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A Legal Analysis of Anti-Corruption Clauses in International Commercial Contracts and Their Impact on Transactional Transparency and Integrity

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the first paragraph of the Introduction, the discussion of the United Nations Convention against Corruption and the OECD Anti-Bribery Convention should be legally differentiated. The sentence stating that these instruments address "the abuse of position for the acquisition of illegitimate benefits, the bribery of foreign public officials, and collusion" may imply that both instruments have an equivalent substantive scope, whereas the OECD Convention is principally directed toward the bribery of foreign public officials in international business transactions, while UNCAC covers a considerably broader range of conduct. The authors should specify the distinct scope, legal status, enforcement structure, and relevance of each instrument to private contractual anti-corruption obligations.

The second paragraph of the Introduction states that "the anti-corruption clause has evolved from a recommendation contained in soft-law instruments into a decisive, binding, and preventive legal mechanism." This proposition requires greater doctrinal precision because an anti-corruption clause does not become binding merely through its inclusion in international commercial practice; its enforceability depends on the governing law, contractual incorporation, clarity of drafting, mandatory rules, and the tribunal's characterization of the obligation. The authors should explain the legal process through which non-binding international standards are transformed into enforceable contractual obligations and should distinguish between soft-law influence and contractual normativity.

In the second paragraph of the Introduction, the reference to the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act should be expanded to explain their different jurisdictional and substantive approaches. The current sentence groups them together as statutes that "have transformed compliance with anti-corruption standards into a critical requirement for mitigating compliance risks," but the FCPA and the UK Bribery Act differ in relation to facilitation payments, corporate liability, commercial bribery, jurisdictional nexus, and available defenses. A more accurate comparative explanation would strengthen the manuscript's claim that extraterritorial legislation influences contractual drafting and compliance allocation.

The third paragraph of the Introduction identifies uncertainty concerning whether anti-corruption clauses encompass "conflicts of interest and improper influence," but it does not formulate a legal test for determining the clause's substantive scope. The authors should explain whether scope should be determined through literal interpretation, the parties' common intention, incorporation of applicable legislation, reference to international standards, or a functional definition of corrupt conduct. The article would benefit from proposing model interpretive criteria, particularly for clauses containing broad expressions such as "improper advantage," "corrupt practice," or "unethical conduct."

The discussion of third-party obligations in the third paragraph of the Introduction requires deeper analysis. The sentence stating that extension to "agents and subcontractors requires legal justification in light of the doctrine of privity of contract" correctly identifies the issue, but the manuscript should distinguish between imposing direct obligations on third parties and imposing a contractual duty on the principal party to ensure third-party compliance. The authors should analyze flow-down clauses, warranties concerning intermediaries, due-diligence obligations, agency principles, vicarious liability, and indemnification mechanisms rather than treating third-party extension as a single issue.

In the third paragraph of Section 4, the sentence stating that modern anti-corruption clauses "must incorporate liability-allocation and indemnification mechanisms" requires qualification. Indemnity provisions may themselves be restricted where they purport to shift responsibility for criminal fines, intentional wrongdoing, or violations of public policy. The authors should distinguish between indemnification for investigation costs, third-party claims, reputational loss, regulatory penalties, and losses caused by termination. They should also examine whether indemnification remains enforceable when the indemnified party contributed to the corrupt conduct or failed to conduct reasonable due diligence.

The first paragraph of Section 5 asserts that anti-corruption clauses redirect competition "away from rent-seeking and collusion toward merit and economic efficiency." This claim is theoretically plausible but presented as a definitive causal conclusion without specifying its assumptions or evidentiary basis. The authors should clarify whether this is a normative proposition derived from transaction-cost economics or an empirically established effect. It would also be useful to discuss possible countervailing effects, including increased compliance costs, strategic use of allegations, exclusion of smaller suppliers, and opportunistic termination by stronger contractual parties.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The final paragraph of the Introduction frames the principal question broadly but does not identify subsidiary research questions or a clear analytical roadmap. The sentence beginning "How should the legal structure of anti-corruption clauses be formulated and interpreted" combines drafting, interpretation, personal scope, remedies, risk management, transparency, and transactional integrity within one question. The authors should divide this into discrete questions concerning legal nature, substantive scope, third-party application, evidentiary consequences, remedies, and the relationship with mandatory anti-corruption norms. This would improve the coherence between the research question, the analytical sections, and the conclusion.

In the Literature Review, the statement that previous studies have focused on "three broad areas" is useful but insufficiently systematic. The paragraph should identify the methodology, jurisdictional focus, principal conclusions, and limitations of the most relevant studies rather than merely grouping them thematically. In particular, the authors should demonstrate how the present article differs from prior research on corruption-tainted contracts, civil consequences of corruption, anti-corruption clauses in investment agreements, and international arbitration. A more structured literature synthesis is necessary to substantiate the claim that the contractual nature and preventive function of anti-corruption clauses have been "largely neglected."

The Literature Review characterizes some contracts as subject to "inherent nullity, or voidability," but it does not distinguish adequately among nullity, voidability, unenforceability, termination, rescission, and illegality. These concepts have different doctrinal foundations and consequences across legal systems. The authors should define each remedy and explain whether the article adopts civil-law terminology, common-law terminology, or a comparative functional approach. Without such clarification, later references to "absolute nullity" and "unilateral termination" risk appearing interchangeable when they are legally distinct.

The Research Methodology section is too general for a legal study of this scope. The statement that the analysis relies on "systematic and teleological interpretation of legal rules" should be supplemented by a precise explanation of the selection criteria for conventions, statutes, arbitral decisions, institutional clauses, and doctrinal sources. The authors should indicate which jurisdictions and arbitral institutions were examined, how authorities were selected, whether unpublished awards were excluded, and how conflicts among legal systems were evaluated. The methodology should also explain how the four stated variables were operationalized in the analysis.

In the first paragraph of Section 4, the claim that the pre-1990 approach "accepted irregular payments as part of transaction costs" is historically significant but currently unsupported and overly generalized. The authors should specify the jurisdictions, corporate practices, tax regimes, or regulatory environments to which this statement refers. They should also distinguish between legal deductibility of bribe payments, regulatory tolerance, weak enforcement, and doctrinal acceptance. A more nuanced historical account would avoid implying that the international legal order uniformly accepted corrupt payments before the 1990s.

The second paragraph of Section 4 refers to an "independent audit clause" and "whistleblowing systems," but the manuscript does not explain the minimum drafting elements required for these mechanisms to be enforceable. The authors should discuss the temporal scope of audit rights, access to records, confidentiality protections, data-protection limitations, costs of audit, selection of independent auditors, record-retention periods, reasonable-suspicion thresholds, and consequences of non-cooperation. Similarly, reporting obligations should address protection against retaliation, escalation procedures, and the treatment of anonymous allegations.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.