Analysis of the Draft Law of Ukraine "On Basic Principles of Preventing and Combating Corruption in Ukraine"
ANALYSIS OF THE DRAFT LAW OF UKRAINE “ON BASIC PRINCIPLES OF PREVENTING AND COMBATING CORRUPTION IN UKRAINE”

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Analysis of the Draft Law of Ukraine
“On Basic Principles of Preventing and Combating Corruption in Ukraine”
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Draft Law of Ukraine “On Basic Principles of Preventing and Combating Corruption in Ukraine”

I. Introduction and General Assessment

The purpose of this exercise is to assess the compliance of the draft Law of Ukraine “On Basic Principles of Preventing and Combating Corruption in Ukraine” [hereinafter “draft law”] with existing international and regional standards. If adopted, the draft law will replace the 1995 Law of Ukraine “On Combating Corruption” [hereinafter “1995 Law”] which is currently in force. The analysis of the draft law in this context will be especially helpful given the fact that the draft law seeks to bring the Ukrainian legal framework against corruption in line with the new United Nations Convention against Corruption and to raise the country’s international image in general.1

As a preliminary note, the drafters should be commended for making a very good attempt at trying to meet the existing international standards for preventing and combating corruption. With a few exceptions, the draft law largely covers the subjects that applicable international standards call for in anticorruption legislation and programs. Some provisions, namely those relating to civil law remedies, asset forfeiture, and international cooperation, are particularly encouraging, since they follow the applicable international anticorruption standards very closely. The draft law also significantly expands the provisions of the 1995 Law. For example, it introduces new, albeit imperfect, provisions on issues such as conflict of interest, codes of conduct, restrictions on employment of relatives and on subsequent private sector employment of former public officials, public participation in corruption prevention, anticorruption expert evaluation of draft laws and regulations, internal investigation of corruption offenses, disciplinary responsibility for corruption offenses, liability of legal entities, witness protection, prohibition of corruption in the private sector, and enhanced international cooperation.

At the same time, the draft law fails to provide a comprehensive blueprint for combating corruption and is largely hortatory. Perhaps its greatest general shortcoming is that many of its provisions simply state, in general terms, the need for a certain legal measure and then, without providing any specific guidance as to the content of such a measure, refer to a different implementing law or regulation, which is yet to be drafted and adopted. These cross-references have the effect of making the draft law too vague and ambiguous. Although the draft law, in its Final Provisions, sets a three-months deadline for drafting the relevant domestic laws and/or amending the regulations, it is unclear what will happen after the Cabinet of Ministers submits the relevant drafts for consideration to the Verkhovna Rada. While it may be argued that an attempt at exhaustiveness may limit the chances of a draft anticorruption legislation passing parliamentary procedure, some aspects of such legislation are too important to be left to secondary legislation.

Moreover, it has been recently noted that in Ukraine, “[t]he legal framework for fighting against corruption builds on a significant number of laws and regulations; the effectiveness and

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1 See Explanatory Note to the draft Law of Ukraine “On Basic Principles of Preventing and Combating Corruption in Ukraine.”

*Compiled by Olga Ruda, CEELI Legal Analyst; LL.M. in International Legal Studies, American University Washington College of Law, 2003; Master of Law, Kyiv National Taras Shevchenko University, 2001; Bachelor of Law (J.D. equivalent), Kyiv National Taras Shevchenko University, 2000.
The interrelation of these legal acts is often difficult to assess, in part due to their overwhelming quantity. Therefore, it may be preferable to expand the draft law into a single comprehensive piece of legislation rather than continue having a series of smaller acts that address distinct aspects of the national anticorruption program and may be more difficult to enforce. Overall, as it presently stands, it is difficult to assess whether the final product will achieve its purported goals without seeing the other laws and regulations that the draft law envisions.

II. International and Regional Standards

The applicable international and regional standards for preventing and combating corruption in Ukraine include the United Nations Convention Against Corruption [hereinafter “UN Convention”], the Council of Europe Criminal Law Convention on Corruption [hereinafter “Criminal Law Convention”], the Council of Europe Civil Law Convention on Corruption [hereinafter “Civil Law Convention”], and the Additional Protocol to the Council of Europe Criminal Law Convention [hereinafter “Additional Protocol”]. While Ukraine has signed all of these international law instruments, it has not yet ratified any of them.

The new UN Convention represents an international consensus and, once it enters into force, it will become the first and the most comprehensive international anticorruption instrument of truly global reach. It applies “to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of [corruption] offenses.” According to Article 1, the Convention has a threefold purpose that includes:

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…;

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7 Both Council of Europe conventions are already in force, while the UN Convention and the Additional Protocol are yet to be ratified by a sufficient number of states.

8 According to Article 68, the UN Convention will enter into force on the ninetieth day after the deposit of the thirtieth instrument of ratification. Experts estimate that the UN Convention may enter into force at the earliest at the end of 2005.

9 UN Convention, Article 3.1.
c) To promote integrity, accountability and proper management of public affairs and public property.

To achieve these purposes, the UN Convention calls upon the participating states to implement preventive anticorruption measures and policies at the national level, both in the public and the private sectors (Articles 7, 12), for the establishment of independent anticorruption agencies (Article 6), and for promoting the participation of the society in preventing public corruption (Article 13). These preventive measures should “reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

Although the UN Convention fails to provide a uniform definition of what constitutes corruption under international law, it requires that participating states criminalize different forms of corrupt behavior that go beyond simple bribery of public officials (which the traditional international law has regarded as the basic paradigm of corruption and which is covered by Articles 15-16 of the Convention) and extend to embezzlement (Article 17), trading in influence (Article 18), abuse of functions (Article 19), illicit enrichment (Article 20), and laundering of proceeds of corruption (Article 23). It also provides for criminalization of private sector bribery and embezzlement (Articles 20-21) and for liability of legal persons for participation in corruption offenses (Article 26).

The UN Convention also calls for procedural measures related to the prosecution of corruption offenses and enforcement of national anticorruption laws, such as cooperation between national law enforcement authorities, specialized anticorruption agencies, and the private sector (Articles 37-39); use of special investigative techniques (Article 50); evidentiary standards in adjudicating corruption offenses (Articles 28, 30); protection of witnesses, victims and whistleblowers (Articles 32-33); and compensating for damages caused by corruption (Articles 34-35), including very detailed provisions on asset recovery (Articles 51-58).

Finally, the UN Convention calls for enhanced international cooperation in preventing and combating corruption, stating that participating states “shall cooperate in criminal matters … [and] shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.” Such enhanced international cooperation includes extradition (Article 44), mutual legal assistance (Article 46), exchange of information (Articles 48, 61), and joint investigations (Article 49).

The main focus of the Criminal Law Convention is to criminalize active and passive bribery of different categories of public officials, including domestic public officials and members of domestic public assemblies, foreign public officials and members of foreign public assemblies, officials of international organizations and members of international parliamentary assemblies, and judges and officials of international courts (Articles 2-6, 9-11). The Additional Protocol lists two more categories of persons – domestic and foreign arbitrators and jurors – whose bribery is prohibited. Additionally, the Criminal Law Convention criminalizes active and passive bribery in the private sector (Articles 7-8), as well as a number of additional offenses, such as trading in influence (Article 12), money laundering (Article 13), corruption in auditing (Article 14), participatory acts...
(Article 15), and corporate liability for corruption offenses (Article 18). The Criminal Law Convention is largely similar to the UN Convention in terms of procedural measures related to investigation and prosecution of corruption offenses and requiring the participating states to “co-operate … to the widest extent possible for the purposes of investigations and proceedings concerning criminal offenses established in accordance with this Convention.”

The purpose of the Civil Law Convention is to “provide … for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.” Unlike the UN Convention or the Criminal Law Convention, this document contains a relatively broad definition of corruption:

For the purpose of this Convention, “corruption” means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.

The Civil Law Convention then goes on to require the participating states to allow a person who suffered damages as a result of corruption to obtain compensation for “material damage, loss of profits and non-pecuniary loss,” including the right to claim such compensation from the state (Article 5). It also requires an additional remedy of rescission of any contract or clause of contract where “consent has been undermined by an act of corruption.” There are provisions regarding the procedural safeguards necessary for the enforcement of civil anticorruption laws, such as standards of liability (Articles 4, 6), protection of whistleblowers (Article 9), and procedures for acquisition of evidence in civil cases related to corruption (Article 11). Finally, as in other international anticorruption instruments, the Civil Law Convention requires the participating states to “co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgments and litigation costs.…”

III. Drafting Issues

The drafting and structure of the Ukrainian draft law raise some concerns. First and foremost, as was previously mentioned, it contains too many cross-references to various laws and regulations that do not yet exist. As a result, many important aspects that should normally be addressed in a comprehensive anticorruption law are mentioned only in passing. The draft law needs to be redrafted so that it contains bright-line rules that are “easy to understand, simple to apply, and demand[] little or no judgment in determining [their] applicability.” Doing so will facilitate
compliance with the draft law, while the responsible government agencies will be better able to enforce the law and monitor the compliance.

