

*PREVENTION OF CORRUPTION ACT, 2012-31*

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PART 1

**BARBADOS**

I assent  
ELLIOTT F. BELGRAVE  
Governor-General  
18th December, 2012.

**2012-31**

An Act to make provision for the prevention of corruption and the implementation of

- (a) the Inter-American Convention Against Corruption adopted on 29th March, 1996 in Caracas, Venezuela;
- (b) Articles 8 and 9 of the United Nations Convention Against Transnational Organized Crime relating to Corruption adopted on 29th September, 2003 in New York; and

(c) the United Nations Convention Against Corruption adopted on 31st October, 2003 in New York,

to which Barbados is a signatory and for related matters.

ENACTED by the Parliament of Barbados as follows:

*Part I*

*Preliminary*

**Short title**

1. This Act may be cited as the *Prevention of Corruption Act, 2012*.

**Interpretation**

2. In this Act,

“advantage” includes

- (a) any commission, fee, gift, loan or reward consisting of money or of any valuable security or other property or interest in property of any description;
- (b) any contract, employment or office;
- (c) any discharge, liquidation, payment or release of any loan, obligation or other liability, whether in whole or in part;
- (d) the exercise or forbearance from the exercise of any duty, power or right;
- (e) any other favour or service, including protection from any disability or penalty apprehended or incurred from any action or proceedings of a civil, criminal or disciplinary nature, whether or not already instituted; and

(f) any offer, promise or undertaking, whether conditional or unconditional, of any advantage within the meaning of paragraph (a), (b), (c), (d) or (e);

“agent” has the meaning set out in section 12(4);

“assets” in relation to a person in public life means all property beneficially held by a person in public life whether in Barbados or elsewhere and all benefits and rights flowing from that property;

“child” includes a child of the family, a step-child and an adopted child;

“Commission” means the Prevention of Corruption Commission established by section 3;

“Convention” means

- (a) the Inter-American Convention Against Corruption adopted on March 29th, 1996 in Caracas, Venezuela;
- (b) Articles 8 and 9 of the United Nations Convention Against Transnational Organized Crime relating to Corruption adopted on 29th September, 2003 in New York; or
- (c) the United Nations Convention Against Corruption adopted on 31st October, 2003 in New York,

as the case may be, to which Barbados is a signatory and which is set out in Parts I, II and III of the *Sixth Schedule*;

“corruption” or “act of corruption” means any act which constitutes an offence under Part VI and includes the following:

- (a) any act or omission by a public official in the discharge of his duties, for the purpose of illicitly obtaining benefits for himself or for a third party;
- (b) participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or

attempted commission of, or in any collaboration or conspiracy to commit any of the acts referred to in this definition;

- (c) the fraudulent use or concealment of property derived from any of the acts referred to in this definition;
- (d) the offering or granting, directly or indirectly, to a public official of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
- (e) the solicitation or acceptance, directly or indirectly, by a public official of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or for another person or entity, in exchange for an act or omission in the performance of his public functions;

“foreign public official” means any person who

- (a) exercises a public function for a foreign country including a public function for a public agency or public enterprise of a foreign country; or
- (b) holds an administrative, executive, judicial or legislative office of a foreign country whether appointed or elected;

“freezing” means temporarily

- (a) restraining or assuming control or custody of property; or
- (b) prohibiting the conversion, disposition, movement or transfer of property,

on the basis of a court order;

“income” in relation to a person in public life means all income from whatever source derived, acquired by the person in or out of Barbados and includes all benefits and prerequisites whether acquired directly or indirectly and

includes, as money or money's worth, all receipts by way of salary, fees, wages, profits, gains, emoluments, rents, interest, commissions, bonus, pension, annuity or benefit and any other income within the meaning of the *Income Tax Act*, Cap. 73;

“liability” in relation to a person in public life includes any obligation of the person to pay or transfer money or money's worth to others in Barbados or elsewhere;

“member” means a member of the Commission;

“Minister” means the Minister with responsibility for legal affairs;

“official of a public international organization” means a person who is authorized by an international organization to act on its behalf;

“person in public life” means any public official whose office is specified in the *Second Schedule*;

“private sector entity” means an entity that is not a public body and is not under the direct control of the Government;

“property” means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and any legal document or instrument establishing or purporting to establish title to or interest in those assets;

“public body” means

(a) a corporation established by an Act of Parliament for a public purpose or a company or a subsidiary of a company registered under the *Companies Act*, Cap. 308 in respect of which the Government or an agency of Government holds shares or has the type of financial input that influences the policy of the company;

(b) the Cabinet, a Ministry or a Department of Government;

(c) any authority, board, commission, committee or other similar body appointed by the Governor-General or a Minister of Government pursuant to an enactment;

- (d) the Government; or
- (e) the House of Assembly and the Senate;

“public official” means

- (a) any person who holds a legislative, executive, administrative or judicial office in the Government of Barbados whether appointed or elected, whether permanent or temporary, whether paid or unpaid;
- (b) any person who performs a public function or provides a public service including a public function or public service for a public body, public agency, public enterprise or public institution;
- (c) a person in public life;

“spouse” includes a party to a union other than marriage within the meaning of section 39 of the *Family Law Act*, Cap. 214;

“stateless person” means a person who does not enjoy the rights and privileges of being a citizen of any State due to the revocation of his citizenship through lawful means;

“tribunal” means the persons appointed by the Governor-General under paragraph 5(3) of the *First Schedule*.

## *PART II*

### *Prevention of Corruption Commission*

#### **Establishment of a Prevention of Corruption Commission**

**3.(1)** There is hereby established for the purposes of this Act a body to be known as the Prevention of Corruption Commission.

**(2)** Subject to subsection (3) the provisions of the *First Schedule* shall have effect as to the constitution of the Commission and otherwise in relation thereto.

(3) The Governor-General shall pursuant to paragraph 1 of the *First Schedule* and in the manner described in that Schedule,

- (a) appoint the members of the Commission; and
- (b) remove any member of the Commission for the reasons and in the manner set out in paragraph 5 of that Schedule.

(4) Where, pursuant to paragraph (b) of subsection (3) and paragraph 5(2) of the *First Schedule* the Governor-General determines that a tribunal ought to be appointed to consider the question of the removal of a member, he shall do so in the manner set out in paragraph 5(3) of that Schedule.

(5) The proceedings of the tribunal shall be conducted in the manner set out in the *First Schedule*.

### **Functions of the Commission**

4.(1) The Commission shall

- (a) receive and keep on record all declarations and documents furnished pursuant to this Act;
- (b) request from a person any information relevant to a declaration made pursuant to this Act which, in the opinion of the Commission, will assist in the examination and verification of the declaration;
- (c) without prejudice to the provisions of any other enactment, make independent enquiries and carry out investigations into any allegations of corruption or any act or omission relevant to compliance with the provisions of this Act;
- (d) make any enquiry it considers necessary in order to determine or verify the accuracy of any declaration or document before it; and
- (e) receive and investigate complaints in respect of non-compliance with any provision of this Act.

(2) Notwithstanding subsection (1), the Commission shall perform any other function which it considers necessary for the purpose of carrying out its functions under this Act.

(3) The Commission shall make recommendations to the appropriate authority in respect of any conduct which is prohibited under this Act.

(4) Where the recommendations of the Commission made pursuant to subsection (3) are not implemented, the Commission shall forward the recommendations to the Office of the Director of Public Prosecutions.

(5) The Commission may, where it deems necessary, allow for the exchange of information with other domestic and foreign bodies involved in anti-corruption functions.

(6) Where a public official or a person on his behalf, is suspected of being in possession of property disproportionate to his legitimate source of income, the Commission may conduct an enquiry into the acquisition of that property.

### **Custody of documents and declarations**

5. The Commission shall retain all documents and declarations filed before it for at least 10 years from the date of filing.

### **Staff of the Commission**

6.(1) The Commission shall appoint from among persons who are not public officials or who are no longer public officials adequate staff for the performance of its functions.

(2) The Commission shall, subject to the approval of the Minister of Finance, determine the remuneration and other terms and conditions in relation to the employees of the Commission.

### **Independence of the Commission**

7. In the performance of its functions the Commission shall not be subject to the direction or control of any authority or person.

**Estimates of expenditure**

8. The Commission shall, on or before the 31st day of October every year, submit to the Minister its estimate of expenditure for the next financial year.

**Accounts and audit**

9. The Commission shall keep proper accounts of all assets, liabilities, payments and receipts and those accounts shall be audited by the Auditor-General.

**Issue of summons**

10. The Commission shall, in pursuance of its functions, have the power to

- (a) compel the production of statements, information or specified documents; and
- (b) summon, enforce the attendance of and examine witnesses on oath or affirmation.

