BRIBERY AND CORRUPTION IN THE ARBITRAL PROCESS

English Law context:

Bribery Act 2010 (enacted April 2010)

- Section 1 – active bribery (the giver)
- Section 2 – passive bribery (the receiver)
- Section 6 – Bribery of a Foreign Public Official
- Section 7 – Failure of a UK commercial organization to prevent bribery

No successful prosecution for “foreign” bribery under previous law until 2008

Recent cases in England – the SFO trend towards “settlement”

- BAE Systems – Al-Yamamah Saudi arms bribery investigation halted December 2006
- Tumukunde – September 2008 guilty pleas (City of London Police investigation) suspended sentence for giver and 12 months in prison (reduced for good behaviour) for Ugandan receiver
- Balfour Beatty – October 2008 SFO Civil Recovery Order (CRO) £2.25 million
- Mabey & Johnson – July 2009 guilt plea payment of bribes leading to fines and compensation
- AMEC plc – October 2009 CRO £5 million (accounting irregularities)
- Innopec Ltd – March 2010 “settlement” fine of £12.7 million heavily criticized by LJ Thomas
Bribery and Corruption in the Arbitral context – Enforcement of Awards

The “public policy” approach of the English Courts:

- **Soleimany** [1998] (CA) – Illegal contract could not give rise to an enforceable Arbitral Award (smuggling carpets out of Iran)

- **Westacre** [1999] (CA) - Arms contract- no finding of bribery in the Award–(CA majority- not allow new evidence to be introduced to challenge enforcement of the award)

- **Omnium** [1999] (QBD) - Award enforced where middleman contract not contrary to Swiss Law (was contrary to Algerian law-place of performance)

- **R v V** [2008] (QBD) - Award enforced where contract for purchase of personal influence in Libya was not unlawful in place of performance

- **HJ Heinz** [2010] (QBD) - Evidence that a contract underlying an arbitration award was forged was admissible when challenging enforcement