In addition, the draft law must necessarily be read in conjunction with other laws and regulations, both those currently in force and those whose adoption are envisioned by the draft law. Therefore, the drafters must ensure consistency and harmony between the draft law and other related pieces of legislation, such as, for example, the Criminal Code, the Code on Administrative Offenses, the Labor Code, the procedural codes, and the legislation on civil service, banking, anti-money laundering, and taxation. All of these laws will have to be reviewed and adapted to reflect the new provisions of the draft law and to ensure their compliance with international standards. Yet, the draft law contains no reference to any of these related laws, nor does it mention the need for amending such laws. Thus, there is a risk that the establishment of a comprehensive anticorruption framework might be delayed indefinitely. Perhaps the Ukrainian drafters should consider an approach taken by the Estonian Anti-Corruption Act of 1999, which contains a separate Chapter 6 entitled “Implementing Provisions” that spells out the amendments to existing related laws.\(^{19}\)

Another issue related to drafting of the draft law is the lack of the logical consistency and seemingly random pattern in the internal structuring and grouping of the articles. For instance, the drafters should consider placing Article 6 (Prohibition to Receive Gifts and Souvenirs) next to Article 14 (Regulation of Conflict of Interests), since these articles belong together thematically. In addition, the language of the draft law is often rather ornamental (as opposed to concise), making it difficult to navigate among the different provisions.

IV. Definitions

A. Corruption, Corruption Crime, and Corruption Offense

The drafters of the draft law should be commended for coming up with a relatively broad definition of corruption (see Article 1). As mentioned previously, there is a notable lack of international consensus as to a universally acceptable definition of what constitutes corruption, since “no definition of corruption will be equally accepted in every nation”;\(^{20}\) instead, the applicable international conventions, e.g., the UN Convention and the Criminal Law Convention, seek to define corruption by listing the various substantive offenses or types of prohibited conduct, all of which are regarded as forms of corruption. Such an approach necessarily leaves certain aspects of corruption beyond the scope of anticorruption conventions.

The concept of corruption as defined in the draft law is, therefore, exemplary. First, this concept consists of two prongs, covering both passive corruption (“illicit use of power, its prestige, authority and possibilities related thereto for the purpose of procuring any assets (advantages,

\(^{19}\) Such drafting approach is not novel for the Ukrainian legislative practice. There have been instances when a primary law was adopted simultaneously with a supplementary law, the only purpose of which was to amend existing laws in connection with the adoption of a primary law. This was the case, for example, with the 1995 Law on Combating Corruption, as well as the laws “On Measures to Combat Illegal Circulation and Abuse of Narcotic Substances, Psychotropic Substances, and Precursors” and “On Circulation of Narcotic Substances, Psychotropic Substances, and Precursors in Ukraine.”

benefits, privileges) of pecuniary and non-pecuniary nature, both for [one]self and for other persons”) and active corruption (“granting to [public officials] any undue advantages, both for them personally and for other natural or legal persons, so that these [officials], while using their position, perform or refrain from performing certain actions.”).

Second, the draft law’s definition has capacity for broader application than the definition of corruption under Article 2 of the Civil Law Convention, since it extends to both civil and criminal, as well as to other forms of responsibility for corrupt conduct.21 This definition is also consistent with the one generally used in Western legal literature, which treats corruption as “[t]he act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.”22 At the same time, this definition refers the precise interpretation of the elements of the corruption crime and the corruption offense to other relevant laws that penalize such crimes/offenses.

Finally, there is an opinion that the definition of corruption in the draft law seems to define a more narrow form of corruption – official corruption; consequently, the drafters should consider changing the title of this definition accordingly. Moreover, since the draft law uses the term corruption in a broader sense, a more inclusive definition of corruption should also be developed.

**B. Relatives**

It is suggested that the drafters revise the draft law’s definition of the concept of relatives (see Article 1), since the current definition seems vague and too broad. First, it is unclear for a person to be “on family terms or in close relations with the subject of a corruption offense.” This definition may be interpreted to cover non-relatives, as well as those whom the subject of a corruption offense supports financially or those who reside together with the subject. There are two possible solutions to this ambiguity. The draft law could list all persons covered by the concept of relative (similarly to the definition of immediate relatives, see Article 1), such as in-laws, first and second cousins, step-parents and step-children, and half-siblings. However, such an approach would leave out those persons who have a personal relationship with the subject of a corruption offense and/or live together with the subject.

Alternatively, the draft law could define relatives by incorporating a reference to a provision of the tax legislation that defines a dependent of the taxpayer. For instance, under the U.S. tax rules (as amended in 2000), a person is treated as a taxpayer’s dependent if certain tests are met. For purposes of defining the concept of relative in anticorruption legislation, the relevant tests are gross income, support, and member of household or relationship. The gross income test is satisfied if a person’s taxable income is below a certain threshold amount; it is automatically satisfied in the case of children under the age of 19 and children under the age of 24 who are full-time students. The

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21 At the same time, although a broad definition of corruption is generally preferable, the drafters of the Draft Law should be cautioned against providing an overly broad definition of corruption; a careful balance is therefore necessary. See Peter J. Henning, Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law, in ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, vol. 18, p. 803 (Fall 2001) (“The broader the scope of the law, the greater the possibility that arguably acceptable conduct will come within the criminal provisions and result in punishment for acts that are not morally blameworthy.”).

support test is likewise simple; it would be met if the subject of a corruption offense provides more than half of a person’s total support. Finally, the two-prong member of household or relationship test would be satisfied either if a person lives with the subject of a corruption offense as a member of the subject’s household or if a person is related to the subject in a particular way.

The relationships that would satisfy this test include:

- Children, grandchildren, step-children, and adopted children;
- Siblings, step-siblings, and half-siblings;
- Parents, grandparents, and other direct ancestors;
- Step-parents and adoptive parents;
- Aunts and uncles by blood;
- Nieces and nephews by blood;

**C. Public Official: A Missing Definition**

One definition that should have been included in Article 1 of the draft law is that of the public official. Currently, the long phrase “persons authorized to perform the functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance” (defined in Article 2.1 of the draft law) is used repeatedly throughout the draft. To avoid these lengthy repetitions, the drafters should consider assigning a shortcut for this phrase or using it as the definition for a term such as public official, government functionary or some other term that accurately describes the group of persons who are included in this reference.

**V. Subjects of Corruption Offenses**

**A. Public Officials**

The definition of subjects of corruption offenses under Article 2 of the draft law is much broader than the definition under the 1995 Law and generally meets the applicable international standards found in Article 2(a) of the UN Convention and the Criminal Law Convention with its Additional Protocol:

“Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office … 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…; (iii) any other person defined as a “public official” in the domestic law of a State Party.

In compliance with this definition, Article 2 of the draft law covers the senior-level officials of the country, officials of all branches of government (parliament members, executive branch officials, judges and jurors), local self-government officials, civil servants, military officials, law enforcement personnel, officials of state-owned entities and other organizations (including
foundations and charities) that receive public funds from national or local budgets, political party leaders, and any other persons who receive salaries from national and local budgets or perform public functions delegated by the state (e.g., auditors, notaries, attorneys, and arbitrators), as well as foreign public officials and employees of international organizations.

However, while this listing is quite extensive and reflects the approach taken by a number of other anticorruption laws (e.g., Article 4 of Estonian Anti-Corruption Act), there is a danger that providing such a list may exclude positions and persons meant to be included. For example, even in its current wording, it is unclear whether the list includes the Prosecutor-General and subordinate prosecutors (i.e., do they fall under the category of law enforcement personnel?). Taking into account that other leading public officials and categories are specifically named, it may be a good idea to list the procuracy as a separate category as well. Similarly, candidates for political office seem to be omitted from the listing of subjects of corruption offenses. Since such individuals are capable of committing corruption crimes or offenses in their quest for political office, the draft law should provide a specific reference to them.

It may be suggested that, in order to ensure that all positions and categories of public officials are covered by Article 2 of the draft law, the drafters insert the phrase “including but not limited to” immediately before the listing of persons covered by the definition of subjects of corruption offenses. This would reflect the universal prohibition against corruption and leave less room for discretionary interpretation.

Finally, as mentioned previously, the definition of subjects of corruption offenses should be made consistent with the definitions of public official or official under the Law on Civil Service and the Criminal Code.