**Report to Minister**

11.(1) The Commission shall, not later than 2 months after the end of each financial year, submit to the Minister a report of its activities during the preceding year.

(2) A report filed under subsection (1) shall not disclose the particulars of any declaration filed with the Commission.

(3) The Minister shall table the report in the Parliament not later than 2 months from the date of receipt of the report from the Commission.

(4) In the event that the Minister fails to table the report within the time specified in subsection (3), the Minister shall notify the Speaker of the House in writing of his reasons for the failure to do so and specify the sitting of the Parliament at which the report will be tabled.

*Part III**Financial Disclosure***Declaration of affairs by persons in public life**

12.(1) Subject to subsection (2), every person in public life shall file with the Commission, a declaration setting out

- (a) his assets, income and liabilities;
- (b) his office or offices;
- (c) the assets of his spouse and children who are under the age of 18 years and are not married; and
- (d) any gift or series of gifts in value exceeding \$500 given to him, directly or indirectly, by a person who is not a member of his family or household or a relative.

(2) Where a person referred to in subsection (1) is also a member of the Commission, that person shall file the declaration referred to in subsection (1), with the Governor-General.

(3) For the purpose of the declaration referred to in subsection (1), the assets, income and liabilities of a person required to file the declaration pursuant to that subsection shall include the assets held, income earned and liabilities incurred by any other person as his agent or on his behalf.

(4) A person is an agent and another his principal for whom that person performs functions where

- (a) both persons are partners in the same partnership;
- (b) the first mentioned person is a trustee and the other is a beneficiary under the same trust; or
- (c) there is an agreement or understanding between both persons either expressed or implied that the first mentioned person is to perform the function for the other person.

(5) It is immaterial if

- (a) the affairs or business of the principal or the functions of the principal have no connection with Barbados; or
- (b) the functions of the agent have no connection with Barbados.

(6) Where a person in public life holds money or property in trust for another person, that fact shall be stated in the declaration of that person.

(7) Notwithstanding subsection (1), where

- (a) the spouse of a declarant was not ordinarily living with the declarant for a continuous period of 6 months; or
- (b) a child of a declarant was not ordinarily living with the declarant at any time,

during the period in respect of which the declaration is required to be made, the particulars required to be furnished by the declarant shall be limited to assets held by the spouse or child in trust for, or as agent of, the declarant.

(8) Nothing in subsection (7) shall be construed as precluding the Commission or the person appointed under section 14(3), as the case may be, from requiring from a declarant in accordance with this Act, any additional particulars.

(9) A person referred to in subsection (1) who

- (a) fails to file a declaration or provide information in accordance with this section; or
- (b) knowingly makes a declaration which is false in some material particular,

is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

**Declaration of affairs by members of Parliament**

**13.(1)** A person in public life who is a member of Parliament shall also state in his declaration under section 12, the place where the that person was employed during the period of 15 years prior to the filing of the declaration.

(2) A member of Parliament who

- (a) fails to file a declaration or provide information in accordance with this section; or
- (b) knowingly makes a declaration which is false in some material particular,

is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

**Form of declaration and request for information**

**14.(1)** The declaration referred to in sections 12 and 13 shall be submitted in the form set out in the *Third Schedule*.

(2) The Commission or, a person appointed pursuant to subsection (3), as the case may be, shall examine every declaration received and may request from a declarant any information, document or explanation required in respect of the declaration in order to verify the accuracy of the declaration.

(3) The Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, appoint from among persons who are not or are no longer public officials

- (a) a former judge;
- (b) an attorney-at-law of at least 15 years' standing; or
- (c) a person with at least 15 years' experience in financial or accounting matters,

to perform the function set out in subsection (2) in relation to declarations received by the Governor-General.

(4) A person appointed under subsection (3)

- (a) shall
  - (i) receive such remuneration as the Governor-General determines after consultation with the Minister of Finance; and
  - (ii) after performing the function set out in subsection (2), submit a report of his findings to the Governor-General and to the declarant, if the declarant so requests; and
- (b) may, in the report, make such recommendations as the circumstances may require, including a recommendation that the matter be referred to a tribunal.

### **First filing of declaration by persons in public life**

**15.(1)** Every person who,

- (a) on the date of the commencement of this Act, is a person in public life, shall file a declaration within 3 months after that date; or
- (b) after the date of the commencement of this Act, becomes a person in public life, shall file a declaration within 6 months after the date on which he becomes a person in public life.

(2) Any person who fails to file a declaration in accordance with subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Annual filing of declaration by persons in public life**

**16.(1)** Every person in public life shall file the declaration referred to in section 12 not later than 3 months after the end of each year.

(2) A person who ceases to be a person in public life shall file a declaration in respect of the year in which he ceases to be a person in public life.

**Declaration by political parties**

**17.(1)** The secretary of a political party which contests a general election shall, on behalf of that political party, file a declaration stating the name and address of every financial contributor to the political party.

**(2)** The declaration shall be in respect of all contributions made within 2 years prior to and 6 months after the general election.

**(3)** A political leader, president or chairman or secretary of any political party referred to in subsection (1), who fails to ensure that a declaration is filed in accordance with subsections (1) and (2), is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

**(4)** Notwithstanding subsection (3), it is a defence to a charge brought under that subsection that the person charged did all in his power to enable the secretary to comply with subsections (1) and (2).

**Blind trusts**

**18.(1)** A person in public life whose assets are in a blind trust shall, in respect of those assets, state in his declaration the amount and description of those assets and the date the trust was created.

**(2)** For the purposes of this section a blind trust is created where a person in public life enters into an agreement with a qualified trust company in which provision is made

*(a)* for all or part of his assets to be conveyed to the trust for its administration, control and management in its absolute discretion without recourse or reporting to the persons beneficially entitled to those assets;

*(b)* after he ceases to be a person in public life, for full and proper accounting to be made to him regarding the management of the trust; and

- (c) for conversion of the assets into other assets not to be communicated to him until he ceases to be a person in public life.
- (3) A trust company is a “qualified trust company” where
  - (a) no more than 10 per cent of the issued shares in the trust company or any of its affiliates is held by the person in public life entering into an agreement with it or by an associate; and
  - (b) the person in public life holds no directorship or office in the trust company or any of its affiliates.
- (4) For the purposes of this section, “associate” means
  - (a) a company or body corporate of which the settlor or any person specified in paragraph (b), (c), (d), (e) or (f) owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 per cent of the voting rights
    - (i) under all circumstances;
    - (ii) by reason of the occurrence of an event that has occurred and is continuing; or
    - (iii) by reason of currently exercising the option or right to purchase those shares or those convertible debentures;
  - (b) a partner of that person acting on behalf of the partnership of which they are partners;
  - (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
  - (d) a spouse;
  - (e) a child; or
  - (f) a relative of that person or of his spouse if that relative has the same residence as that person.

(5) For the purposes of this section,

- (a) a company is an affiliate of another company where one of them is the subsidiary of the other or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) where 2 bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

(6) For the purpose of subsection (4), “control” shall be construed within the meaning of section 441 of the *Companies Act*, Cap. 308.

(7) A person in public life who fails to comply with subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Secrecy**

**19.** All declarations filed with and records kept by the Commission pursuant to the provisions of this Act are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of

- (a) an enquiry in respect of a declarant under this Act;
- (b) an enquiry under the *Commissions of Inquiry Act*, Cap. 112; or
- (c) court proceedings in relation to a breach of this Act.

### **Information not to be communicated to unauthorized persons**

**20.(1)** Any member, person performing any function on behalf of the Commission, any person appointed under section 14(3) and any tribunal shall

- (a) treat all declarations, information and records relating thereto as secret and confidential;
- (b) not communicate or disclose to any unauthorized person the contents of any declaration or any information or records relating thereto; and

(c) not allow any unauthorized person to have access to any declaration or information and records relating thereto.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

(3) An unauthorized person who publishes information which comes to his knowledge under subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

(4) In this section, an “unauthorized person” is a person who is not authorized to receive information concerning the financial affairs of persons in public life

- (a) by a court order;
- (b) under this Act; or
- (c) under any other law.

### **Formal enquiry may be held**

**21.(1)** Where the Commission considers it expedient or necessary to enquire into the accuracy or completeness of any declaration, the Commission shall appoint a Committee comprising of 3 members to verify the contents of that declaration.

(2) An enquiry shall not be commenced in respect of any declaration after 8 years from the date when the declaration was filed.

(3) Where the Commission has reasonable cause to believe that a breach of any of the provisions of this Act may amount to a criminal offence, it shall refer the matter to the Director of Public Prosecutions.

(4) The Committee shall submit a written report of its findings to the Commission and to the declarant if the declarant so requests.

