Tackling Fraud and Corruption in International Arbitration

Steven Perian KC[*]

Introduction

[1] Fraud and corruption in international arbitration remain pressing concerns, often described as the "fog" that obscures the integrity of dispute resolution. While arbitration is favoured for its confidentiality, efficiency, and enforceability, these same attributes can be exploited to facilitate or conceal illicit conduct.

[2] High-profile cases such as *The Federal Republic of Nigeria v Process & Industrial Development Ltd* ("*P&ID*")[1] and *National Iranian Oil Company v Crescent Petroleum Company International Ltd & Anor* ("*NIOC*")[2] highlight the challenges faced by courts and arbitration institutions when dealing with awards tainted by fraud, corruption, or jurisdictional irregularities.

[3] This article explores the vulnerabilities of arbitration, the red flags practitioners should watch for, and the role of arbitrators, technology, domestic courts, and arbitral institutions in maintaining the integrity of the process. It also draws from the newly published Chartered Institute of Arbitrators ("CIArb") *Guidelines on the Use of AI in Arbitration* (March 2025), which offer practical insights into emerging tools for detecting and addressing misconduct.

The vulnerability of international arbitration

[4] While arbitration is designed to be a neutral and efficient dispute resolution mechanism, its confidentiality and flexibility can create opportunities for misconduct. Fraudulent activities – including bribery, forged documents, and undisclosed conflicts of interest – can go undetected due to the lack of a centralised enforcement mechanism and the absence of robust investigatory powers typically found in judicial settings.

[5] Parties engaged in corruption may exploit arbitration by:

- using shell companies and secret payments to manipulate proceedings;

---

[*] Fellow of the Chartered Institute of Arbitrators (UK), Member of the Civil Mediation Council (UK), Barrister at 2 King's Bench Walk (UK), Partner at Rosli Dahlan Saravana Partnership (Malaysia), Arbitrator and Mediator with the Asian International Arbitration Centre, and accredited Mediator with the Malaysian International Mediation Centre.

[1] [2023] EWHC 2638.

[2] [2023] EWCA Civ 826.

- presenting fabricated or incomplete evidence to support fraudulent claims;
- taking advantage of arbitrators limited investigative powers.

[6] These risks are heightened in cross-border disputes involving jurisdictions with weak governance structures or a history of corruption.

Identifying red flags in arbitration

[7] Recognising indicators of fraud and corruption is crucial for arbitrators and practitioners. Some common red flags include:

- unexplained payments or financial transactions that lack supporting documentation;
- sudden contract modifications with no commercial rationale;
- the involvement of intermediaries or shell companies with no legitimate role;
- parties refusing to disclose crucial documents or engaging in obstructionist tactics;
- witness testimonies that appear coached, contradictory, or unreliable.

[8] To counter these risks, practitioners must conduct thorough due diligence, employ forensic accounting tools, and collaborate with independent experts where necessary.

Balancing party autonomy and arbitrator duties

[9] One of arbitration's cornerstone principles is party autonomy – the ability of parties to control key aspects of the proceedings. However, arbitrators also have a duty to safeguard the integrity of the process. They must actively investigate red flags, scrutinise suspicious evidence, and refuse to enforce agreements or render awards where corruption is manifest.

[10] The challenge lies in determining the threshold at which arbitrators should intervene. While they must avoid overstepping their mandate, turning a blind eye to corruption undermines arbitration's legitimacy. The *P&ID* case demonstrates that courts will not enforce awards procured through fraud, reinforcing the importance of arbitrators exercising due diligence and vigilance.

Judicial oversight and the enforcement of fraudulent awards

[11] The global expansion of international arbitration has yielded significant procedural efficiencies, yet it has concurrently amplified concerns regarding its vulnerability to fraud and misconduct. While arbitral tribunals are charged with safeguarding fairness within the confines of the proceedings, it

is ultimately for domestic courts to perform a supervisory function – acting as critical guardians of the rule of law and ensuring that arbitral processes do not devolve into sanctuaries for illegality or procedural impropriety. An emerging judicial trend underscores a growing willingness to withhold recognition or enforcement of awards tainted by fraud, bribery, or serious procedural irregularity, thereby reinforcing the integrity of the arbitral system through the lens of public policy.

