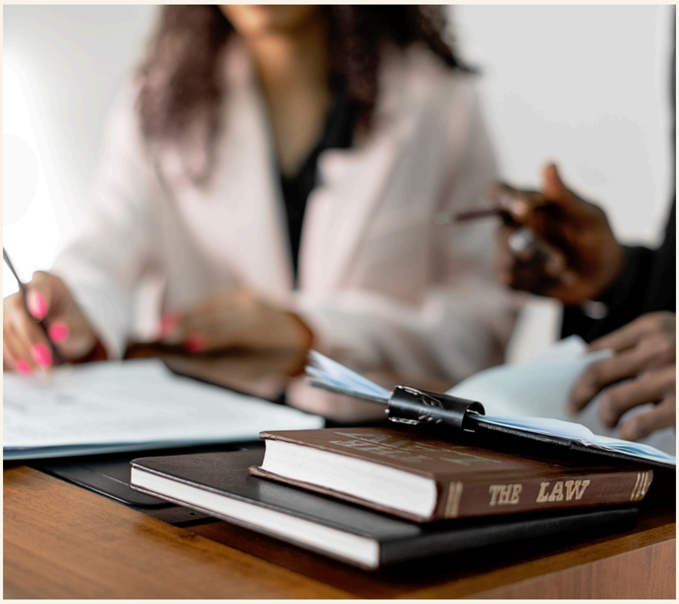
FINANCIAL CRIMES FROM AN ARBITRATION PERSPECTIVE:

ICC'S GUIDANCE ON INDICATORS OF CORRUPTION

RED FLAGS OR INDICATORS OF CORRUPTION IN INTERNATIONAL ARBITRATION



The ICC's 2024 report entitled "Red Flags or Other Indicators of Corruption in International Arbitration" systematically identifies warning signs that may reveal suspicions of corruption in arbitral proceedings. In particular, payments made without any corresponding service, unexplained large transfers, non-transparent relations with public officials, and payments routed through chains of intermediary companies are listed among the critical indicators.

According to the report, in addition to these, unusually high commission payments made through intermediaries or consultants, contract values inconsistent with market conditions, non-transparent tender processes, corporate structures concealing the true beneficial owner, and incomplete or off-the-books accounting records are also considered red flags indicating corruption.

LEGAL FRAMEWORK:

The existence of corruption indicators in international arbitration can directly affect not only the merits of the dispute but also the validity of the arbitral proceedings and the enforceability of arbitral awards. The ICC report emphasizes that arbitral tribunals may, when necessary, take such suspicions into account *ex officio*, beyond the parties' submissions. Moreover, under the ICC Arbitration Rules and the public policy provisions of the New York Convention, contracts tainted by corruption or arbitral awards based on such contracts may be declared invalid or denied enforcement. Under Turkish law as well, transactions involving bribery, money laundering, or other acts aimed at obtaining unlawful benefits may result in absolute nullity and criminal sanctions pursuant to the Turkish Code of Obligations and the Turkish Penal Code. In this respect, the indicators set out in the ICC Report serve as a guiding framework in both international and domestic arbitration practice with regard to evidentiary assessment, public policy review, and compliance obligations.

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WHAT PRECAUTIONS SHOULD YOUR COMPANY TAKE?

- All payment flows in contract and negotiation processes should be documented in detail.
- Internal audit and control mechanisms consistent with the ICC Arbitration Rules and national AML regulations should be established.
- Suspicious transaction reports should be filed effectively, and financial flows should be regularly monitored.
- Information on the ultimate beneficial owner should be made clear and accessible.
- Risks of public policy violations should be mitigated in order to safeguard the international enforceability of arbitral awards.

VARDAR ŞANLI IN ACTION:

- We analyze corruption and financial crime risks in arbitration proceedings in light of the ICC report and local regulations.
- We advise companies on developing transparency policies and compliance mechanisms.
- We provide strategic legal support in evidence management and public policy review.
- We establish risk assessments and internal procedures in line with Financial Crimes Investigation Board (MASAK) and international AML standards.
- We offer proactive solutions against public policy barriers to ensure the validity and international enforceability of arbitral awards.