(5) For the purpose of any enquiry under this section, the Commission may request in writing that the declarant or any other person whom it reasonably believes has relevant information, to

- (a) appear before the Commission to give evidence; and
- (b) furnish all documents in his possession which would facilitate the enquiry.

(6) A person who

- (a) fails without reasonable excuse
  - (i) to attend an enquiry of the Commission or a Committee appointed under subsection (1); or
  - (ii) to comply with the instructions of the Commission pursuant to subsection (5)(b) or section 10(a),

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for a term of 5 years or to both; or

(b) gives false information at an enquiry is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 4 years or to both.

(7) A tribunal shall, where it is necessary to verify the contents of a declaration of a Commissioner pursuant to an enquiry under paragraph 5(4) of the *First Schedule*, have in respect of that enquiry, the powers set out in subsection (5) and section 10, and subsections (2), (3), (4) and (6) shall apply with such modifications and adaptations as may be required in respect of that enquiry.

#### **Declaration for tax purposes**

**22.** For the purpose of the *Income Tax Act*, Cap. 73, all expenses incurred by a declarant in order to comply with this Act are deemed to be necessarily incurred by him during the year of assessment to which the declaration relates.

**Indemnity**

**23.** Where after an enquiry under section 21 a Committee or a tribunal finds that a declarant made full disclosure in his declaration, the declarant shall be reimbursed by the Commission for all expenses reasonably incurred due to his attendance before the Committee or the tribunal.

*Part IV*  
*Code of Conduct*

**Code of Conduct**

**24.** Notwithstanding the provisions of the Second Schedule to the *Public Service Act*, (Act 2007-41) every public official shall observe and comply with the Code of Conduct set out in the *Fourth Schedule*.

**Complaint to the Commission**

**25.(1)** A person who has reasonable grounds to believe that a public official has breached any provision of the Code of Conduct referred to in section 24, may make a written complaint to the Commission specifying

- (a) the name and position of the public official;
- (b) the nature of the perceived breach;
- (c) the relevant details; and
- (d) any other particulars prescribed in Regulations made by the Minister pursuant to section 69.

**(2)** The Commission shall notify in writing the person against whom a complaint has been made of the allegations made against that person.

**Rejection of complaints**

**26.(1)** The Commission shall reject any complaint made under this Act where, after reviewing the complaint, the Commission finds that the complaint

- (a) does not pertain to a matter over which the Commission has jurisdiction; or
- (b) is frivolous or vexatious.

(2) The Commission shall, before making a decision that a complaint is frivolous or vexatious, give the complainant an opportunity to be heard.

**Investigation of breach**

**27.(1)** Where the Commission is of the opinion that an investigation is necessary to ascertain whether a public official has breached any provision of the Code of Conduct, the Commission shall enquire into the matter.

(2) The sittings of the Commission to hear arguments or take evidence in the course of any enquiry under subsection (1), section 4(6), section 21 or section 56 shall be held in private.

(3) The parties to any enquiry under this Act

- (a) are entitled to
  - (i) the particulars of the alleged breach;
  - (ii) the right to be heard;
  - (iii) notice of the proceedings; and
- (b) shall be informed by the Commission of their right to be represented by an attorney-at-law.

(4) The Commission shall, at the commencement of a sitting to hear arguments or take evidence in an enquiry under this section, inform the person appearing of his right to be represented by an attorney-at-law.

(5) This section and section 28 shall apply, with such modifications and adaptations as may be required, in respect of an enquiry by a tribunal.

### **Submission of report**

**28.(1)** On the conclusion of any enquiry under section 27, the Commission shall submit a report on the enquiry to the Governor-General.

(2) Notwithstanding subsection (1), where the Commission has reason to believe that the evidence before it may constitute a criminal offence, it shall forward a copy of its findings to the Director of Public Prosecutions.

## *Part V*

### *Private Sector*

#### **Solicitation by persons in the private sector**

**29.(1)** Any private sector entity that fails to comply with the relevant law in order to obtain a concession, exemption or licence and so as to improperly gain an advantage in respect of the commercial activities of the entity, is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

(2) A person who directs or works in any capacity for a private sector entity and who accepts or solicits directly or indirectly an advantage for himself or another person or entity in order that the person or entity acts or refrains from acting in the exercise of duties is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

#### **Embezzlement by persons in the private sector**

**30.** A person who directs or works in any capacity for a private sector entity and who, for his benefit or for the benefit of another person or entity, embezzles, misappropriates or otherwise diverts any property entrusted to him

in the course of economic, commercial or financial activities by virtue of his position, is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Financial obligations**

**31.(1)** A private sector entity shall comply with general accounting and auditing principles and, without limiting the generality of the foregoing, shall not in relation to that entity,

- (a) enter liabilities with incorrect identification of their objects;
- (b) establish off-the-book accounts;
- (c) conduct off-the-book or inadequately identified transactions;
- (d) record non-existent expenditure; or
- (e) use false documents.

(2) A general manager or any person responsible for the preparation of the accounts of a private sector entity who fails to comply with the provisions of subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### *Part VI*

#### *Solicitation, Bribery and Other Offences*

### **Accepting, offering or soliciting an advantage**

**32.** For the purposes of this Part, Part V and the *Fourth Schedule* a person

- (a) accepts an advantage where he or any person acting on his behalf, directly or indirectly
  - (i) agrees to obtain, receive or take; or
  - (ii) obtains, receives or takes,

any advantage whether for himself or any other person;

(b) offers an advantage where he or any person acting on his behalf, directly or indirectly

- (i) agrees to give; or
- (ii) gives or holds out,

any advantage to or in trust for any other person; and

(c) solicits an advantage where he or any person acting on his behalf, directly or indirectly

- (i) asks for, demands or invites; or
- (ii) indicates a willingness to receive,

any advantage whether for himself or any other person.

### **Bribery of a public official**

**33.(1)** A person who, without lawful authority, promises, offers or gives any advantage to a public official as an inducement or reward for himself or another person or entity in order that the public official

- (a) abstain from performing or perform any act in his official capacity;
- (b) assist, hinder or delay any other person in the transaction of any business with a public body; or
- (c) hinder, expedite or prevent the performance of any act whether by himself or through another public official,

is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

(2) A public official who, without lawful authority, accepts or solicits any advantage for himself or another person or entity as an inducement or reward in order to

- (a) abstain from performing or perform any act in his capacity as a public official;
- (b) assist, hinder or delay any other person in the transaction of any business with a public body;
- (c) communicate to another person any classified or confidential information obtained in the performance of his functions; or
- (d) hinder, expedite or prevent the performance of an act whether by himself or through another public official,

is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Bribery with regard to contracts**

**34.(1)** Any person who, without lawful authority, offers an advantage to a public official as an inducement or reward for giving assistance or for using his real or apparent influence in relation to any matter referred to in subsection (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

(2) The matters referred to in subsection (1) are

- (a) the payment of the price or other consideration in respect of any contract or sub-contract as referred to in paragraph (b);
- (b) the procurement, promotion or execution of any contract or sub-contract with a public body for
  - (i) the performance of any work;
  - (ii) the provision of any service;
  - (iii) the supply of any article, material or substances; or

(iv) the doing of any other thing.

(3) A public official who, without lawful authority, accepts or solicits any advantage as an inducement or reward for giving assistance or using his real or apparent influence concerning

- (a) the payment of the price or other consideration; or
- (b) the procuring, promotion or execution,

of any contract or sub-contract as is referred to in subsection (2) is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Embezzlement by public official**

35. A public official who, for his benefit or for the benefit of another person or entity, embezzles, misappropriates or otherwise diverts any property entrusted to him by virtue of his position is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Bribery of a foreign public official**

36. A person who gives, offers or promises directly or indirectly, a foreign public official an advantage for himself or another person or entity in order that the foreign public official act or refrain from acting in the exercise of his official duties to obtain or retain business or other advantage in the conduct of international business is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Solicitation by a foreign public official**

37. A foreign public official who accepts or solicits directly or indirectly an advantage for himself or another person or entity in order that the official act or refrain from acting in the exercise of his official duties is guilty of an offence

and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Bribery of an official of a public international organization**

**38.** A person who gives, offers or promises directly or indirectly to an official of a public international organization an advantage for himself or another person or entity in order that the official act or refrain from acting in the exercise of his official duties in order to obtain or retain business or another advantage in the conduct of international business is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Soliciting by an official of a public international organization**

**39.** An official of a public international organization who accepts or solicits directly or indirectly an advantage for himself or another person or entity in order that the official act or refrain from acting in the exercise of his official duties is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Trading in influence**

**40.** A person who gives, offers or promises an advantage to any person for the purpose of having that person abuse his real or supposed influence with a view to obtaining from a public body an advantage for himself, another person or entity is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Soliciting trade in influence**

**41.** A person who accepts or solicits an advantage for himself, another person or entity for the purpose of having another person abuse his real or supposed influence with a view to obtaining from a public body an advantage is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

**Possession of unexplained property**

**42.** A public official

- (a) who is found in possession of property disproportionate to his legitimate sources of income; or
- (b) whose assets increase significantly in relation to his legitimate sources of income,

and who is unable to give a reasonable explanation for such, is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

*Part VII**Seizure, Freezing and Confiscation***Seizure and detention of property**

**43.(1)** Where a customs officer, an immigration officer or a member of the Police Force has reasonable grounds for believing or suspecting that property in the possession of any person is derived from an act of corruption and that it is necessary to seize the property to prevent its concealment, its loss or destruction or its use in committing, continuing or repeating the act, that officer may seize and detain the property in the possession of that person.

