for inferential reasoning with fairness to the parties. Drawing adverse inferences without adequate factual grounding risks undermining due process and the legitimacy of the arbitral process and outcome. In *Libananco Holdings Co v Turkey*, the tribunal rejected the state’s allegations of fraud, emphasising that suspicions, however strong, are not sufficient to meet the burden of proof without corroborative evidence ^[30]. Thus, tribunals must carefully assess the probative value of circumstantial evidence and ensure that findings of corruption are based on reasoned and credible grounds.

5. BIT Practices and Treaty Innovations in Economic Crime Arbitration

The treatment of economic crimes within international investment arbitration is not determined solely by arbitral jurisprudence. It is increasingly shaped by the drafting practices of Bilateral Investment Treaties (BITs) and other international investment agreements (IIAs). States have gradually recognised that treaty language significantly influences tribunals’ approaches to allegations of bribery, fraud, and money laundering. Consequently, there has been a discernible trend towards refining treaty provisions to address economic crimes more proactively and systematically. This section critically examines traditional BIT drafting practices, the trajectory of recent innovations, and the potential implications for arbitra-

bility and the recalibration of investor protections.

5.1. Traditional BIT Approaches: Silence on Economic Crimes

Historically, most BITs contained broad dispute settlement clauses that permitted investors to submit “any dispute” relating to an investment to arbitration, without explicit references to the legality of the investment’s origin or operation. The absence of express treaty language addressing corruption, bribery, or fraud created a significant doctrinal lacuna. In practice, tribunals were compelled to infer limitations from general principles of international law or to rely upon implied legality requirements anchored in domestic legal standards. This vacuum was exploited in cases where investors engaged in serious misconduct during the establishment or operation of investments, only for such issues to be revealed post hoc during arbitral proceedings. In such contexts, tribunals often invoked general principles or “in accordance with law” clauses to police investors’ conduct retrospectively, thereby filling the normative gap left by treaty silence ^[2].

5.2. “In Accordance with Law” Clauses: A First Line of Defence

A central mechanism to address the legality of investments has been the “in accordance with law” clause, prevalent in many BITs. These provisions stipulate that only investments made in compliance with the laws and regulations of the host state qualify for treaty protection. They operate as a jurisdictional threshold, empowering tribunals to decline jurisdiction over investments tainted by illegality at the inception.

For instance, the 1995 Kazakhstan-United States BIT defines investment as “every kind of investment [...] admitted in accordance with the laws and regulations of the Party in whose territory the investment is made”.¹² This formulation underpinned the tribunal’s approach in *Metal-Tech Ltd v Uzbekistan*, where corruption in the establishment of the investment led to a dismissal for lack of jurisdiction ^[5]. Nonetheless, “in accordance with law” clauses are not without ambiguity. Tribunals have differed on whether such clauses pertain solely to the making of the investment or also extend to its ongoing operation. Questions also arise regarding the threshold of illegality necessary to vitiate protection: while grave violations such as bribery clearly exclude protection, minor regulatory breaches present a more contested terrain.

Modern treaty practice marks a departure from the broad and often ambiguous drafting of older BITs, where tribunals were left to infer legality requirements primarily from general principles or vague references to “public policy.” Tribunals interpreting these older agreements frequently diverged in

¹² Kazakhstan-United States BIT (signed 19 May 1992, entered into force 11 January 1994) art I(1)(a).

approach—some examining the legality of the investment at the establishment phase, while others extended scrutiny to the operational phase or assessed compliance only at the enforcement stage. A doctrinal turning point occurred in *Metal-Tech v Uzbekistan*, where the tribunal applied an “in accordance with law” clause to deny jurisdiction on the basis that the investment was tainted by corruption at inception [5]. A similar outcome was reached in *Inceysa v El Salvador*, where fraudulent misrepresentations were found to breach both the host state’s domestic law and the treaty’s legality clause [1].

