CHAPTER 14

Corruption and Arbitration: Swedish Perspectives Against a French Backdrop

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§14.01 INTRODUCTION

Corruption is an unwanted reality from which arbitration is not spared. Many of the most common business sectors in arbitration are the most exposed to corruption; such as, construction, infrastructure, defence and natural resources. There is a risk that dubious parties will try to find a 'safe haven' in arbitration by exploiting the privacy and integrity of arbitration proceedings.

In most jurisdictions, corruption falls under the concept of international public policy (or *ordre public international*), the violation of which will render an award invalid or unenforceable. If contested, a national court will review the award, but the depth of the review differs among jurisdictions. Some jurisdictions have adopted a *minimalist approach* (e.g., Switzerland and the United Kingdom), while others have adopted a *maximalist approach* (e.g., France and the Netherlands).[1] The minimalist approach can be defined as a review based only on the facts established in the award. This excludes the possibility to correct or supplement the arbitrators' findings ex officio, even if such facts were established in a manner that is manifestly incorrect or contrary to the law.[2] The maximalist approach allows a court to go beyond the findings laid down in the award. The maximalist approach is neither limited to the evidence

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1. The terms 'minimalist approach' and 'maximalist approach' are not official terms or fixed in the sense that commentators will always use and define them in the same way. In this chapter we only use the terms to discuss the scope of the courts' review of an award in relation to facts. Other factors, such as standard of proof, are discussed separately from these terms.
2. *Alexander Brothers v. Alstom*, 4A_136/2016 (Swiss Federal Court, 3 November 2016).