(2) Any property seized under this section may be returned to the purported owner not later than 14 working days from the date on which it was seized.

**Continued detention**

**44.(1)** Notwithstanding section 43(2), not later than 14 days from the date on which property is seized or detained pursuant to that section, the Comptroller of Customs, the Chief Immigration Officer or the Commissioner of Police shall

apply to the Magistrate's Court for District "A" for an order for the continued detention of the property seized where the officer deems it necessary.

(2) An order may be granted if the court is satisfied that

- (a) there are reasonable grounds to believe that the property is derived from an act of corruption; or
- (b) continued detention of the property is justified pending
  - (i) a decision whether to institute criminal proceedings; or
  - (ii) the completion of investigations into the origin of the property.

(3) An order granted under subsection (2) may

- (a) authorize the continued detention of the property; and
- (b) specify the duration of the order which may be for a period not more than 6 months from the granting of the order.

(4) Notwithstanding subsection (3)(b), subsequent orders may be made, but the duration of detention of any property shall not exceed 18 months from the date of the first order unless there are proceedings pending before a court of competent jurisdiction.

### **Detained property**

45.(1) Any interested person may apply to a magistrate's court for an order for the release of detained property.

(2) The court may grant an order under subsection (1) where the court is satisfied that

- (a) section 44(2) no longer applies; or
- (b) the detention of the property is for any other reason no longer justified.

(3) An order for the release of detained property shall not be made by the court while forfeiture or any other proceedings, whether in Barbados or elsewhere,

brought as a result of a request for legal assistance, in relation to the detained property, have not been concluded.

### **Freezing of property**

**46.(1)** Subject to subsection (4), the court may, where it is satisfied on the application of the Director of Public Prosecutions that

- (a) a person has been charged with an offence under this Act; or
- (b) a request has been made by the competent authority of another State, in accordance with section 64, in respect of a person
  - (i) whom there are reasonable grounds for believing has committed an offence under this Act or an offence which, had it been committed in Barbados, would have been an offence under this Act; or
  - (ii) who has been charged with or is about to be charged with an offence under this Act or an offence which, had it been committed in Barbados, would have been an offence under this Act,

make an order freezing the property in the possession of or under the control of that person.

(2) An application for a freezing order shall be accompanied by an affidavit stating

- (a) the grounds for believing that the property is related to an offence referred to in subsection (1) and that the property is subject to the control of the person referred to in subsection (1);
- (b) a description of the property in respect of which the freezing order is sought;
- (c) the name and address of the person who is believed to be in possession or control of the property; and
- (d) the offence with which the person is charged.

(3) Where the court makes a freezing order under subsection (1), the court shall require that

- (a) within 21 days of the making of the order, the applicant serve a notice of the order together with a copy thereof on every person named in the order;
- (b) the order be published within the time and in the manner directed by the court; and
- (c) persons who appear to the court to have an interest in the property be given an opportunity to be heard,

unless in respect of paragraph (a), the court is of the opinion that the giving of notice will result in the disappearance, dissipation or reduction in the value of the property.

(4) On the making of an order under subsection (1), the court may give directions regarding the disposal of the property for the purpose of determining

- (a) any dispute relating to the ownership of or other interest in the property;
- (b) the proper administration of the property during the period of the order;
- (c) the payment of debts incurred in good faith prior to the making of the order; and
- (d) the payment of moneys to the person referred to in subsection (1) for the reasonable subsistence of that person and his family or for defending criminal proceedings against him.

(5) An order made under subsection (1) may be renewed for a period not exceeding 6 months in each particular case but in no case shall the entire period of the renewal exceed 18 months.

(6) A freezing order granted by the court under this section shall not prejudice the rights of any third party acting in good faith in respect of the frozen assets or any interest therein.

(7) Where the application for a freezing order is made as a result of a request from another State, the court shall only make the order if it is satisfied that reciprocal arrangements exist between Barbados and that other State in respect of similar freezing orders.

### **Undertaking by Crown**

**47.(1)** Before making an order under section 46(7), the court may require the Crown to give such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the court such undertakings with respect to the payment of damages or costs, or both, as are required by the court.

### **Registration of freezing order**

**48.(1)** A copy of a freezing order that affects registered land in Barbados shall be registered with the Registrar of Titles who shall record the particulars of the order and make a notation thereof on the certificate of title.

(2) A freezing order is of no effect with respect to registered land unless it is registered.

(3) Where particulars of a freezing order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 50, be deemed to have notice of the order at the time of dealing.

(4) The registration of a freezing order under this section shall be exempt from the payment of fees under the *Land Registration Act*, Cap. 229 and stamp duty under the *Stamp Duty Act*, Cap. 91.

**Review of freezing orders**

**49.(1)** A person who has an interest in property in respect of which a freezing order is made may, at any time, apply to the court for

- (a) permission to examine the property; or
- (b) an order under subsection (6).

**(2)** Where an application is made to the court under subsection (1)(a), the court may order that the applicant be permitted to examine the property subject to such terms as appear to the court to be necessary or desirable to ensure that the property is safeguarded for the purpose for which it may subsequently be required.

**(3)** An application under subsection (1) shall not be heard by the court unless the applicant has given the Director of Public Prosecutions not less than 3 days' notice in writing of the application.

**(4)** The court may require notice of the application to be given to, and may hear, any person who, in the opinion of the court, appears to have an interest in the property.

**(5)** An order under subsection (6) in respect of property may be made if the court is satisfied that

- (a) a freezing order should not have been made in respect of the property;
- (b) the applicant is the lawful owner, or is lawfully entitled to possession, of the property and appears innocent of any complicity in any offence under this Act or of any collusion in relation to such an offence; and
- (c) the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

**(6)** The court may, after hearing the applicant, the Director of Public Prosecutions or any other person who is notified under subsection (4),

- (a) order that the property or any part thereof be returned to the applicant; or

- (b) revoke the freezing order or vary it to exclude the property or any interest therein or any part thereof from the application of the order.
- (7) An order under subsection (6) may be made where
  - (a) the applicant enters into a recognizance before the court, with or without sureties, in such amount and with such conditions, as the court directs, and where the court considers it appropriate, and deposits with the court such sum of money or other valuable security as the court directs; and
  - (b) the conditions referred to in subsection (5) are satisfied.
- (8) For the purpose of meeting the reasonable business, living or legal expenses of a person who was in possession of the property at the time the order was made or any person who, in the opinion of the court, has an interest in the property and of the dependants of that person, the court may make any order it considers fit and proper in the circumstances.

### **Contravention of freezing order**

**50.(1)** A person who knowingly contravenes a freezing order by disposing of, or otherwise dealing with property that is subject to the freezing order is guilty of an offence and is liable on conviction on indictment to a fine of \$750 000 or to imprisonment for a term of 7 years or to both.

- (2) The Director of Public Prosecutions may apply to the court for an order to set aside any dealing or disposition of property subject to a freezing order
  - (a) in contravention of the freezing order;
  - (b) for insufficient consideration; or
  - (c) in favour of a person who acted in good faith and without notice.

(3) The court may by order on the application of the Director of Public Prosecutions under subsection (2), set aside the dealing or disposition of the property effective from the day

- (a) on which the dealing or disposition took place; or
- (b) the order is made under this subsection.

(4) The court shall declare the respective rights of any person who acquires interests in the property on or after the day on which the disposition or dealing took place, and before the day the order is made.

### **Exemption from liability**

**51.(1)** Where the court makes an order for the administration of property subject to a freezing order, the person charged with the administration of the property is not liable for

- (a) any damage or loss of the property;
- (b) the cost of proceedings taken to establish a claim to the property or to an interest therein,

unless the court in which the claim is made is of the opinion that the person is guilty of negligence in respect of the taking of the custody, administration or control of the property.

(2) Notwithstanding subsection (1), a person is not exempt from criminal liability in relation to the administration of property subject to a freezing order.