These cases reflect a growing judicial consensus that legality requirements are not merely rhetorical but function as jurisdictional thresholds.

In contrast, modern treaties—including the 2021 Canada Model FIPA and the 2020 Brazil–India BIT—expressly define the scope of legality clauses, often extending them beyond entry-phase compliance to the operation and conduct of the investment.¹³ This textual clarity enhances legal certainty for states and investors alike and reinforces the normative alignment of investment protection with anti-corruption and public interest imperatives.

5.3. New Treaty Innovations: Adopting Explicit Anti-corruption Provisions

Recognising the inadequacies of implicit legality requirements, recent treaty practice has embraced the incorporation of explicit anti-corruption and anti-economic crime provisions. Several modern agreements require that investments be not only established but also operated in accordance with host state laws, including anti-corruption statutes.

For example, the Canada Model BIT (2021) stipulates that investments must comply with anti-corruption laws throughout their life cycle.¹⁴ Similarly, the EU–Vietnam Investment Protection Agreement (2020) introduces a denial of benefits clause where investments are established or operated through corruption, fraud, or misrepresentation.¹⁵ The United States–Mexico–Canada Agreement (USMCA) (2020) further entrenches anti-corruption obligations by affirmatively allowing states to adopt measures against investments involving bribery or fraudulent practices.¹⁶

These innovations aim to reinforce jurisdictional barriers against unlawful investments, empower tribunals to scrutinize allegations of economic crimes more proactively, and enhance the legitimacy of the investment arbitration regime by aligning it with evolving international anti-corruption norms.

It is important to note that the trajectory of BIT drafting reflects broader international legal developments. Multilateral instruments such as the United Nations Convention against Corruption (UNCAC), [31] the OECD Anti-Bribery Convention, [21] and the Financial Action Task Force (FATF) Recommendations [32] have collectively shaped the normative expectations that states will combat economic crimes, including within the investment arbitration context.

Consequently, modern treaty drafting increasingly seeks to harmonize investment protection with global anti-corruption obligations. Tribunals are no longer interpreting BITs in an autonomous vacuum but must consider the broader international commitments undertaken by states to eliminate corruption and illicit financial practices.

5.4. Denial of Benefits Clauses and Economic Crimes

Beyond legality clauses, modern treaties increasingly feature “denial of benefits” provisions, which permit states to deny treaty protections to investors engaged in specified wrongful conduct, including corruption and fraud. Article 9.14 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) exemplifies this trend, allowing a party to deny benefits if the investor has engaged in fraudulent activities.¹⁷ Such clauses serve as a powerful treaty-based defence, enabling host states to disqualify tainted investments without resorting solely to the more arduous burden of proving illegality under “in accordance with law” clauses.

5.5. Challenges and Ambiguities in Treaty Practice: Need for Balanced Treaty Drafting

Despite these normative advances, several challenges remain unresolved. Many treaties employ vague references to “corruption” or “fraud” without providing detailed definitions, thereby creating interpretative uncertainties. The evidentiary burdens associated with invoking denial of benefits clauses or proving illegality often remain under-specified, leaving tribunals significant discretion. Furthermore, ambiguity persists as to whether wrongdoing during the operation, rather than merely the establishment of an investment suffices to deny protection. The retroactive application of new anti-corruption obligations to existing investments remains another source of contention, raising issues of legal certainty and legitimate expectations.

Thus, while treaty innovations mark commendable progress, they must be interpreted and applied carefully to avoid unintended consequences, including the risk of denying protection to legitimate investments or imposing unreasonably

13 See Canada Model Foreign Investment Promotion and Protection Agreement (FIPA) (2021) art 2; Brazil–India BIT (signed 25 January 2020) art 2.