[12] A case that vividly illustrates this dynamic is the decision of the Supreme Court of the United Kingdom ("UK") in *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* ("*IPCO*").[3] Here, the court was called upon to determine whether to adjourn the enforcement of a Nigerian arbitral award amid *credible allegations of fraud* and pending set-aside proceedings at the seat of arbitration.

[13] Delivering the lead judgment, Lord Mance clarified the scope of judicial discretion under s 103 of the Arbitration Act 1996,[4] which implements the New York Convention in English law. Section 103(3) allows a court to refuse enforcement if doing so would be contrary to *public policy*, a provision broad enough to encompass fraud. Section 103(5) allows for *adjournment* of enforcement where an award is being challenged abroad. The Supreme Court ruled that where credible evidence of fraud is adduced – particularly new material unavailable during the arbitration – the courts can justifiably delay enforcement pending resolution at the seat.

[14] This case supports the principle that where the integrity of the arbitral process is in question due to alleged fraud, it would be contrary to public policy for a domestic court to enforce the award without affording proper scrutiny. The Supreme Court emphasised that Nigerian National Petroleum Corporation's fraud challenge was properly arguable and that the Court of Appeal erred in making the decision on the fraud issue conditional upon the provision of further security.

[15] The judgment underscores the importance of ensuring that challenges based on public policy, such as fraud, are fully and fairly considered before enforcement of an arbitral award.

[16] This principled approach demonstrates that *finality in arbitration does not preclude accountability*. Domestic courts, while generally pro-enforcement, must retain the *flexibility to intervene* in exceptional circumstances to uphold the rule of law. The decision also highlighted that such adjournments must be *proportionate and balanced*, often with conditions such as the posting of *security* to safeguard the interests of the award creditor.

---

[3] [2017] UKSC 16.

[4] Note: The Arbitration Act 2023 did not change the Arbitration Act 1996, s 103 by giving it a new section number. The Arbitration Act 2025 received Royal Assent on February 24, 2025, but it has yet to be brought into force.

[17] In *P&ID*, the case involved a 2010 Gas Supply Processing Agreement ("GSPA") between the Federal Republic of Nigeria and Process & Industrial Developments Limited ("P&ID Ltd"), under which Nigeria was to supply "wet" gas for processing, but neither party performed. An arbitration tribunal awarded P&ID Ltd *USD6.6 billion* in *2017*, now exceeding *USD11 billion* with *7% interest*, challenged in the *London Commercial Court* on grounds of bribery and corruption.

[18] The English High Court set aside the arbitral award on the grounds that it was procured through bribery and perjury. The court found that a "*massive fraud*" had been committed against Nigeria and concluded that public policy demanded the court's intervention. The judgment detailed how the award was obtained by fraud and how the way in which it was procured was contrary to public policy, leading to substantial injustice to Nigeria.

[19] The court used the following terms to describe the scale and severity of the fraudulent activities involved in the case:

(1) *Bribery*: Payments made by P&ID Ltd to Nigerian officials, and the Legal Director at Nigeria's Ministry of Petroleum Resources to secure the GSPA under corrupt circumstances.

(2) *Perjury*: False evidence knowingly provided by P&ID's representative, during the arbitration proceedings, including concealing the bribery of the Legal Director at Nigeria's Ministry of Petroleum Resources

(3) *Retention of privileged documents*: P&ID Ltd improperly retained Nigeria's internal legal documents during the arbitration, which allowed it to monitor Nigeria's legal strategy and awareness of the fraud.

[20] The court emphasised that these actions constituted a severe abuse of the arbitral process, undermining its integrity and resulting in an award that was contrary to public policy.

[21] Similarly, in *NIOC*,[5] the English Court of Appeal upheld the High Court's decision dismissing NIOC's jurisdictional challenge under s 67 of the Arbitration Act 1996. The case concerned a long-term gas supply agreement where Crescent had assigned rights to a third party. NIOC objected to the tribunal's jurisdiction over certain claims, citing Iranian law.

[22] The Court of Appeal confirmed that:

- *broadly drafted arbitration clauses* governed by foreign law can still be interpreted expansively by English courts to include a wide range of disputes;

[5] See n 2 above.

- *expert evidence on foreign law* must be limited to interpretative principles and not intrude into contract construction;
- *summary judgment* may be appropriate in arbitration-related court challenges where arguments lack sufficient merit.