### **Forfeiture of property**

**52.(1)** Where a person is convicted of an offence under this Act, the Director of Public Prosecutions may apply to a judge in chambers for a forfeiture order in respect of any property that is the subject of the offence.

(2) The judge shall issue a forfeiture order where he is satisfied on reasonable grounds that the property is derived from an act of corruption.

(3) Before making a forfeiture order under subsection (2), the judge shall give an opportunity to be heard to a person who

- (a) appears to the court to have an interest in; or
- (b) claims to be the owner of,

the property.

(4) The court may, upon the application of the Director of Public Prosecutions, make a forfeiture order in respect of any property owned by or in the possession or under the control of any person who is

- (a) convicted of an act of corruption; or
- (b) the subject of a freezing order,

unless it is proved that the property was not obtained from the commission of the offence by that person.

(5) In making a forfeiture order, the court may give directions

- (a) for the purpose of determining any dispute as to the ownership of or other interest in the property; and
- (b) in respect of the disposal of the property.

(6) Where an application is made to the court by a person against whom a forfeiture order has been made under this section and in respect of any part of the property which is not money, the court may order that an amount deemed by the court to be the value of the property ordered to be forfeited by that person, be paid to the court.

(7) Upon the satisfactory payment by that person of the amount deemed by the court under subsection (6), the forfeited property shall no longer be subject to the forfeiture order.

**Sharing of forfeited property**

**53.(1)** The Government of Barbados may, pursuant to any agreement with any other State, share with that State on a reciprocal basis, the property derived from any forfeiture.

(2) The Government of Barbados may use property obtained under subsection (1) to compensate persons who have suffered damage as a result of an offence committed under this Act.

**Forfeiture in addition to other penalty**

**54.** Upon conviction for any offence under this Act, a person shall, in addition to any other penalty, be liable to have a forfeiture order made against him in respect of property obtained from the commission of that offence.

*Part VIII**Protection of Witnesses etc.***Interpretation of Part VIII**

**55.** For the purposes of this Part,

“discrimination” means

- (a) a taking of or failure to take action;
- (b) a recommendation to take action; or
- (c) a threat to take action

that prejudices or undermines the rights or interests of a protected witness in any way;

“lawful disclosure” means the communication of any information the release of which is not specifically

- (a) designated as secret in the interest of national security; or

- (b) prohibited by law;

“protected activity” means the making of a lawful disclosure relating to

- (a) an abuse of authority;
- (b) an act of corruption;
- (c) a substantial and specific danger to public health or safety;
- (d) a failure to take action to assist in achieving the purposes of the Convention; or
- (e) a refusal to participate in activities knowing that the refusal will contribute to corruption;

“protected witness” means a person who

- (a) engages;
- (b) is about to engage; or
- (c) is perceived as engaging,

in protected activity.

### **Enquiry**

**56.** Where the Commission has received a complaint

- (a) alleging discrimination against a protected witness; or
- (b) in relation to protected activity,

the Commission may conduct an enquiry into the subject of the investigation.

### **Refusal to investigate**

**57.(1)** Where the Commission declines to investigate a complaint of alleged discrimination for protected activity, it shall provide written notification to the person seeking assistance.

(2) The Commission shall give

- (a) reasons for its decisions; and
- (b) referral instructions for any other available avenues for relief.

### **Findings of the Commission**

**58.(1)** Where the Commission finds evidence of discrimination for protected activity, it shall issue a report with its findings.

(2) A report issued under subsection (1) shall include recommendations for relief including corrective action to

- (a) end the discrimination; and
- (b) neutralize any direct or indirect prejudicial consequences suffered by the protected witness.

(3) Relief under subsection (2) may include a finding that a protected witness should be relocated within Barbados or to another State Party to the Convention.

(4) The Commission shall forward a copy of its report issued under subsection (1) to the Director of Public Prosecutions.

### **Privileged information**

**59.(1)** All communications between the Commission and a person alleging discrimination for protected activity are privileged.

(2) Information that is privileged in accordance with subsection (1) may only be released in the face of a threat

- (a) of corruption; or
- (b) to public health or safety,

after giving the person reasonable prior written notice of the intended release of the information.

**Confidentiality**

60. Notwithstanding section 59, information received under this Part may also be divulged to public authorities in the pursuit of the objectives of this Act or for the purpose of the investigation and prosecution of a criminal offence.

**Legal aid**

61. A person who cannot assert his rights under this Part due to financial constraints shall be given legal aid notwithstanding the provisions of the *Community Legal Services Act*, Cap. 112A.

*Part IX**Miscellaneous Provisions***Obstruction of members or employees**

62. A person who obstructs a member or employee of the Commission in the performance of his duties or functions under this Act is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

**Legal basis for cooperation on extradition**

63. The *Extradition Act*, Cap. 189 and the Convention shall be the legal basis for cooperation on extradition with other State Parties to the Convention.

**Application of the *Mutual Assistance in Criminal Matters Act***

64. Sections 27 and 27A of the *Mutual Assistance in Criminal Matters Act*, Cap. 140A apply to the procedures to be adopted in respect of a request made from another State for mutual assistance in obtaining a freezing, forfeiture or confiscation order under this Act with such modifications and adaptations that may be necessary to give effect to the request.

### **False allegations**

**65.** A person who maliciously makes a false allegation or provides false information against a person who is or was a public official in relation to bribery, corruption or possession of unexplained property is guilty of an offence and is liable on conviction on indictment to a fine of \$500 000 or to imprisonment for a term of 5 years or to both.

### **Jurisdiction**

**66.(1)** Where any offence is committed under this Act

- (a) against a citizen; or
- (b) by a citizen,

of Barbados a court shall have jurisdiction to try the alleged offender for the offence irrespective of where the offence was committed.

(2) Where any offence is committed under this Act by a stateless person who has his habitual residence in Barbados, a court shall have jurisdiction to try the alleged offender for the offence irrespective of where the offence was committed.

### **Power of Commission to make Rules**

**67.** Subject to this Act and Regulations, the Commission shall make Rules to govern its procedure.

### **Amendment of Schedules**

**68.(1)** The Minister may by Order amend any of the Schedules except the *Sixth Schedule*.

(2) An Order referred to in subsection (1) shall be subject to affirmative resolution.

**Power of Minister to make Regulations**

69. The Minister may make Regulations on the recommendation of the Commission for the purpose of giving effect to this Act.

**Repeal of *Prevention of Corruption Act***

70. *[The Prevention of Corruption Act, Cap. 144 is repealed.]*

**Commencement**

71. This Act comes into operation on a date to be fixed by proclamation.

**FIRST SCHEDULE***(Section 3)****Commission and Tribunal  
(Constitution and Procedure)***

1.(1) The Commission shall consist of

- (a) a Chairman, who shall be a former judge or an attorney-at-law of at least 15 years' standing appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition;
- (b) a Deputy Chairman, who shall be an attorney-at-law of at least 15 years' standing appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition;
- (c) a certified or chartered accountant of at least 7 years' standing appointed by the Governor-General on the recommendation of the Institute of Chartered Accountants of Barbados;
- (d) an attorney-at-law of at least 7 years' standing appointed by the Governor-General on the recommendation of the Barbados Bar Association;
- (e) two members appointed by the Governor-General on the advice of the Prime Minister; and
- (f) two members appointed by the Governor-General on the advice of the Leader of the Opposition.

(2) Any person appointed to the Commission shall be a person of high public standing and repute.

(3) Notwithstanding paragraph 4(a), a person appointed under subparagraph (1) may be re-appointed for a further term.

**2.** A person shall not be qualified to be appointed as a member of the Commission where that person

- (a) is a person in public life or is otherwise performing a public function;
- (b) has held public office during the preceding 5 years;
- (c) has held office in a political party during the preceding 5 years; or
- (d) would be disqualified to be a member of Parliament.

**3.(1)** The Chairman may at any time resign from his office by instrument in writing addressed to the Governor-General.

(2) Any member except the Chairman may resign from his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman.

(3) From the date of receipt by the Governor-General of any instrument referred to in sub-paragraph (1) or (2) from any member, that member ceases to be on the Commission.

**4.** A vacancy in the membership of the Commission occurs

- (a) at the expiration of 4 years from the date of the appointment of a member;
- (b) on the absence of a member from 3 consecutive meetings of the Commission, unless the absence is approved by the Chairman;
- (c) on the death, resignation or removal from office of a member;
- (d) when a member is appointed to any office of emolument in the service of the Government of Barbados; or
- (e) when a member with his consent is nominated for election as a representative in the House of Assembly or is appointed to the Senate.

5.(1) A member may be removed from office by the Governor-General for

- (a) inability to exercise the functions of his office whether arising from infirmity of body or mind or any other cause; or
- (b) misconduct,

and shall not be so removed except in accordance with the provisions of this paragraph.