14 See Canada Model Foreign Investment Promotion and Protection Agreement (FIPA) (2021) art 17.

15 See EU–Vietnam Investment Protection Agreement (signed 30 June 2019) art 2.2 and 2.3.

16 See United States–Mexico–Canada Agreement (signed 30 November 2018, entered into force 1 July 2020) ch 27.

17 See Comprehensive and Progressive Agreement for Trans-Pacific Partnership (signed 8 March 2018) art 9.14.

burdensome proof obligations on states.

A balanced approach to treaty drafting is essential. Overly rigid legality requirements risk chilling foreign investment, introducing uncertainty, and enabling host states to invoke minor regulatory breaches opportunistically. Conversely, insufficient regulation risks undermining the credibility and legitimacy of the ISDS system.

Best practices in contemporary treaty drafting should include the clear definition of key terms such as "corruption," "fraud," and "economic crime," the specification of whether legality requirements apply solely at establishment or throughout the investment's duration, the articulation of evidentiary thresholds and procedural fairness guarantees, and the conditioning of denial of benefits clauses upon timely and transparent invocation by host states. Only through such calibrated drafting can states safeguard their regulatory autonomy while preserving the legitimate expectations of good-faith investors.

6. Reform Proposals and Best Practices

Addressing economic crimes within the framework of investment arbitration necessitates meaningful reforms that go beyond procedural tweaks. It requires a structural recalibration of treaty drafting, arbitral procedures, evidentiary methodologies, and institutional cooperation. As we conclude with this section, we offer critically insights on the reform strategies, if properly articulated and implemented, that can safeguard the legitimacy of international investment law while ensuring that arbitration does not become a sanctuary for illicit conduct.

6.1. Clarifying Treaty Standards on Legality and Economic Crimes

One of the foremost areas requiring reform is the clarity and precision of treaty language. Traditional BITs often fail to expressly address the consequences of corruption, fraud, or money laundering. Reform-oriented treaties should not only require that investments be made "in accordance with host state law" but should explicitly reference anti-corruption and anti-money laundering obligations. The definition of key terms such as "corruption," "fraud," and "illicit enrichment" should be standardized across treaties, preferably by direct reference to international instruments like the United Nations Convention against Corruption (UNCAC) [31] and the Financial Action Task Force (FATF) recommendations [32].

Clear treaty provisions should also delineate the consequences of non-compliance. It must be explicit whether illegality bars jurisdiction, renders claims inadmissible or merely affects the merits. The timing of the illegality, whether during the establishment or operation of the investment, must be specified, along with whether host states can invoke such defenses retroactively.

6.2. Strengthening Evidentiary Protocols and Tribunal Methodology

The evidentiary framework within investment arbitration must be refined to account for the unique challenges posed by allegations of economic crimes. While a "clear and convincing" standard of proof remains appropriate for serious allegations such as bribery and fraud, tribunals should also recognize the practical necessity of relying on circumstantial evidence and inferential reasoning, given the clandestine nature of such misconduct.

Procedural adaptations are essential. Tribunals should be encouraged to use procedural bifurcation, allowing preliminary jurisdictional and legality issues to be addressed before full merits hearings. Additionally, rules governing document production should be flexible enough to accommodate the complexity of tracing financial flows and uncovering covert corruption networks. Tribunals must also be willing to draw adverse inferences where a party's obstructionism inhibits full evidentiary disclosure, consistent with international evidentiary standards like those promoted in the IBA Rules on the Taking of Evidence [33]. These reforms would enhance the tribunal's ability to adjudicate allegations of economic crimes while safeguarding due process and procedural fairness.

6.3. Enhancing Tribunal Expertise and Use of Experts

Given the complexity of financial crimes, the competence of arbitrators must be a focus of reform. Tribunals dealing with corruption or money laundering allegations should either comprise arbitrators with expertise in these areas or ensure that expert evidence is actively sought and utilized. Institutional reforms could include the establishment of specialized rosters of arbitrators vetted for experience in public international law, financial crimes, or forensic accounting.