[23] The *IPCO*, *P&ID*, and *NIOC* cases underscore the Judiciary's indispensable role as the ultimate guardian of arbitral integrity – yet, in an era defined by data-driven complexity, technology now stands as a formidable parallel force in uncovering and preventing fraud within the arbitral process.

The role of technology in combating fraud

[24] In today's data-rich disputes, *technology has become an equally important pillar* in preventing and exposing fraud. Advancements in artificial intelligence ("AI") and blockchain technology are changing how fraud can be detected and prevented in arbitration. These tools are increasingly being adopted by arbitrators, counsel, and institutions to manage complex disputes, conduct due diligence, and uncover hidden misconduct.

AI and data analytics

[25] AI technologies, particularly natural language processing, machine learning, and anomaly detection algorithms, can assist in:

- analysing vast datasets to identify suspicious financial transactions or discrepancies in invoices and contracts;
- flagging forged or duplicated documents across voluminous disclosure;
- detecting inconsistencies in testimonial evidence or patterns of communication suggestive of collusion or tampering;
- mapping relationships between parties, intermediaries, or shell entities using publicly available and proprietary datasets;
- forecasting procedural timelines and arbitration costs with greater accuracy.

Blockchain and digital verification

[26] Blockchain's immutable ledger system has potential applications in enhancing the integrity of document trails and contract execution. By providing timestamped, verifiable records of transactions and communications, blockchain can help prevent the falsification of evidence and establish authentic chains of custody in sensitive matters.

The 2025 CIArb Guidelines on the use of AI in arbitration

[27] Recognising both the potential and the risks of AI, CIArb issued its *Guidelines on the Use of Artificial Intelligence in International Arbitration* in March 2025. These Guidelines represent a landmark development in formalising how AI should be ethically and responsibly integrated into arbitration practice.

[28] The Guidelines advocate for the *responsible deployment* of AI at all stages of the arbitration process, including:

- *case management and scheduling*, to streamline procedural timelines;
- *document review and legal research*, using natural language processing and semantic search tools;
- *risk detection and due diligence*, to assist in identifying red flags in party conduct or transactional history;
- *decision support*, with AI-generated summaries and issue mapping aiding in organising complex evidentiary and legal frameworks.

[29] However, the CIArb Guidelines *expressly caution* against excessive reliance on automated tools. AI should be used to augment – *not replace* – professional judgment, legal reasoning, and due diligence. The Guidelines call for a "*human-in-the-loop*" approach, where technology operates under the supervision of a qualified practitioner.

[30] Key pillars of the Guidelines include:

- *Transparency*: Parties and arbitrators should disclose their use of AI tools, particularly where they have a material impact on proceedings;
- *Accountability*: Users must ensure they can explain and defend the use of AI in any procedural or substantive aspect of the arbitration;
- *Proportionality*: AI should be used in a manner consistent with the complexity, value, and sensitivity of the dispute;
- *Data protection and ethics*: The Guidelines stress compliance with data privacy laws, protection of confidential information, and mitigation of algorithmic bias.

[31] In fraud-prone contexts, AI is particularly valuable for uncovering hidden relationships and verifying evidentiary integrity. But it must be used cautiously – flawed datasets, opaque algorithms, or uncritical reliance on predictive outputs can distort the truth rather than illuminate it.

[32] Ultimately, the 2025 CIArb Guidelines are not prescriptive rules, but a *living framework*. They call for continuous dialogue, technological awareness,

and ethical reflection by all arbitration stakeholders. The message is clear: *technology is a powerful ally, but not a substitute for principled arbitration practice*.

Applying the CIArb Guidelines to tribunal case management orders

[33] The CIArb *Guidelines on the Use of AI in Arbitration (2025)* offer a valuable framework not only for ethical AI deployment but also for proactive case management in arbitration. Tribunals increasingly face questions about the appropriate use of advanced technologies in matters involving complex fraud, voluminous data, or technical expert evidence. As such, the Guidelines can be *incorporated into tribunal case management orders (CMOs)* to ensure procedural clarity and safeguard the fairness of proceedings.