(2) A member may be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under sub-paragraph (3) and the tribunal has recommended to the Governor-General that he ought to be removed for inability to discharge the functions of his office or for misconduct.

(3) Where the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, considers that the question of removing a member should be investigated he shall appoint a tribunal which shall consist of a Chairman and one other person selected by the Chief Justice from among persons who have been attorneys-at-law for not less than 15 years.

(4) The tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to him whether the member should be removed from office.

(5) The tribunal shall give the member an opportunity to be heard and to show cause why he should not be removed from office.

(6) Where the question of removing a member has been referred to a tribunal by the Governor-General, he may, after consultation with the Prime Minister and the Leader of the Opposition, suspend the member from the exercise of the functions of his office.

(7) Any suspension under sub-paragraph (6) may at any time be revoked by the Governor-General and shall in any case cease to have effect where the tribunal recommends to the Governor-General that the member should not be removed.

(8) For the purpose of this paragraph,

“misconduct” includes

- (a) acting in bad faith in respect of a matter before the Commission;
- (b) contravention of paragraph 9; and
- (c) any other contravention of this Act.

6. The appointment, death, resignation or revocation of the appointment of a member shall be published in the *Official Gazette*.

7.(1) Every member of the Commission shall make and subscribe to the oaths of allegiance, of office and of secrecy as specified in the *Fifth Schedule*.

(2) The oaths may be taken before a Commissioner of Oaths or a magistrate and the instruments shall thereafter be deposited with the Governor-General.

8.(1) The Commission shall meet at such times as is convenient for the transaction of its business.

(2) A quorum of the Commission shall be 5 members.

(3) The proceedings of the Commission shall not be affected by

- (a) any defect in the appointment of any member; or
- (b) any vacancy in its membership.

(4) The decisions of the Commission shall be by a majority of votes and, in addition to an original vote, in any case in which the voting is equal, the person presiding at the meeting shall have a second or casting vote.

9. Where the Chairman or any other member of the Commission is interested in any matter before the Commission or in any person who is a party to any matter before the Commission, the Chairman or the other member so interested shall disclose the nature of his interest to the Commission and shall not participate in its sittings in relation to the matter or person.

**10.(1)** There shall be a Secretary to the Commission.

(2) The Secretary shall

- (a) attend all meetings of the Commission;
- (b) record all the minutes of each meeting; and
- (c) perform any function which is necessary for the implementation of the work of the Commission.

**11.(1)** The Secretary and all other members of staff of the Commission shall make and subscribe to the oaths of allegiance, of office and of secrecy as specified in the *Fifth Schedule*.

(2) The oaths may be taken before a Commissioner of Oaths or a magistrate and the instruments shall thereafter be deposited with the Commission.

**12.(1)** The Chairman, other members of the Commission and the Secretary to the Commission shall receive such remuneration as determined by the Governor-General after consultation with the Minister of Finance.

(2) The remuneration of the members of the Commission and all its expenses shall be a charge on the Consolidated Fund.

**SECOND SCHEDULE***(Section 2)****PERSONS IN PUBLIC LIFE***

Chairmen, Board Members, and Chief Executives of Statutory Boards and Companies controlled by Government

Heads of Government Departments

Judges

Magistrates

Members of Parliament

Members of the Prevention of Corruption Commission

Permanent Secretaries and Officers of Related Grades

President and Chief Executive Officer of a Registered Trade Union

**THIRD SCHEDULE***(Section 14)****DECLARATION OF ASSETS, INCOME AND LIABILITIES***  
***PLEASE FOLLOW ALL NOTES AND INSTRUCTIONS CAREFULLY***

NOTE: *If the space is insufficient under any paragraph, the required information may be supplied on a separate sheet.*

**DECLARATION** of assets and liabilities at \_\_\_\_\_

*(Declaration date)*

and of income for the period of twelve months (or other period where appropriate) ending on that date.

1. Name and address of declarant:

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2. Name and address of the spouse of the declarant:

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3. Names and addresses of the children of the declarant who are under 18 years of age:

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4. Particulars of bank accounts and credit union accounts held by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Name and Address of Bank or Credit Union	Name in which account held	Account No.	Type of Account	Balance \$

**NOTE:**

- (a) *Letters of verification from banks and credit unions must be submitted showing balances on declaration date.*
- (b) *All interest earned for the period from bank accounts and credit unions must be shown in paragraph 14.*

5. Particulars of cash held other than in a bank or credit union by

	Where held	Amount \$
(a) Declarant		
(b) Spouse of the Declarant		
(c) Children of the Declarant		

6. Particulars of bonds, stocks, shares and similar investment, including private limited liability companies, held by the declarant, the spouse of the declarant or children of the declarant who are under 18 years of age.

Description of investment	Name in which held	Date of acquisition or purchase	Cost of acquisition or purchase \$	Dividends received in the year \$	Estimated Market Value or Book Value \$

Description of investment	Name in which held	Date of acquisition or purchase	Cost of acquisition or purchase \$	Dividends received in the year \$	Estimated Market Value or Book Value \$

**NOTE: All income derived for the period from the above investments must be shown in paragraph 14.**

7. Particulars of immovable property such as houses and land held by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Description/Location (recording reference if available)	Name in which held	Date of acquisition or purchase	Purchase price and/or construction cost \$	Estimated Market Value \$

Description/Location (recording reference if available)	Name in which held	Date of acquisition or purchase	Purchase price and/or construction cost \$	Estimated Market Value \$

**NOTE: Any income derived from the above properties for the period must be shown in paragraph 14.**

8. Particulars of investments held in mortgages or business venture other than investment shown in paragraph 6 by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Type of investment	Owner of investment and percentage of ownership	Term of investment	Interest rate (if applicable) %	Amount of investment \$	Net income for period \$

**NOTE:**

- (a) *All income shown above must also be entered in paragraph 14.*
- (b) *If money invested under paragraph 8 is invested in a firm (in which any of the persons referred to in paragraph 1, 2 or 3 is a partner), then state the estimated market value of that person's investment therein.*

9. Other accounts receivable by the declarant, the spouse of the declarant, or the children of the declarant who are under 18 years of age.

To whom owed	Date due	Due from	Purpose	Original amount \$	Interest earned \$	Balance outstanding at end of declaration period \$

To whom owed	Date due	Due from	Purpose	Original amount \$	Interest earned \$	Balance outstanding at end of declaration period \$

**NOTE: If any interest was earned during the period, it must be shown as income in paragraph 14.**

**10.** Particulars of motor vehicles, boats, and livestock owned by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Name of owner	Description (including age)	Date of acquisition	Purchase price \$	Market value \$

Name of owner	Description (including age)	Date of acquisition	Purchase price \$	Market value \$

**NOTE: If any of the above motor vehicles, boats or livestock were involved in the production of income, such income must be shown in paragraph 14.**

**11.** Particulars of life or endowment insurance policies held by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Name of insured person	Name of beneficiary	Insurance Company and date of issue	Description of policy	Date of maturity	Face Value \$	Amount of premium	Cash surrender value \$

Name of insured person	Name of beneficiary	Insurance Company and date of issue	Description of policy	Date of maturity	Face Value \$	Amount of premium	Cash surrender value \$

**12.** Where the declarant is a partner or director, state the particulars relevant to:

- (a) the name of the business in which the declarant is a partner or director as the case may be;
- (b) the date of appointment as a partner or a director as the case may be; and
- (c) the percentage of shares held if the declarant is in a partnership.

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**13.** Where the declarant is a shareholder in a company, state particulars on:

(a) the name of the company; and  
 (b) the number of shares held.

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**14.** Particulars of income in respect of the relevant 12 month period ended on the 31<sup>st</sup> of December or other period in relation to an onus, commission, fees as consultant or director, gifts in kind or cash, fees, rent, salary, other receipts or transfers and any other income of the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Source of income (Salary, Realty, Securities and any other income)	By whom earned	Period for which earned		Amount from each source
		From	To	

Source of income (Salary, Realty, Securities and any other income)	By whom earned	Period for which earned		Amount from each source	
		From	To	Gross \$	
		Total from all sources \$			

**15.** Particulars of the liabilities of the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Description of liability	Date debt was incurred	To whom owed	By whom owed	Original amount \$	Repayment terms	Balance owing at end of declaration period \$

**16.** State the particulars of any property, business or investment acquired or disposed of including real estate, bonds, stocks, shares, motor vehicles, boats and livestock during the relevant period ending on the 31<sup>st</sup> of December in respect of which declaration is made, by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

Description of each Asset (property business or investment)	By whom acquired or by whom disposed	Price paid acquisition \$	Price received on disposal \$

**NOTE: List all acquisitions under the relevant paragraphs.**

**17.** Particulars of gifts exceeding \$500.00 in value received by the declarant, the spouse of the declarant or the children of the declarant who are under 18 years of age.