Tribunals should also exercise their discretion to appoint independent experts to assist in technical assessments, particularly in tracing illicit financial flows or evaluating suspicious contractual arrangements.

6.4. Deepening Cooperation Between Tribunals and National Authorities

Given that economic crimes often involve breaches of both domestic and international law, greater collaboration between arbitral tribunals and national criminal authorities is necessary. While tribunals must preserve their independence and the confidentiality of proceedings, structured protocols for information sharing—subject to strict procedural safeguards—would be beneficial.

Suspending arbitral proceedings pending the outcome of parallel criminal investigations may sometimes be appropriate, particularly where the findings of national authorities could decisively affect jurisdiction or admissibility. Moreo-

ver, tribunals should be prepared to give appropriate evidentiary weight to final and binding criminal convictions rendered by competent courts [34]. Such cooperation would strengthen the credibility of arbitration outcomes and ensure that tribunals do not inadvertently shield unlawful conduct from judicial scrutiny.

6.5. Promoting Greater Transparency and Public Accountability

Transparency is indispensable to preserving the legitimacy of investment arbitration in cases involving economic crimes. The routine publication of awards—with appropriate confidentiality protections—should become standard practice, consistent with initiatives like the UNCITRAL Transparency Rules [35]. Open hearings, public access to key procedural documents, and the acceptance of amicus curiae submissions from civil society organizations could further democratize the arbitral process.

Transparency would serve multiple objectives: it would deter both frivolous claims and bad-faith defenses, enhance the accountability of both investors and states, and align investment arbitration more closely with broader anti-corruption norms at the international level.

6.6. Requiring Preventive Measures and Compliance Standards from Investors

Investment treaties should not only penalize corruption but also incentivise preventive compliance. Investors seeking protection under BITs should be required to demonstrate adherence to robust anti-corruption compliance programs, transparency in beneficial ownership structures, and responsible business conduct.

Certification schemes such as ISO 37001 on Anti-Bribery Management Systems [34] could be referenced as part of due diligence obligations. By embedding preventive obligations into investment frameworks, states and tribunals would shift the emphasis from punitive ex post enforcement to proactive risk mitigation.

6.7. Harmonising Interpretive Practices Through Soft Law Instruments

Soft law instruments have a crucial role to play in harmonizing arbitral approaches to economic crimes. The development of detailed guidelines—such as an expansion of the IBA Rules on the Taking of Evidence or the promulgation of a dedicated IBA Guide on Corruption in Investment Arbitration [16]—would provide tribunals with a structured methodology for handling allegations of economic misconduct.

Institutions like ICSID and UNCITRAL could also adopt best practice notes or procedural protocols to guide tribunals and parties in managing disputes involving allegations of corruption and fraud.

7. Conclusion

The arbitrability of economic crime claims in international investment arbitration raises fundamental doctrinal, procedural, and systemic challenges that directly affect the legitimacy and credibility of the ISDS system. As foreign investment increasingly intersects with complex cross-border financial structures, disputes involving allegations of bribery, fraud, money laundering, and related forms of economic misconduct have become more frequent and more central to contemporary investment arbitration practice. This article has shown that, although tribunals are engaging with these issues in more sophisticated ways, profound inconsistencies and conceptual gaps persist.

The analysis of key cases—including *World Duty Free v Kenya*, *Metal-Tech v Uzbekistan*, and *Inceysa Vallisoletana v El Salvador*—demonstrates that tribunals generally accept that investments tainted by illegality at the point of establishment may fall outside treaty protection. This appears to be the clearest area of consensus. Tribunals have also developed increasingly structured approaches to jurisdiction, admissibility, and the merits when faced with allegations of corruption, applying heightened standards of proof such as “clear and convincing evidence,” while remaining open to the use of inferential and circumstantial evidence in recognition of the clandestine nature of economic crimes.