[34] Tribunals may draw on the Guidelines to:

- *Mandate disclosure of AI tools*: Require parties to identify any AI-based systems used for evidence review, disclosure processing, legal research, or submissions. This fosters transparency and allows both sides to assess the reliability and limitations of such outputs.
- *Ensure human oversight*: Reinforce the principle that automated decision-support must be overseen by legal professionals, particularly where AI tools flag fraudulent conduct, analyse financial patterns, or generate predictive models.
- *Set guardrails for AI-generated material*: Require that any AI-assisted analyses, such as document classification or anomaly detection, be accompanied by an explanation of methodology and quality control protocols.
- *Address technological imbalance*: Where there is asymmetry in parties' access to or familiarity with AI tools, CMOs can adjust procedural timelines or invite agreement on neutral technological protocols, avoiding unfair advantage.
- *Protect data and privacy*: Tribunals may reference the Guidelines to establish protocols for secure data handling, especially when AI platforms process confidential evidence or cross-border financial records.

[35] In this way, the CIArb Guidelines serve as both *a normative anchor and a practical tool* for modern tribunal management. Far from being theoretical, their integration into procedural orders reflects the evolving reality of arbitration practice. They help arbitrators navigate the ethical and operational risks of technology use – particularly in fraud-sensitive arbitrations – without compromising on due process, party equality, or arbitral efficiency.

The challenge of proving fraud in arbitration

[36] Proving fraud in arbitration is notoriously difficult, especially when the evidence is spread across multiple jurisdictions or deliberately concealed. Strategies to overcome these evidentiary hurdles include:

- engaging forensic experts to trace money flows and verify document authenticity;
- applying for document production or third-party disclosures;
- collaborating with anti-corruption agencies or domestic courts;
- drawing adverse inferences where a party fails to provide essential evidence.

[37] The *NICO* and *P&ID* cases demonstrate how tribunals and courts can collectively unearth concealed misconduct when counsel pursues red flags diligently and adopts a forensic mindset.

Strengthening the arbitration process against corruption

[38] Given the structural vulnerabilities of arbitration, a series of reforms are necessary to improve its resilience:

(1) *Enhanced due diligence*

- Arbitration institutions should require early disclosure of any known risks or histories of corruption.
- Tribunals should actively question dubious contractual arrangements, particularly in high-risk industries.

(2) *Transparency and accountability*

- Publishing redacted versions of awards can deter misconduct and foster consistency.
- Arbitrators should be empowered to summarily dismiss claims tainted by fraud.

(3) *Collaboration with domestic courts*

- Close cooperation is vital for tackling post-award challenges.
- Courts must remain firm in refusing to enforce awards tainted by illegality.

(4) *Strengthening the role of arbitration institutions*

- Institutions like the Asian International Arbitration Centre, the London Court of International Arbitration and others should implement mandatory anti-corruption declarations.
- Develop toolkits to assist arbitrators and practitioners in identifying and addressing common fraud indicators.

The path forward

[39] The arbitration community must remain vigilant and prioritise integrity over procedural expediency. The most effective way to restore and maintain trust in arbitration is through a combination of rigorous due diligence, greater transparency, and stronger collaboration among stakeholders – including arbitration institutions, courts, regulators, and practitioners.

[40] As technologies evolve and fraud schemes become more sophisticated, practitioners must commit to continuous learning and ethical leadership. Arbitrators, in particular, must not shy away from exercising their mandate to protect the fairness of the process.

[41] By taking decisive, collective action, stakeholders can ensure that arbitration remains a trusted forum for resolving international disputes while upholding the rule of law.

Conclusion

[42] As arbitration continues to evolve in complexity and scale, courts must adapt to the growing intersection between technology and procedural justice. The Judiciary's willingness to pause or refuse enforcement when credible allegations of fraud arise reflects a careful, necessary balance between two fundamental imperatives:

- preserving the finality and efficiency of arbitral awards; and
- safeguarding the integrity of the legal process through procedural fairness.

[43] In the post-*IPCO*, *P&ID*, and *NIOC* era, domestic courts are no longer seen as passive executors of arbitral decisions. Instead, they have emerged as active custodians of justice – empowered to intervene when the legitimacy of arbitration is called into question.

[44] The convergence of judicial oversight and emerging technologies such as AI offers a potent framework for detecting and addressing fraud in arbitration. But this framework only functions effectively when grounded in transparency, accountability, and the exercise of sound professional judgment. AI may highlight anomalies and red flags, but it is ultimately through the careful lens of judicial scrutiny – anchored in public policy and

due process – that such concerns are validated, interrogated, and, where necessary, remedied. In this dual safeguard system, courts remain the final fail-safe, ensuring that the promise of arbitration is not undermined by misconduct or manipulation.