B. Immunity from Prosecution and Liability

This issue is closely related to the definition of subjects of corruption offenses. Article 2.1 of the draft law mentions several categories of public officials, such as the President of Ukraine, deputies of the Verkhovna Rada, and judges of all courts who may be held liable for corruption offenses. According to the Constitution of Ukraine, these persons cannot be held criminally responsible, arrested, or detained without a special authorization by the Verkhovna Rada to lift their immunity. Nevertheless, the draft law lacks any reference to the possibility of automatic or simplified lifting of immunity from the investigation and prosecution of corruption offenses allegedly committed by these officials. In fact, some provisions may even suggest unwillingness on the part of the drafters to provide for lifting the immunity of elected officials.

Thus, as has been suggested in earlier assessments, the drafters should correct this major shortcoming by specifying, in the draft law, simplified “procedures for lifting of immunity for criminal proceedings and considering abolishing the requirement of authorization on lifting the

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23 See Constitution of Ukraine, Article 80 (immunity of deputies of Verkhovna Rada); Article 105 (immunity of the President); Articles 126 and 149 (immunity of judges of the courts of general jurisdiction and of the Constitutional Court).

24 See, e.g., Draft law, Article 21.7, which states that “termination of authority in elected office … shall be effected in conformity with the legislation of Ukraine.”
immunity in cases when a person is caught in *flagrante delicto.* This would ensure that no official, including those in the highest levels of the government, is immune or exempt from criminal prosecution or ethical standards laid out in the draft law. Additionally, it would bring the draft law into compliance with Article 30.2 of the UN Convention, which requires the participating states “to establish or maintain … 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 [corruption] offenses…”

C. Private Sector Officials and Private Individuals

The definition of subjects of corruption offenses extends not only to public officials (thus covering the demand side of corruption), but also to all private sector officials and private individuals “who illicitly grant to [public officials] … pecuniary and non-pecuniary assets (advantages, benefits, privileges)” (thus covering the supply side of corruption) (see Article 2.4). Moreover, all other manifestations of private sector corruption are covered by the draft law, since Article 2.3 mentions private sector officials authorized to perform managerial or administrative functions. The inclusion of potential corruptors is an important element of anticorruption legislation and is in accordance with the applicable international standards of Article 12 of the UN Convention and Articles 6-7 of the Criminal Law Convention, which criminalize the offenses:

> [W]hen committed intentionally in the course of economic, financial or commercial activities[, of the promise, offering or giving[, solicitation or acceptance[, directly or indirectly, of an undue advantage to [and by] any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for any other person, in order that he or she, in breach of his or her duties, act or refrain from acting.

VI. Specialized Anticorruption Bodies

The draft law envisions a wide array of government bodies specially authorized to undertake measures for preventing and combating corruption, such as detection, termination, and investigation of corruption offenses. These bodies are defined as specialized subdivisions of the Ministry of Interior, the Security Service, the State Tax Administration, and the Procuracy. In addition, other executive agencies, local self-governments, and private entities may participate in prophylactics, prevention, detection, and termination of corruption offenses, reinstatement of rights, conducting research, and international cooperation. The draft law further vests the authority for coordinating all anticorruption efforts of executive agencies in the Coordinating Committee for Combating Corruption and Organized Crime, which is subordinated to the President of Ukraine [hereinafter “Coordinating Committee”] (see Article 3).

A number of issues arise with respect to these provisions. First of all, the draft law fails to address earlier recommendations and strengthen the independent status of the Coordinating Committee, thus failing to comply with the applicable international standards that require governments to grant the preventive corruption bodies “the necessary independence … to enable

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25 OECD Anti-Corruption Network Assessment, p. 3.
them] to carry out … their functions effectively and free from any undue influence.”26 Because the corruption problem in many countries may exist at the highest levels of power, subordinating anticorruption agencies to an executive body or official, or even to the legislature, may be suspect. For instance, if the Coordinating Committee is subordinated to the President of Ukraine, it might find it impossible to secure presidential approval (required by Article 3.7 of the draft law) for an annual program, or to undertake other measures for preventing and combating corruption that the President has decided not to investigate or remedy.

Second, the list of bodies specially authorized to prevent and combat corruption is too broad. It merely codifies the existing structure of multiple anticorruption agencies, while the inclusion of private entities in this list makes it seem as if almost anyone can investigate or remedy corruption. Assigning government power to too many entities is likely to result in lack of coordination between the different agencies with overlapping functions. It may also lead to frequent misuses of the law to incapacitate someone’s political, economic, or personal rivals, without adding much to the overarching goal of the law – elimination of corruption. The best evidence here is Ukraine’s own experience: despite the abundance of different bodies in charge of implementing numerous corruption-related laws, the corruption problem in Ukraine still persists.

Instead of having a number of government agencies with overlapping or even conflicting responsibilities for preventing and combating corruption, the Ukrainian drafters may consider a model adopted by some countries, according to which the responsibility for all issues related to the country’s anticorruption effort is placed within a single centralized office.27 This office should be charged with detecting, investigating and prosecuting corruption offenses, monitoring and preventing corruption, and exercising general supervision over compliance with various duties imposed by anticorruption laws, such as financial disclosures, codes of conduct, and conflict of interests. The central agency should also be responsible for interpreting the corruption-related laws, drafting amendments to such laws, formulating the national anticorruption policies and strategies, and educating the public about the negative consequences of corruption and its role in fighting it.

Specialized independent anticorruption agencies are normally established in countries where corruption is systemic and the traditionally responsible governmental institutions are corrupt, or perceived as being so, and a holistic approach that includes prevention, enforcement, monitoring, and education is needed. One of the central arguments for the creation of an anticorruption agency is that the police cannot investigate corruption because they lack the expertise or because they are corrupt. Given these considerations, Ukraine seems a perfect ground for establishing such a specialized agency.

The benchmark for an effective, adequately resourced anticorruption agency is the Hong Kong Independent Commission Against Corruption (ICAC). Its experience reveals several observations regarding the transferability of this model. Specifically, anticorruption agencies can only be effective in combating corruption in a limited number of contexts, because variables behind their success are complex and often specific to individual countries. In particular, their success depends

26 UN Convention, Article 6.2; see also UN Convention, Article 36 (requiring the existence of bodies or persons specialized in combating corruption through law enforcement); Criminal Law Convention, Article 20.
27 Such model, however, is not a universal standard; there are countries (e.g., the United States) that follow a more decentralized approach.
upon effective legislation, a favorable political climate, state capacity, the rule of law, a professional legal system, and an efficient criminal justice system. It also requires basic levels of internal governance in terms of financial management, record-keeping, and personnel management. Finally, the success of an anticorruption agency is also based on more predictable organizational features that include independence from political interference, adequate funding, leadership stability, training, and professionalism.

Perhaps the best example of successfully establishing an independent anticorruption agency, which the drafters of the draft law should consider very carefully, is that of the Lithuanian Special Investigation Service (SIS). The experience of SIS is especially important in light of the fact that it is not patterned after the Hong Kong model or any other model. It is a model crafted specifically to the anticorruption landscape of Lithuania, and one that is being closely examined by neighboring countries and international experts. The Lithuanian model is a product of examining best practices of other nations, learning from their successes and failures, and blending what they learned into the legal framework of their country.

Following Lithuania’s independence, the country was dramatically affected by corruption; yet, none of the existing law enforcement institutions seemed ready or equipped to take on the new enemy. Responsibility for enforcing the few and vague anticorruption laws was spread amongst several agencies. Allegations of corruption throughout the criminal justice system detracted from any prospect of a focused and effective attack against corruption. Many thought the problem would “just go away.” Finally, in 1997, the government responded with a resolution creating the SIS, a specialized unit within the Ministry of Interior with the sole mission to combat public corruption. The SIS quickly became recognized as an effective tool in the fight against corruption. However, being part of the Ministry of Interior, arguably the most corrupt ministry, compromised its mission. Simply stated, it was not free from political pressure in the conduct of its investigations.

In May 2000, the law creating the SIS was amended, removing it from the subordination to the Ministry of Interior. Today, the SIS reports only to the President and the Parliament. The new law also expanded the mission of the SIS. It has been designated as a guarantor and coordinator of the National Anticorruption Program, which is authorized to combat corruption at the highest levels of government. It is also responsible for coordinating the efforts of other government agencies charged with anticorruption enforcement responsibilities. The top SIS priorities are investigating corruption in the areas of public procurement, privatization, local government, law enforcement, and foreign investment. There are also separate divisions responsible for prevention of corruption, enforcement of anticorruption laws, and educating the public about the dangers of corruption.