However, the article’s major finding is that tribunal practice remains fragmented and unpredictable. Divergences persist regarding the interpretation of “in accordance with law” clauses, the allocation of burdens of proof, and the consequences of wrongdoing that arises during the operation—rather than the establishment—of an investment. This fragmentation is compounded by procedural dilemmas: tribunals must safeguard fairness between parties while adjudicating allegations that are inherently difficult to prove and often embedded within opaque financial networks. Such inconsistencies expose parties to uncertainty and weaken systemic coherence, thereby threatening the perceived legitimacy of ISDS as a neutral forum.

The treaty practice of states reflects an emerging awareness of these challenges. Modern BITs and FTAs increasingly incorporate explicit legality requirements, anti-corruption obligations, and denial-of-benefits clauses aimed at excluding tainted investments from treaty coverage. While these innovations signify progress, their drafting remains uneven across instruments, creating wide interpretive discretion that can either reinforce or undermine the coherence of the system. Moreover, strategic behaviour by both investors and host states—ranging from opportunistic allegations of corruption to attempts to launder unlawful conduct through treaty protections—further complicates the normative landscape.

The main contribution of this article is the development of a structured analytical framework that clarifies when and how economic crime allegations should be deemed arbitrable in investment arbitration. By synthesising doctrinal practice,

comparative jurisprudence across arbitral fora, and relevant international public policy standards—including the UNCAC and FATF Recommendations—the framework advances a principled approach that aligns the investment arbitration regime with the broader international legal order governing economic criminality. This contribution fills a significant gap in existing scholarship by offering a coherent model that enhances legal predictability while safeguarding the public policy imperative of combating economic crime.

Building on this foundation, the article proposes a series of reforms aimed at strengthening the system's ability to address economic crime claims. These include: clarifying treaty language on corruption and money laundering; refining evidentiary frameworks to better capture the realities of proving covert wrongdoing; encouraging reliance on specialised expertise and independent forensic evidence; and enhancing transparency through publication of awards and participation of civil society via amicus curiae submissions. The article further argues for structured coordination between arbitral and domestic criminal processes—through information-sharing protocols, appropriate procedural stays, and calibrated treatment of domestic criminal judgments—to increase consistency, credibility, and respect for sovereign enforcement prerogatives. Proactive compliance obligations on investors, such as mandatory anti-corruption programmes and beneficial ownership disclosure, are also essential to shifting the emphasis from reactive adjudication to preventative governance.

Soft law instruments, including IBA Guidelines and model frameworks from ICSID, UNCITRAL, and UNCTAD, can play a harmonising role by promoting best practices without constraining party autonomy. Collectively, these measures advance the goal of ensuring that investment arbitration neither becomes a refuge for criminality nor a platform for abusive state conduct.

Ultimately, strengthening the treatment of economic crimes in international investment arbitration is indispensable to preserving the system's legitimacy. By integrating clearer treaty standards, more rigorous evidentiary practices, and deeper alignment with international anti-corruption norms, tribunals and states can promote lawful foreign investment, protect good-faith investors, deter illicit conduct, and reinforce international rule of law. The reforms proposed in this article outline a pathway toward a more principled, transparent, and sustainable investment arbitration system capable of meeting the complex ethical and economic challenges of the twenty-first century.

Abbreviations

BIT	Bilateral Investment Treaty
MIT	Multilateral Investment Treaty
ECT	Energy Charter Treaty
ISDS	Investor–State Dispute Settlement
ICSID	International Centre for Settlement of Investment Disputes

UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNCAC	United Nations Convention Against Corruption
FATF	Financial Action Task Force
FTA	Free Trade Agreement
IBA	International Bar Association
SCC	Stockholm Chamber of Commerce (Arbitration Institute)
ICC	International Chamber of Commerce (International Court of Arbitration)
VCLT	Vienna Convention on the Law of Treaties
IPCC	Intergovernmental Panel on Climate Change

Author Contributions

Prince Uche Amadi is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares there is no conflicts of interest.

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