	Description of gift exceeding \$500.00 in value
a Declarant	
b Spouse of the Declarant	
c Children of the Declarant	

I \_\_\_\_\_ hereby declare that the contents of this Declaration are to the best of my information and belief true and accurate.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Declarant

Before: \_\_\_\_\_

Commissioner of Oaths/Justice of the Peace

**FOURTH SCHEDULE***(Section 24)****CODE OF CONDUCT***

A public official shall not

- (a) allow private interest to conflict with his public duties or improperly influence his conduct in the performance of his public duties;
- (b) allow the pursuit of his private interests to interfere with the proper discharge of his public duties;
- (c) for himself or anyone else accept any advantage, benefit or gift from anyone as a motive or reward for himself or some one else doing or forbearing to do anything in the performance of his official functions;
- (d) for his personal advantage, benefit or gain, communicate to anyone or make use of any information or the contents of any document acquired in his official capacity, which is not in the public domain;
- (e) in return for anything done, or to be done, or omitted to be done in the execution of his duties, accept or ask for on behalf of himself or any other person any advantage, benefit, favour or property of any kind;
- (f) in the course of his official functions discriminate against any person with respect to conditions, privileges or terms of employment or any matter because of the colour, creed, place of origin, political opinion, race or gender of the person;
- (g) use his official influence in support of any scheme or in furtherance of any contract or proposed contract in regard to which himself or a member of his immediate family has an interest; or
- (h) use or allow the use of public property including services for any purpose other than a public purpose.

**FIFTH SCHEDULE***(Section 3(2))***OATHS****Oath of Allegiance**

I \_\_\_\_\_ do swear that I will be faithful and bear true allegiance to the Government and People of Barbados.

Dated \_\_\_\_\_ the day of \_\_\_\_\_, 20\_\_\_\_\_

So Help Me God

**Affirmation**

I \_\_\_\_\_ solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the Government and People of Barbados.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**Oath of Office**

I \_\_\_\_\_ do swear that I will exercise the functions of Chairman/Member/Secretary/employee of the Prevention of Corruption Commission without fear of favour, affection or ill-will according to the Laws of Barbados.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

So Help Me God

**Affirmation**

I \_\_\_\_\_ solemnly and sincerely declare and affirm that I will exercise the functions of Chairman/Member/Secretary/employee of the Prevention of Corruption Commission without fear of favour, affection or ill-will according to the Laws of Barbados.

Dated the                    day of                   , 20

**Oath of Secrecy**

I \_\_\_\_\_ being appointed Chairman/Member/Secretary/employee of the Prevention of Corruption Commission do swear that I will not on any account or at any time disclose any advice, opinion or privileged information of the Prevention of Corruption Commission and that I shall not except on the authority of the Supreme Court or the Prevention of Corruption Commission and to such extent as will not unduly compromise the independence of the Prevention of Corruption Commission, directly or indirectly reveal business or proceedings of the Commission or the nature or content of any information or document in its possession.

Dated the                    day of                   , 20

\_\_\_\_\_  
So Help Me God

**Affirmation**

I \_\_\_\_\_ being appointed Chairman/Member/Secretary/employee of the Prevention of Corruption Commission solemnly and sincerely declare and affirm that I will not on any account or at any time disclose any advice, opinion or privileged information of the Prevention of Corruption Commission and that I shall not except on the authority of the Supreme Court or the Prevention of Corruption Commission and to such extent as will not unduly compromise the independence of the Commission, directly or indirectly reveal business or proceedings of the Prevention of Corruption Commission or the nature or content of any information or document in its possession.

Dated the                    day of                   , 20

**SIXTH SCHEDULE****PART I***(Section 2)***INTER-AMERICAN CONVENTION AGAINST CORRUPTION**

(Adopted at the third plenary session, held on March 29, 1996)

**Preamble**

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONVINCED that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples;

CONSIDERING that representative democracy, an essential condition for stability, peace and development of the region, requires, by its nature, the combating of every form of corruption in the performance of public functions, as well as acts of corruption specifically related to such performance;

PERSUADED that fighting corruption strengthens democratic institutions and prevents distortions in the economy, improprieties in public administration and damage to a society's moral fiber;

RECOGNIZING that corruption is often a tool used by organized crime for the accomplishment of its purposes;

CONVINCED of the importance of making people in the countries of the region aware of this problem and its gravity, and of the need to strengthen participation by civil society in preventing and fighting corruption;

RECOGNIZING that, in some cases, corruption has international dimensions, which requires coordinated action by States to fight it effectively;

CONVINCED of the need for prompt adoption of an international instrument to promote and facilitate international cooperation in fighting corruption and, especially, in taking appropriate action against persons who commit acts of corruption in the performance of public functions, or acts specifically related to such performance, as well as appropriate measures with respect to the proceeds of such acts;

DEEPLY CONCERNED by the steadily increasing links between corruption and the proceeds generated by illicit narcotics trafficking which undermine and threaten legitimate commercial and financial activities, and society, at all levels;

BEARING IN MIND the responsibility of States to hold corrupt persons accountable in order to combat corruption and to cooperate with one another for their efforts in this area to be effective; and

DETERMINED to make every effort to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance,

HAVE AGREED to adopt the following:

**INTER-AMERICAN CONVENTION AGAINST CORRUPTION****Article I****Definitions**

For the purposes of this Convention:

"Public function" means any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy.

"Public official", "government official", or "public servant" means any official or employee of the State or its agencies, including those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy.

"Property" means assets of any kind, whether movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such assets.

**Article II****Purposes**

The purposes of this Convention are:

1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and
2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

## **Article III**

### **Preventive Measures**

For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes.
2. Mechanisms to enforce these standards of conduct.
3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.
4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.
5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.
6. Government revenue collection and control systems that deter corruption.
7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.

8. Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems.
9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.
10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.
11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.
12. The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

#### **Article IV**

##### **Scope**

This Convention is applicable provided that the alleged act of corruption has been committed or has effects in a State Party.

**Article V****Jurisdiction**

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.
2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.
3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.
4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

**Article VI****Acts of Corruption**

1. This Convention is applicable to the following acts of corruption:
  - a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

- b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
- c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
- d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
- e. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein.

## **Article VII**

### **Domestic Law**

The States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the acts of corruption described in Article VI(1) and to facilitate cooperation among themselves pursuant to this Convention.

**Article VIII****Transnational Bribery**

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

**Article IX****Illicit Enrichment**

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

## **Article X**

### Notification

When a State Party adopts the legislation referred to in paragraph 1 of articles VIII and IX, it shall notify the Secretary General of the Organization of American States, who shall in turn notify the other States Parties. For the purposes of this Convention, the crimes of transnational bribery and illicit enrichment shall be considered acts of corruption for that State Party thirty days following the date of such notification.

## **Article XI**

### Progressive Development

1. In order to foster the development and harmonization of their domestic legislation and the attainment of the purposes of this Convention, the States Parties view as desirable, and undertake to consider, establishing as offenses under their laws the following acts:

- a. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;

- b. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;
- c. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain, whether or not such act or omission harms State property; and
- d. The diversion by a government official, for purposes unrelated to those for which they were intended, for his own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his position for purposes of administration, custody or for other reasons.

2. Among those States Parties that have established these offenses, such offenses shall be considered acts of corruption for the purposes of this Convention.

3. Any State Party that has not established these offenses shall, insofar as its laws permit, provide assistance and cooperation with respect to these offenses as provided in this Convention.

## **Article XII**

### **Effect on State Property**

For application of this Convention, it shall not be necessary that the acts of corruption harm State property.

**Article XIII****Extradition**

1. This article shall apply to the offenses established by the States Parties in accordance with this Convention.
2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between or among the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.
3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.
4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.
5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.
6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

7. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings.

#### **Article XIV**

##### **Assistance and Cooperation**

1. In accordance with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute the acts of corruption described in this Convention, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption.

2. The States Parties shall also provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating, and punishing acts of corruption. To that end, they shall foster exchanges of experiences by way of agreements and meetings between competent bodies and institutions, and shall pay special attention to methods and procedures of citizen participation in the fight against corruption.

**Article XV****Measures Regarding Property**

1. In accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, the States Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offenses established in accordance with this Convention.
2. A State Party that enforces its own or another State Party's forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the property or proceeds in accordance with its laws. To the extent permitted by a State Party's laws and upon such terms as it deems appropriate, it may transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.

**Article XVI****Bank Secrecy**

1. The Requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the Requesting State. The Requested State shall apply this article in accordance with its domestic law, its procedural provisions, or bilateral or multilateral agreements with the Requesting State.