As the SIS continues to evolve as a bona fide threat to public corruption, it has continuously struggled to address high-level government corruption. In 2000, its Director successfully lobbied for changes in laws that granted immunity from investigation to parliament members, judges, and ministers. These officials are now included among the investigative targets of the SIS. Investigations

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28 It should be noted that approximately three years ago a team of Ukrainian officials was brought to Lithuania to meet with the Director of SIS. Following their meetings they concluded that Ukraine was not ready for an agency like the SIS. If the Draft Law is an indicator of a sincere desire on the part of high government officials to combat corruption, then perhaps it is time for Ukraine to revisit this concept.
have led to the arrest and conviction of public officials engaged in multi-million dollar procurement fraud rackets.

Taking into account these international requirements and examples, the drafters of the draft law are advised to consider the possibility of creating a specialized, structurally independent anticorruption agency, which would replace or integrate the institutions currently listed in Article 3. This task should necessarily involve the review of the effectiveness and efficiency of the existing anticorruption bodies and take into account lessons learned from such a review. For instance, if the drafters decide to keep the Coordinating Committee as Ukraine’s specialized anticorruption agency, then it should be removed from the subordination to the President, while its capacity should be strengthened.\(^{29}\) If it is decided to keep the current framework of several agencies responsible for different aspects of anticorruption policy, then the focus should be on ensuring collaboration and coordination between the efforts of these institutions. This would be in accordance with Article 38 of the UN Convention and Article 12 of the Criminal Law Convention, both of which call for enhanced inter-institutional cooperation at the domestic level. Finally, the draft law should guarantee that the new agency will have adequate financial resources and specialized staff who will receive the necessary training at the expense of the state, as is required by Article 6 of the UN Convention and Article 20 of the Criminal Law Convention.

### VII. Criminalization and Other Penalties for Corruption Offenses

#### A. Substantive Corruption Offense

Although the draft law itself fails to define the requisite elements of a corruption crime or a corruption offense, it does list the types of prohibited conduct and other restrictions on outside employment and income of all public officials. These restrictions also apply to applicants for public positions with the state government and local self-governments, and refusal to comply with these restrictions is an automatic ground for denying the application (see Article 4).

The draft law further refers to the Criminal Code and other laws, which define the elements of corruption offenses. The Criminal Code, in turn, is largely limited to bribery and similar offenses, as is the case under the Criminal Law Convention. Its articles criminalize active (Article 369) and passive (Article 368) bribery, provocation of a bribe by an official (Article 370), abuse of power or office (Article 364), and official negligence (Article 367). The draft law is silent as to the issue of amending these limited provisions or introducing additional crimes that may be charged in the instances of corruption. Thus, it fails to address the recommendation contained in an earlier assessment, which stated that Ukraine should “[a] mend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards. In particular, [it should] clarify elements of bribery through a third person; delineation of offenses between an

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\(^{29}\) As noted in the OECD Anti-Corruption Network Assessment (p. 2), the Coordinating Committee should be strengthened by ensuring high moral standards of its members, who should include representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.) [and by ensuring] a more appropriate frequency of the Committee’s meetings (currently it meet twice a year)…. 
As mentioned above, other corruption offenses, which are criminalized by the UN Convention, include embezzlement and misappropriation, illicit enrichment, money laundering, and tax crimes. While the Criminal Code does penalize all of these offenses in some form, all of the relevant provisions should be reviewed in order to ensure their compliance with the draft law and the applicable international standards.

At the same time, the definition of types of prohibited conduct under Article 4 of the draft law is too broad in certain instances. First, the drafters might consider removing a total ban on engagement of public officials in all entrepreneurial activities (see Article 4.1(2)). Given the low wages of government employees in Ukraine, these types of prohibitions are unrealistic and could result in non-enforcement of aspects of the draft law. Therefore, it may be desirable to allow public officials to engage in some limited private activity, for example, working in a family-run business, as long as this does not conflict with the performance of their official duties. This permission to engage in outside private activity may be made subject to a specific authorization from an official’s supervising authority, which would ensure proper monitoring of compliance with the restrictions. Such limited authorization on outside employment and income is available, for instance, under Article 19(3) of the Estonian Anti-Corruption Act, which states that:

[a]n official may operate as an undertaking, be a partner of a general partnership or general partner of a limited partnership only with the permission of the person or agency who has appointed or elected him or her to office or hired under an employment contract if such activity does not hinder the performance of duties of employment or damage the reputation of the position or office.

Another example of legislation that allows involvement of public officials in certain limited types of outside activities may be found in the Final Regulation of the U.S. Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (Code of Federal Regulations, Title 5, Part 2635, Subpart H) [hereinafter “U.S. Standards of Ethical Conduct”]. This regulation is based on:

[T]he principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards … and the prohibition against use of official position for an employee’s private gain or for the private gain of any

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30 OECD Anti-Corruption Network Assessment, p. 3.

31 Although the listing of prohibited conduct is certainly comprehensive and covers activities that commonly involve misuse of the official position, the drafters should keep in mind the need for striking a proper balance between providing a too broad prohibition and at the same time being able to address the problem of corruption effectively. An anticorruption law should make an effort to avoid the following situation:

When drafting [anticorruption] acts, the instinct is to list every activity that could conceivably be considered corrupt and then write language making each illegal. But people are endlessly creative in finding ways to enrich themselves or their friends and family at the public’s expense. As drafters realize this, the rules they write become more general. … [However, while such sweeping language does address bribery, nepotism, and conflict of interest[,] … bureaucratic and political rivals can also invoke it to question perfectly innocent actions.

Richard E. Messick and Rachel Kleinfeld, Writing an Effective Anticorruption Law, in WORLD BANK PREMNOTES, No. 58 (October 2001).
person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.

Taking into account this broad principle, the regulation generally prohibits outside employment or any other activity that conflicts with the executive employee’s official duties, i.e., such that would materially impair the employee’s ability to perform the duties of his/her position. It further imposes limitations on receipt of outside earned income by certain Presidential appointees, such as restrictions on paid or unpaid service as an expert witness in proceedings in which the United States is a party or has a direct and substantial interest, without prior agency authorization. It also places limitations on paid and unpaid teaching, speaking, and writing that relate to the employee’s official duties.

The second problem with the definition of prohibited conduct under the draft law concerns its provision that prohibits legal entities and natural persons from performing unpaid work or rendering services for the benefit of government agencies, which is too broad (see Article 4.5). This ban seems to prohibit high school and college students from being unpaid government interns, as well as disallowing volunteer participation by citizens in performance of various public tasks, such as assisting the government in local emergency situations. Accordingly, this article of the draft law needs to be revisited.

**B. Prohibition to Receive Gifts and Souvenirs**

The draft law imposes a total ban on receipt of any gifts or souvenirs by public employees, except gifts or souvenirs presented during official events. It further states that “[a]ny gift or souvenir received during official events shall be recognized as property of the state authority … for which the recipient of the gift or souvenir works” (see Article 6). This prohibition is seen as too broad and the drafters are advised to revise it in light of the following comments and examples.

Although none of the international anticorruption instruments imposes a direct prohibition or limitation on the receipt of gifts or gratuities by public officials, such measures are generally desirable. As has been correctly noted by one author, “[i]nfluence buying can be just as corrupt [as traditional bribery offenses,] because it creates the appearance – and often the reality – that the decision-making process is affected by the receipt of gifts.” However, where a gift does not seek to influence the performance of an official’s duties, such a gift could be permitted. For example, under Article 26 of the Estonian Anti-Corruption Act, public officials may not accept those gifts “the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service.”

Public officials should be allowed to receive a de minimis gift amount, up to a specified threshold. For example, in the U.S., federal employees are generally prohibited from receiving gifts
“in return for being influenced in the performance of any official act”\textsuperscript{34} or to “\textit{accept gifts … so frequent[ly] that a reasonable person would be led to believe that employee is using his public office for private gain.}”\textsuperscript{35} However, the executive regulation contains an exception allowing executive branch employees to “accept unsolicited gifts having an aggregate market value of $20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person … shall not exceed $50 in a calendar year.” In addition, the law allows the employees to accept and retain the gifts of a minimal retail value (up to $100) tendered as a souvenir or mark of courtesy by a foreign government or international organization.\textsuperscript{36}

If de minimis gifts are permitted by law, then a public official would be able, for instance, to accept a lunch organized in his/her honor when transferring offices, or a key chain or a pen presented to him/her by a foreign counterpart during an international cooperation case. Otherwise, the total ban on receipt of gifts could lead to trivial prosecutions or even to the abuse of situation by those seeking to oust a person from his/her position. For example, an official would be considered to have received a prohibited gift if he/she accepted a pack of chewing gum from someone.

The drafters should also consider exempting gifts presented to a public official based on a personal relationship from the prohibition on the acceptance of gifts. The considerations here are similar to those for allowing de minimis gifts. For example, under the U.S. Standards of Ethical Conduct, an executive branch employee is allowed to:

\textit{[A]ccept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.}

There is also a problem with the provision of the draft law that makes any gifts or souvenirs the property of the respective state body. For example, in the U.S., the President and Vice President are allowed to accept and keep any gifts, as long as they make public the nature and the estimated value of the gift and the identity of the donor. The reasons behind this are historic practice, protocol considerations, and the fact that any abuses may be rectified by the citizenry at the ballot box. As an alternative solution, the drafters of the draft law may consider permitting public officials to buy from the government, at a fair market price, a gift that he/she received with the value exceeding the threshold established for de minimis gifts. For example, in the U.S., while executive branch employees may not pay the excess value of the gift over $20 in order to accept that excessive portion of the gift, they are allowed to pay the donor the full market value of any tangible gift and must reimburse the donor the market value of any intangible gift (e.g., entertainment, favor, service, or benefit).

\textsuperscript{34} United States Code, Title 5, Section 7353.
\textsuperscript{35} U.S. Standards of Ethical Conduct, Subpart B.
\textsuperscript{36} See United States Code, Title 5, Section 7342.
C. Sanctions and Penalties

The draft law establishes criminal, administrative, disciplinary, and civil liability for the commission of corruption offenses (see Article 20). Moreover, the draft law, for the first time in the history of the Ukrainian legal system, introduces the liability of legal entities for corruption offenses committed by any person authorized to act on the entity’s behalf (see Articles 22 and 18). It is commendable that the legal framework against corruption in Ukraine will finally be brought into compliance with the applicable international instruments, all of which require introduction of liability of legal entities for corruption offenses.37

While the focus on combating corruption through parallel remedies is commendable, the draft law falls short of establishing either specific grounds for liability (i.e., substantive offenses) or the procedures for bringing the offenders to liability; these issues are to be determined “by laws of Ukraine.” The draft law only specifies the detailed procedure for disciplinary liability of subjects of corruption offenses (see Article 21) and establishes the types of civil remedies aimed at compensating the damages caused by corruption offenses (see Articles 23-26). These provisions are generally consistent with the applicable international standards set forth in Articles 34-35 of the UN Convention and in the Civil Law Convention. However, there is no reference to the relevant provisions of the Criminal Code or the Code of Administrative Offenses. Yet, the effectiveness of the draft law’s measures aimed at combating and preventing corruption will be undermined if these measures are not supported by provisions that impose appropriate sanctions for the commission of different types of corruption offenses, as is required by applicable international anticorruption instruments. Consequently, Article 20 of the draft law should be revised (or new articles similar to Article 21 added) to spell out, in detail, the grounds and procedure for all forms of responsibility for corruption offenses, while the relevant provisions of other laws should be amended and brought into compliance with the draft law.

Generally, international legal instruments in the field of combating corruption require that corruption offenses be punished through “effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty,” or monetary sanctions for offenses committed by legal entities.38 The severity of sanctions must take into account the gravity of each offense. In other words, the law should envision penalties of varying severity, commensurate with the gravity of the offense. For example, persons who commit minor infractions can be more effectively punished within the agency where the corruption offense occurred, while those accused of more serious infractions should be pursued through traditional criminal investigation and prosecution procedures.

In addition to prison penalties, sanctions may include disqualification, for a certain period, from “(a) holding public office; and (b) holding office in an enterprise owned in whole or in part by the State.”39 In order to ensure that public officials do not interfere with the official investigation and prosecution of corruption offenses of which they are accused, the law, in accordance with Article 30.6 of the UN Convention, may also provide for removal, suspension, or reassignment of

37 See UN Convention, Article 26; Criminal Law Convention, Article 18.
38 Criminal Law Convention, Article 19; see also UN Convention, Article 26 (establishing the principles of liability of legal entities).
39 UN Convention, Article 30.7.
such officials for the duration of proceedings. Finally, confiscation of both proceeds derived from corruption crimes and of the property, equipment and other instrumentalities used in the commission of corruption offenses should be a mandatory penalty in all corruption-related offenses (see UN Convention, Article 31; Criminal Law Convention, Article 19.3).

At present, the Ukrainian Criminal Code largely complies with the international standards regarding the severity of penalties in corruption crimes. Thus, most corruption-related articles provide for the possibility of prison sentences and for mandatory disqualification from holding public offices for up to three years. In addition, the draft law, in light of introducing the liability of legal entities for corruption offenses, disqualifies any entity found guilty of a corruption offense from “obtaining funds or property from state authorities … and bodies of local self-governance, legal persons of public law, legal persons funded from the State Budget of Ukraine or local budgets, [and from] effect[ing] activity on behalf of the State or any other activity in rendering state services on a contractual basis” (see Article 18). However, confiscation of proceeds and instrumentalities of corruption crimes is largely an optional penalty, with the exception of passive bribery in large or especially large amounts. It has already been suggested in a previous assessment that the Ukrainians “amend the Criminal Code ensuring that the ‘confiscation of proceeds’ measure applies mandatory to all corruption and corruption-related offenses [and c]ensure that confiscation regime allows for confiscation of proceeds of corruption, of property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect.”40 The drafters are encouraged to reconsider this recommendation and introduce the Criminal Code amendments together with the draft law.

Imposition of responsibility also requires ensuring that public officials under investigation are guaranteed the presumption of innocence until found guilty by a court of law. For instance, Article 21.3 of the draft law provides for suspending from office a person charged with a corruption crime or a corruption offense immediately following the initiation of a criminal case or drawing up of an administrative protocol. This provision is silent as to affording the accused the presumption of innocence, in direct contradiction to Article 30.6 of the UN Convention, which requires “bearing in mind respect for the principle of the presumption of innocence” when removing, suspending or reassigning a public official charged with corruption. Therefore, a reference to this principle should be included in the draft law.

Finally, there are some issues related to the liability of legal entities for corruption offenses. Two articles of the draft law deal with two distinct types of sanctions that may be taken against legal entities engaged in corruption offenses. Article 22 reiterates the general principle found in all international anticorruption conventions that allows holding legal entities judicially liable for corruption. However, from the current wording, it is unclear whether this article provides for criminal liability of legal entities, which would bring the draft law even closer to the applicable international standards. In turn, Article 18 debars legal entities that commit corruption offenses from obtaining public funds or doing business with the government for a period of five years. While this prohibition is significant, the drafters may wish to consider permanently debarring legal entities found guilty of committing significant corruption crimes. Furthermore, particular attention should be paid to those legal entities that reorganize with the same principals in order to avoid the prohibition.

40 OECD Anti-Corruption Network Assessment, p. 3.
VIII. Financial Monitoring and Disclosure

Article 7 of the draft law requires public officials to submit annual reports on their income and financial obligations. In addition, the officials are required to report, within ten days, on opening of accounts in foreign banks. Within one month of transactions, officials are also required to notify the local tax office about the purchase of property or acquiring other financial or property obligations in excess of 12 official salaries, either by the official or by his or her close relatives. These reports are to be submitted to the local tax offices.

Financial disclosure requirements are generally recognized as a desirable and effective tool in combating public corruption. In fact, some countries impose even higher burdens on public officials. For example, when Hong Kong was a British colony, public officials were required to explain why they were living more luxuriously than their salaries allowed. The burden was on officials to prove that they had not gained their money and luxuries through corruption. Certainly, the draft law need not extend that far in order to comply with international standards. Article 8.5 of the UN Convention simply provides that participating states are “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.”

While the draft law makes a good attempt at trying to comply with the applicable international standards and best practices for establishing a comprehensive system for financial disclosure by public officials, these provisions are seen as too imprecise. The draft law should spell out, in detail, which officials are covered by the disclosure requirements, the content of financial declarations, the procedure and timeframe for filing, the procedure for public access to the reports, and the sanctions for failure to comply with the reporting requirements. The draft law could also designate an independent agency responsible for verifying the information found in the reports and generally enforcing the disclosure requirements. These rules are too important for the success of the country’s anticorruption efforts to be left to secondary or implementing legislation. In this respect, the Estonian Anti-Corruption Act may provide excellent guidance. Chapter 2 of the Act defines what economic interests (assets and liabilities) must be declared, points out the terms and procedures for submitting the declarations to the designated depositaries, refers to verification of data contained in the declarations, specifies the procedure for public disclosure of information contained in declarations, including what aspects of the declarations should not be subject to publication, and details the consequences for failure to submit a declaration.