2. The Requesting State shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the Requested State.

## **ARTICLE XVII**

### **Nature of the Act**

For the purposes of articles XIII, XIV, XV and XVI of this Convention, the fact that the property obtained or derived from an act of corruption was intended for political purposes, or that it is alleged that an act of corruption was committed for political motives or purposes, shall not suffice in and of itself to qualify the act as a political offense or as a common offense related to a political offense.

## **Article XVIII**

### **Central Authorities**

1. For the purposes of international assistance and cooperation provided under this Convention, each State Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements.

2. The central authorities shall be responsible for making and receiving the requests for assistance and cooperation referred to in this Convention.

3. The central authorities shall communicate with each other directly for the purposes of this Convention.

### **Article XIX**

#### **Temporal Application**

Subject to the constitutional principles and the domestic laws of each State and existing treaties between the States Parties, the fact that the alleged act of corruption was committed before this Convention entered into force shall not preclude procedural cooperation in criminal matters between the States Parties. This provision shall in no case affect the principle of non-retroactivity in criminal law; nor shall application of this provision interrupt existing statutes of limitations relating to crimes committed prior to the date of the entry into force of this Convention.

### **Article XX**

#### **Other Agreements or Practices**

No provision of this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other international agreements, bilateral or multilateral, currently in force or concluded in the future, or pursuant to any other applicable arrangement or practice.

### **Article XXI**

#### **Signature**

This Convention is open for signature by the Member States of the Organization of American States.

**Article XXII****Ratification**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article XXIII****Accession**

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

**Article XXIV****Reservations**

The States Parties may, at the time of adoption, signature, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

**Article XXV****Entry Into Force**

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article XXVI****Denunciation**

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. One year from the date of deposit of the instrument of denunciation, the Convention shall cease to be in force for the denouncing State, but shall remain in force for the other States Parties.

**Article XXVII****Additional Protocols**

Any State Party may submit for the consideration of other States Parties meeting at a General Assembly of the Organization of American States draft additional protocols to this Convention to contribute to the attainment of the purposes set forth in Article II thereof.

Each additional protocol shall establish the terms for its entry into force and shall apply only to those States that become Parties to it.

**Article XXVIII****Deposit of Original Instrument**

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify its Member States and the States that have acceded to the Convention of signatures, of the deposit of instruments of ratification, accession, or denunciation, and of reservations, if any.

## SIXTH SCHEDULE - (Cont'd)

## PART II

Article 8. *Criminalization of corruption* (Section 2)

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

*Article 9. Measures against corruption*

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

## PART III

*(Section 2)*

### **United Nations Convention against Corruption**

#### **Preamble**

*The States Parties to this Convention,*

*Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,*

*Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,*

*Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,*

*Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,*

*Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,*

*Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,*

*Convinced* that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

*Determined* to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

*Acknowledging* the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

*Bearing in mind* that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

*Bearing also in mind* the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

*Commending* the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

*Recalling* the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

*Taking note with appreciation* of multilateral instruments to prevent and combat corruption, including, *inter alia*, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,<sup>1</sup> the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,<sup>2</sup> the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,<sup>3</sup> the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,<sup>4</sup> the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,<sup>5</sup> and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

*Welcoming* the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime<sup>6</sup>

*Have agreed as follows:*

## **Chapter I**

### **General provisions**

#### *Article 1. Statement of purpose*

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

<sup>1</sup>See E/1996/99.

<sup>2</sup>Official Journal of the European Communities, C 195, 25 June 1997.

<sup>3</sup>See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

<sup>4</sup>Council of Europe, *European Treaty Series*, No. 173.

<sup>5</sup>Ibid., No. 174.

<sup>6</sup>General Assembly resolution 55/25, annex I.

(c) To promote integrity, accountability and proper management of public affairs and public property.

*Article 2. Use of terms*

For the purposes of this Convention:

(a) "Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

### *Article 3. Scope of application*

1. This Convention shall apply in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

*Article 4. Protection of sovereignty*

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

**Chapter II**  
**Preventive measures***Article 5. Preventive anti-corruption policies and practices*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

*Article 6. Preventive anti-corruption body or bodies*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

*Article 7. Public sector*

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

#### *Article 8. Codes of conduct for public officials*

1. In order to fight corruption, each State Party shall promote, *inter alia*, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

*Article 9. Public procurement and management  
of public finances*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, *inter alia*:

- (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

#### *Article 10. Public reporting*

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, *inter alia*:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

*Article 11. Measures relating to the judiciary and prosecution services*

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

*Article 12. Private sector*

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, *inter alia*:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of

the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

#### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

- (i) For respect of the rights or reputations of others;
- (ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

*Article 14. Measures to prevent money-laundering*

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

### **Chapter III** **Criminalization and law enforcement**

#### *Article 15. Bribery of national public officials*

4. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

#### *Article 16. Bribery of foreign public officials and officials of public international organizations*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

*Article 17. Embezzlement, misappropriation or other diversion of property by a public official*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

*Article 18. Trading in influence*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

*Article 19. Abuse of functions*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

*Article 20. Illicit enrichment*

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

*Article 21. Bribery in the private sector*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

*Article 22. Embezzlement of property in the private sector*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

*Article 23. Laundering of proceeds of crime*

1. Each State party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

#### *Article 24. Concealment*

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

*Article 25. Obstruction of justice*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

*Article 26. Liability of legal persons*

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

*Article 27. Participation and attempt*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.
2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

*Article 28. Knowledge, intent and purpose  
as elements of an offence*

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

*Article 29. Statute of limitations*

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

*Article 30. Prosecution, adjudication and sanctions*

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.
3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

*Article 31. Freezing, seizure and confiscation*

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
  - (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
  - (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.
4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

*Article 32. Protection of witnesses, experts and victims*

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

#### *Article 33. Protection of reporting persons*

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

*Article 34. Consequences of acts of corruption*

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

*Article 35. Compensation for damage*

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

*Article 36. Specialized authorities*

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

*Article 37. Cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

*Article 38. Cooperation between national authorities*

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

*Article 39. Cooperation between national authorities and the private sector*

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.
2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

*Article 40. Bank secrecy*

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

*Article 41. Criminal record*

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

*Article 42. Jurisdiction*

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

## Chapter IV International cooperation

### *Article 43. International cooperation*

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

### *Article 44. Extradition*

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and

in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### *Article 45. Transfer of sentenced persons*

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

*Article 46. Mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
  - (a) Taking evidence or statements from persons;
  - (b) Effecting service of judicial documents;
  - (c) Executing searches and seizures, and freezing;
  - (d) Examining objects and sites;
  - (e) Providing information, evidentiary items and expert evaluations;
  - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
  - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
  - (h) Facilitating the voluntary appearance of persons in the requesting State Party;

- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply

unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received.

Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable

requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

#### *Article 47. Transfer of criminal proceedings*

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

#### *Article 48. Law enforcement cooperation*

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the

offences covered by this Convention. States Parties shall, in particular, take effective measures:

- (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
- (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
  - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
  - (ii) The movement of proceeds of crime or property derived from the commission of such offences;
  - (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
- (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;
- (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;
- (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

*Article 49. Joint investigations*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

*Article 50. Special investigative techniques*

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.
2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

## **Chapter V** **Asset recovery**

### *Article 51. General provision*

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

### *Article 52. Prevention and detection of transfers of proceeds of crime*

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

*Article 53. Measures for direct recovery of property*

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

*Article 54. Mechanisms for recovery of property through international cooperation in confiscation*

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

*Article 55. International cooperation for purposes of confiscation*

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1(b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

*Article 56. Special cooperation*

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

*Article 57. Return and disposal of assets*

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

#### *Article 58. Financial intelligence unit*

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

*Article 59. Bilateral and multilateral agreements and arrangements*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

**Chapter VI**  
**Technical assistance and information exchange**

*Article 60. Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, *inter alia*, with the following areas:

- (a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;
- (b) Building capacity in the development and planning of strategic anti-corruption policy;
- (c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;
- (d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;
- (e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries; with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

*Article 61. Collection, exchange and analysis of information on corruption*

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

*Article 62. Other measures: implementation of the Convention through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
  - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;
  - (b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;
  - (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

## **Chapter VII**

### **Mechanisms for implementation**

#### *Article 63. Conference of the States Parties to the Convention*

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, *inter alia*, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, *inter alia*, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

*Article 64. Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

## **Chapter VIII** **Final provisions**

### *Article 65. Implementation of the Convention*

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

### *Article 66. Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 67. Signature, ratification, acceptance, approval and accession*

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 68. Entry into force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession: For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

*Article 69. Amendment*

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### *Article 70. Denunciation*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

#### *Article 71. Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.