As to the content of the declaration and the amounts that must be reported, there is an opinion that public officials should not be required to disclose the actual monetary value of assets and liabilities they acquire; rather, they should disclose only the bands of value. This latter alternative would make public officials less vulnerable to criminal activity (such as kidnapping or extortion). This is the case, for example, under the U.S. Ethics in Government Act of 1978.41 Section 102 of the Act states that all federal employees must submit a full and complete statement regarding, inter alia, “[t]he source, type, and amount or value of income … from any source … aggregating $200 or more in value,” including income consisting of dividends, rents, interest, and other capital gains, and “[t]he identity and category of value of any interest in property held … in a trade or business, or for

41 United States Code, Title 5, Appendix 4.
investment or the production of income, which has a fair market value which exceeds $1,000.” However, the reporting employee has a choice of indicating on the declaration either the exact dollar amount of his/her property item or simply the category of amount or value. The Act then establishes different categories, or bands, of value applicable to different types of items that are to be reported. For instance, in the case of dividend income, the bands of value are under $1,000; between $1,000 and $2,000; between $2,000 and $5,000; and so on, up to over $5 million.

A major deficiency of the draft law is its silence as to whether the financial reports submitted by public officials pursuant to Article 7 will be made public. In this respect, the drafters of the draft law should be reminded that ensuring transparency in the public sector is one of the key elements necessary for effectively preventing and combating public corruption. Thus, financial statements submitted by public officials should be open and readily available to the public for inspection. For instance, under Article 15 of the Estonian Anti-Corruption Act, all declarations of economic interests submitted by public officials are published in the Appendix to the State Gazette; however, certain information is not subject to public disclosure and must be redacted prior to publication. This information includes the personal identification code, address, and data concerning close relatives by blood and marriage, as well as information on the declarant’s immovable property, salary, and additional remuneration received from sources other than the government, total taxable income, and dividend income. Similar limitations on public access to financial reports filed by the federal employees are provided in Section 105 of the U.S. Ethics in Government Act.

As a side note on transparency, it should also be noted that the draft law, unfortunately, does not adequately take into account earlier recommendations to enhance transparency in the public sphere. Transparency is an overriding theme of the UN Convention. For example, different aspects of transparency are addressed, inter alia, in Articles 5.1 (general corruption prevention measures), 7.1(a) and 7.4 (preventing corruption in the public sector), 9 (transparency in public procurement and management of public finances), 10 (transparency in public administration), and 12.2(c) (preventing corruption in the private sector) of the Convention. In contrast, however, Article 16 of the draft law only provides for transparency in the private sector; and these provisions may be seen as too intrusive or difficult to comply with.

In order to give full effect to the financial reporting requirements, these requirements need to be complemented with appropriate sanctions that would be imposed where declarations are either not filed or are false. The sanctions may be of both financial (i.e., monetary fines) and disciplinary nature (i.e., suspension or termination). For example, under the Estonian Anti-Corruption Act, failure to submit a declaration of economic interest is punishable as a disciplinary offense or a misdemeanor, with a fine of 50 to 100 days’ salary. Under Section 104 of the U.S. Ethics in Government Act, willful and knowing failure to file a financial report or filing a false report is punishable with a civil penalty not exceeding $10,000, while a federal employee filing the report after the specified deadline is required to pay a filing fee of $200. Lack of any reference to sanctions in the draft law is likely to make these requirements unworkable, leading to non-compliance and non-enforcement of this provision.

42 OECD Anti-Corruption Network Assessment (p. 2) recommended that in Ukraine, measures to prevent public corruption should focus on “‘open government’ measures such as increased transparency of decision-making procedures [and] access to information.”
IX. Conflict of Interests and Related Rules

A. Conflict of Interests

Although Article 1 of the draft law provides a definition of conflict of interests that is generally consistent with the international standards, the draft law fails to fully address this issue. Article 14 refers to conflict of interest only in passing, merely stating that the manner and appropriate behavior of officials should be regulated in order to avoid any conflict of interests. The draft law does not provide any further guidance, even as to the general principles that should be applied to the regulation of conflict of interests. This issue is too important to be left to the secondary legislation. The UN Convention specifically requires the participating states to undertake appropriate measures for the prevention of conflict of interests, both for the public officials and in the private sector (see Articles 8.5, 12.2(b) of the UN Convention). The drafters are therefore advised to amend Article 14 to set out the principle provisions related to conflict of interests in a detailed (yet concise) manner.

An example of how such provision should be drafted may be found in Articles 24-25 of the Estonian Anti-Corruption Act. These articles generally prohibit the public officials from “engag[ing] in self-dealing, or conclud[ing] transactions of similar nature or involving a conflict of interest” and provide detailed definitions of the types of prohibited transactions that involve self-dealing or create an appearance of conflict of interests. Public officials are also under obligations to recuse themselves from making, or participating in making, a decision that may give rise to conflict of interest. Another example is the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina, which imposes “special obligations” on government officials in the exercise of their duties. Article 1 of this Law defines conflict of interest as a situation where official “has a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty.” The Law then defines the types of activities that are “incompatible with serving the public”; designates the Election Commission of Bosnia and Herzegovina as the only government agency responsible for implementing and enforcing the conflict of interest rules; and provides for an elaborate system of sanctions for violating these rules, including monetary penalties and disqualifications from holding certain public offices.

B. Codes of Conduct

Articles 8 and 17 of the draft law recognize the significance of establishing “normative regulation of the requirements with respect to professional ethics,” both for public employees and for different types of activity in the private sphere. These articles are an attempt to bring the Ukrainian legal framework into compliance with the applicable international standards. In particular, the UN Convention requires participating states to “promote … integrity, honesty and responsibility among its public officials” and to “apply … codes or standards of conduct for the correct, honorable and proper performance of public functions” (see Articles 8.1-8.2). Article 12.2(b) of the UN Convention further suggests that participating states undertake measures such as “[p]romoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions … and for the promotion of the use of good commercial practices.…"
At the same time, in order for the codes of conduct to be useful, the draft law should incorporate the relevant guidelines or general principles of proper conduct. Articles 8 and 17 of the draft law need to be amended to reflect these requirements. The provisions on the codes of conduct in the draft law need not be very detailed; they may be hortatory and simply lay out the basic principles, which could be followed in a more detailed document or serve as a guide to various government agencies and private sector entities drafting their own codes of conduct. Certain issues, however, must be addressed in the draft law. These include the following:

- Who will be covered by the code of conduct?
- Will it be a detailed code (similar to the one designed for executive branch employees in the U.S. or the Model Code of Conduct for Public Officials found in Council of Europe’s Committee of Ministers Recommendation No. R(2000)10 of May 11, 2000) or hortatory (similar to the Model International Code of Conduct for Public Officials promulgated by the U.N. General Assembly Resolution No. 51/59 of December 12, 1996)?
- What government agency (or agencies) will be charged with interpreting and amending the code of conduct?
- Will there be advisory opinions (interpretations) of the different provisions of the code of conduct, which will be made available to the general public (as is the practice of the U.S. Office of Government Ethics)?

Alternatively, the draft law could be amended to include a basic code of conduct for public officials, similarly to the Estonian Anti-Corruption Act. The Act introduced the Public Service Code of Ethics, annexed to the Public Service Act. The Code consists of twenty broadly stated principles that serve as a guidance for public officials in the exercise of their duties. If the drafters of the draft law wish to demonstrate true commitment to the mission of combating corruption, they should carefully consider drafting a similar code as part of the draft law.

### C. Post-Employment Restrictions

Article 15 extends the draft laws’ restrictions to former public officials for a period of two years following their termination of public service, provided that their new activity or employment is directly related to functions performed or supervised by the officials while in public office (see Article 15). This provision makes an imperfect attempt at bringing the Ukrainian legal framework into compliance with the UN Convention, Article 12.2(e) of which requires the participating states to:

> [I]mpos[e] restrictions ... 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.]

In addition, Article 15 of the draft law attempts to curtail abuses by former public officials of their prior positions, to prevent the misuse of insider information gained by former government employees and to avoid inappropriate favoritism. All of these present serious problems and are important issues in the public life of many countries, as they are quite costly to their societies. However, Article 15 of the draft law falls short of adequately addressing the issue. It is too simplistic
in attempting to address a complicated issue with a very general solution. Simply proscribing restricted activities for a period of two years following the exit from government service is insufficient for several reasons.

First, merely extending “[r]estrictions imposed by this Law and other laws of Ukraine…” is far too general a statement of the proscribed activities. Similarly designed laws in other countries frequently contain a detailed description of those activities from which the former public official is debarred and, more particularly, the period of time for which he or she is prohibited from participation. Thus, the draft law should, at a minimum, provide a summary statement or a more specific reference of the applicable restrictions. Second, in order for the post-employment restrictions to be meaningful, the draft law should prescribe specific sanctions for violation of these rules. Yet there is no reference to the criminalization of specific activities or the criminal penalty for violation of the restrictions imposed by Article 15; the targeted conduct is referred to only in terms of the amount of time during which the former public employee is prohibited from engaging in a generally characterized activity.

For comparative purposes, the drafters of the draft law may wish to consider the post-employment restrictions prescribed by the U.S. legislation, which have proved particularly effective from both a prosecution and enforcement point of view. These restrictions have also successfully served a preventive role, as the government officials are well-informed of the clear rules and the penalties they may be subject to for any violations. The legislation specifies, in great detail, different terms of prohibition on subsequent private sector employment by former public officials, ranging from one-year restrictions on certain senior personnel of the executive branch and independent agencies and of the members and staff of Congress, through two-year restrictions concerning particular matters under official responsibility, to permanent restrictions on representation for particular matters. The law also strikes a balance between preventing the abuses and causing undesirable consequences for the development of the private sector, as it provides for a number of exceptions where former public employees may engage in subsequent private activity without limitations. These restrictions are supported by the possibility of applying penalties for any violations. According to Section 216, engaging in a prohibited conduct is punishable by imprisonment for up to one year and/or a fine, while willful engagement in a prohibited conduct is punishable by imprisonment for up to five years. The violator may also be enjoined from engaging in prohibited conduct and be further subject to a civil penalty in the amount of the greater of up to $50,000 for each violation or the amount of compensation which he/she received for the prohibited conduct.

D. Inadmissibility of Close Relatives and Relatives Working Together

Article 9 of the draft law prohibits the employment of immediate relatives and relatives of most public officials if such employment will result in direct subordination. While this provision is commendable, it is suggested that the drafters of the draft law extend it to include the employment

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43 See generally United States Code, Title 18, Section 207
44 For some unexplained reason, this restriction does not apply to relatives of deputies of Verkhovna Rada and of all lower-level radas (elected representative bodies of local self-governance). This omission needs to be addressed in the final version of the Draft Law.
of immediate relatives and relatives that will result in indirect subordination. This would cover the situation where, for example, a government minister might hire his/her nephew to be a night watchman or other support staff, who is not directly subordinate to the minister. Moreover, although Article 9 provides for a set of remedies (such as transfer or dismissal from office), it is silent as to which agency or official will be responsible for monitoring the compliance with the restriction or enforcing the remedies. In order for this restriction to be effective, the draft law should provide some guidance on this issue.

The drafters of the draft law may also wish to consider reviewing the civil service laws so that they better promote merit-based decisions related to recruitment, hiring, retention, promotion, and retirement of public officials. The guidelines on establishing such systems may be found in Article 7 of the UN Convention. Once such systems are established and function properly, it will be possible to allow the appointment of a public official’s relative “who is a preference eligible [i.e., the most qualified – author’s note] in any case in which the passing over of that individual on a certificate of eligibilities … will result in the selection for appointment of an individual who is not a preference eligible,” as is the case under United States Code, Title 5, Section 3110. At present, however, such a discretionary provision would be premature. For instance, a similar proposal has recently been introduced in Argentina; however, it was abandoned after the local drafters realized that such a provision would grant enormous powers to the prosecutors and the courts, which would be left to determine whether a particular individual is the most qualified for a particular job.

X. Participation of Society in Preventing and Combating Corruption

For the first time, the draft law provides for participation of the society in preventing and combating corruption (see Article 12), thus bringing the Ukrainian anticorruption legal framework closer to the applicable international standards. The draft law largely meets the requirements of Article 13 of the UN Convention, which requires the participating states “to promote the active participation of individuals and groups outside of public sector, such as civil society, non-governmental organizations and community-based organization, 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.” Not only does Article 9 provide for the right of individuals and legal entities to participate in the measures taken to prevent and combat corruption, but it also requires the Coordinating Committee to annually prepare and publish the report on the various anticorruption efforts taken nationally, and comprehensively outlines the contents of this report. This requirement of an annual report will assist the public's involvement in a meaningful review of the government’s anticorruption efforts.

At the same time, there are some issues that make the draft law’s provisions on the participation of the public in anticorruption initiatives seem weak. Perhaps the major problem that may undermine the effectiveness of these provision is the sad reality that many civil society groups and NGOs in Ukraine are not fully independent from the government. In the absence of a precise legislative definition of what/who constitutes public for the purposes of the draft law, such government-created groups might fulfill the role of public participation, rendering the entire process meaningless. Further, some provisions are seen as imperfect. This is the case with Article 19 of the draft law, which provides for mandatory participation of the public in making certain types of administrative decisions that relate to granting of special benefits and privileges to individual legal
entities, or the transfer of certain public functions to non-state owned organizations. While such participation is essential for the development of public confidence and support for the referenced decisions, this provision may be too vague, thus leaving too much scope for abuse and making it very difficult to enforce. Likewise, Article 10 of the draft law, which provides for the possibility of conducting anticorruption expert examination of draft legislation by the public but fails to specify the significance of such examination, has a significant potential for abuse that might impede the legislative or regulatory decision-making process. However, the very idea of such expert examination seems appropriate, if it will be supported by the necessary mechanisms to prevent abuses. For instance, Lithuania’s anticorruption law provides for a similar procedure, referred to as the anticorruption assessment of existing or draft legislation. The anticorruption expert examination is also somewhat similar to the functioning of the Accounting Court in Angola, which must approve or reject each contract with the government that exceeds a certain threshold amount, in order to prevent kickbacks and other forms of corruption.

An important component of effective public participation in preventing and combating corruption is legislation ensuring the right of access to information. A London-based NGO, Article 19, has developed a set of basic international principles for freedom of information legislation, which allow to measure whether a country’s laws permit access to official information. The nine broadly stated principles include the following:

- Freedom of information legislation should be guided by the principle of maximum disclosure;
- Public bodies should be under an obligation to publish information of significant public interest;
- Public bodies must actively promote open government, including through provision of public education regarding the right of access to information and freedom of information training for their employees;
- Exceptions to freedom of information should be clearly and narrowly drawn; they must be justified by legitimate government aims and the substantial harm from disclosing the information must outweigh the public interest in having the information;
- Requests for information should be processed rapidly and fairly, and an independent review of any refusals should be available;
- Individuals should not be deterred from making requests for information be excessive costs;
- Meetings of public bodies should be open to the public;
- Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed;
- Persons who release information on official wrongdoing (i.e., whistleblowers) must be protected.  

45 A detailed discussion of each of these principles is available at <http://www.article19.org/docimages/512.htm>.
Article 13.1(d) of the UN Convention is instructive with respect to ensuring the access to corruption-related information. It requires “[r]especting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.” The freedom of access to information may be restricted only out of considerations of respect of the rights and reputation of others or for the protection of national security, public order, or public health or morals. Unfortunately, the draft law fails to fully comply with this requirement. Thus, Article 12.4 guarantees the freedom of access to information only to officially registered citizens’ associations and not to private individuals. This is a serious deficiency, which seems inconsistent with Ukraine’s Law “On Information” and which needs to be corrected. In addition, the draft law should provide for the public’s right not only to receive corruption-related information, but also to use this information to affect government decisions. Presently, the legislation does not specify how private persons can use the information received from the government.

XI. Procedural Aspects Related to Investigation and Prosecution of Corruption Offenses

A. Witness, Victim, and Whistleblower Protection

Because of inherent difficulties in detecting and investigating corruption offenses, measures for the protection of victims of corruption offenses, witnesses in corruption-related proceedings, and persons who report about the instances of corruption (whistleblowers) or otherwise cooperate with the government in investigating and prosecuting corruption offenses, are one of the most critical components of a successful anticorruption program. Ineffective or nonexistent measures for witness protection, as well as the inability of a government to protect a witness from intimidation or retaliation prior to trial or not allowing a witness to provide testimony at trial without fear of retaliation render a lethal blow to the fight against corruption. Because of that, the UN Convention requires participating states to undertake steps “to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony [and] for their relatives and other persons close to them” (see Article 32.1). Victims of corruption offenses are entitled to protection if they agree to testify as witnesses. Protective measures may include physical protection, relocation, change of identity, and allowing the witnesses to testify through communications technology to ensure their safety during testimony. Further, whistleblowers who report corruption offenses in good faith and on reasonable grounds are entitled to protection against unjustified treatment (see UN Convention, Article 33). Similarly, Article 22 of the Criminal Law Convention calls for “effective and appropriate protection” for witnesses and collaborators of justices, while Article 9 of the Civil Law Convention requires “appropriate protection against any unjustified sanctions for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.”

However, the draft law falls short of complying with these international law requirements. Its very limited provisions almost seem like an afterthought. Despite containing a reference to the availability of state protection measures for “persons who informed of a fact of corruption or in another way facilitated the measures … in the sphere of preventing and combating corruption” (see Article 13), the draft law fails to specify in greater detail the general principles for such protection. Consequently, Article 13 of the draft law needs to be made more detailed in the following respects.
First, the draft law should specify the types of protective measures to which witnesses and whistleblowers are entitled. Currently, Article 13 talks only about ensuring their personal safety. However, in the case of whistleblowers, job protection, such as measures ensuring their protection from getting fired, demoted, or harassed at work, is equally important, especially in light of the duty to report the commission of corruption offenses by one’s coworkers, which is established by Article 3.6 of the draft law. For example, under the 1996 Law of Lithuania on the Protection from Criminal Influence of the Participants of Criminal Proceedings and Clandestine Activities, Officers of the Law Enforcement and Justice Administration, a wide array of witness protection measures is available. These measures include:

- Physical protection of the witness’ person and property;
- Temporary relocation of the witness to a secure location;
- New identity assistance from passport offices and other agencies;
- Relocation assistance;
- Changing the witness’ personal records and curriculum vitae;
- Changing the witness’ appearance through plastic surgery; and
- Providing the witness with a firearm or other special security measures.

These protective measures should also be extended to members of families of the persons assisting the government in its anticorruption efforts, as well as to participants and government collaborators in non-criminal proceedings.

Second, the draft law should provide an alternative mechanism for ensuring effective witness and whistleblower protection in cases where such persons assist in investigating corruption within the Ministry of Interior or the State Security Service (these agencies are currently made responsible for providing the necessary protection). In such a situation, even local police officers cannot be expected to adequately protect such persons. A possible solution that the drafters may consider is to assign the responsibility for the protection of witnesses and whistleblowers to a specialized, highly trained, and carefully screened law enforcement unit. The consequences of placing witness protection responsibilities within a corrupt law enforcement agency are obvious.

Finally, any effective witness protection program requires adequate funding; thus, appropriate provisions to ensure such funding should be included in the draft law. Given the limited budgetary resources in Ukraine, it remains to be seen how much funds will be allocated to the witness and whistleblower protection programs that will be established pursuant to the draft law. As an example, Ukraine should note the experience of the witness protection programs in Lithuania and Latvia, which successfully accomplish their missions within very limited budgets.

**B. Use of Special Investigative Techniques**

The draft law fails to address the issue of use of special investigative techniques in investigating and prosecuting corruption offenses. Due to the complexity of investigating corruption offenses, the use of such techniques should be specifically permitted in order to facilitate the gathering of evidence related to the substantive offense and to identify, trace, freeze, and seize
instrumentalities and proceeds of corruption, as required by the applicable international standards. Article 50.1 of the UN Convention, for example, requires the participating states “to allow for the appropriate use … of controlled delivery and … other special investigative techniques, such as electronic or other forms of surveillance and undercover operations … and to allow for the admissibility in court of evidence derived therefrom.”\textsuperscript{46} In civil matters, the law should further provide for “effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.”\textsuperscript{47} Without enabling Ukrainian law enforcement officials to employ these and other innovative investigative techniques, detection of corruption and corruption-related offenses will be nearly impossible.\textsuperscript{48}

By way of guidance, the drafters may wish to consider Lithuania’s Law on Operational Activities, which is the most comprehensive of such laws in the post-Soviet countries. Under this law, agents of the Special Investigation Service are given broad investigative authority. Only the President of the country is immune from the investigative methods employed by the SIS. To avoid potential for abuse, special investigative operations are carefully planned and submitted for review and approval by the Prosecutor General, while the use of electronic surveillance requires the approval by a judge.

\textbf{C. Lifting Bank and Other Secrecy Provisions}

Article 16 of the draft law lifts commercial and bank secrecy in certain limited contexts (e.g., to assess charitable aid contributions, remuneration, employment and other civil law contracts, property and fund acquisitions by public officials and their relatives). In the course of investigating a corruption case, it may not always be possible to link bank information to those contexts. Indeed, it may be only after reviewing the bank data that the link can be made. Thus, it is advised that the drafters of the draft law revisit Article 16 to allow lifting the secrecy provisions in corruption cases without such qualifications. This would be more consistent with Article 40 of the UN Convention, which requires the participating states to establish “appropriate mechanisms … to overcome obstacles that may arise out of the application of bank secrecy laws.”\textsuperscript{49} Further, it is advisable to review other types of secrecy provisions (such as tax or official information) to ensure that law enforcement officials are not denied access to information critical in investigating corruption offenses.

\textbf{XII. Conclusion}

The general conclusion of this assessment is that the draft Law of Ukraine “On Basic Principles of Preventing and Combating Corruption in Ukraine” is reasonably well-drafted and represents a good attempt on behalf of the drafters to bring the Ukrainian legal framework closer to meeting the applicable international standards in the area of preventing and combating corruption.

\textsuperscript{46} See also Criminal Law Convention, Article 23.1.
\textsuperscript{47} See Civil Law Convention, Article 11
\textsuperscript{48} More information on the types of and the use of special investigative techniques in investigating and prosecuting corruption offenses is available from ABA-CEELI’s Washington, D.C., office upon request.
\textsuperscript{49} See also Criminal Law Convention, Article 23 (requiring measures “necessary to empower [the] courts or other competent authorities to order that bank, financial or commercial records be made available or be seized…”).
The assessment draws the drafters’ attention to the legislative weaknesses of the draft law and provides specific recommendations as to ways to strengthen it.

First, certain important aspects of the draft law that are critical to the success of any effective anticorruption effort need to be either added to the draft law or further elaborated, in order for the draft law to become a real blueprint for Ukraine’s anticorruption program. These issues include, among others:

- Enabling automatic or simplified lifting of immunity of top government officials accused of corruption;
- Creating an independent, well-staffed and well-funded anticorruption agency;
- Setting forth a detailed procedure for disclosing information on financial and economic interests of public officials;
- Specifying conflict of interest rules;
- Laying out guidelines for drafting of codes of conduct for public employees and for the private sector;
- Clarifying rules on post-employment restrictions;
- Providing for effective and well-funded witness and whistleblower protection measures, and;
- Allowing law enforcement officials to use special investigative techniques in investigating and prosecuting corruption offenses.

Moreover, the legislative process of building an anticorruption legal framework will not be finished once the draft law is adopted by the Verkhovna Rada. A number of related or complementary laws and regulations will need to be adopted and/or amended to bring them in accordance with the draft law. These include, for instance, passing of a law that guarantees every citizen the freedom of access to information on government functions, including activities in the area of preventing and combating corruption, and amending the Criminal Code and the Code of Administrative Offenses to introduce new corruption-related crimes and offenses and to provide for appropriate penalties for persons convicted of those offenses. Additionally, it is necessary to build institutional capacity for preventing and combating corruption, by establishing an independent anticorruption agency and ensuring effective cooperation between the different government bodies involved in anticorruption activities.

Second, enacting an anticorruption law is only the first (and a relatively speedy, straightforward, and inexpensive) step in addressing the problem of corruption. Having excellent legislation in the absence of the necessary resources and political will to enforce it can be meaningless. Furthermore, in any country that lacks an independent and functioning judiciary, an aggressive and free press, and active and effective non-governmental organizations, the likelihood that anticorruption efforts will succeed is indeed small. Societal attitudes toward corruption and popular expectations that actions in this area will produce results are equally important. The success of any given anticorruption program is therefore dependent on the existence in a country of a so-called institutional integrity system. While this system varies from one country to another, several pillars are typical. These include: the executive branch, the parliament, and the independent judiciary;
the civil service; the “watchdog” agencies, such as an independent anticorruption agency, police, ombudsman, or public accounts committee; the local self-governance; the civil society, including the professionals and the private sector; the independent and free media; and the international community and mechanisms.\textsuperscript{50}

All of these concerns relate to the need for effective enforcement of an anticorruption law. In this respect, it must not be overlooked that in 1995, Ukraine already adopted a Law “On Combating Corruption.” There is also a Law “On Civil Service” and the Criminal Code provisions that deal with the issues relating to some forms of corrupt conduct. Nonetheless, despite “a rich array of legal instruments and broad strategic documents, efficient coordination, implementation and enforcement [of anticorruption laws in Ukraine] remain insufficient.”\textsuperscript{51} As a result, Ukraine consistently ranks at the bottom of Transparency International’s Corruption Perception Index,\textsuperscript{52} indicating that the problem of corruption in the country is truly severe.

Unfortunately, the draft law falls short of providing for a meaningful enforcement system. Indeed, the language of Article 27, which merely states that “[c]ontrol over compliance with laws in the sphere of preventing and combating corruption shall be exercised by [different] state bodies within the limits of their authority as determined by law,” is too vague and incomplete to provide for any enforcement of the draft law. This article should be expanded to include the detailed enforcement and supervision rules, which are crucial for the success of any anticorruption program and therefore should not be left to implementing laws. The drafters should remember that in the absence of effective and functioning enforcement provisions, even the strongest law on the books does not guarantee the success of a country’s anticorruption efforts.


\textsuperscript{51} OECD Anti-Corruption Network Assessment, p. 1.

\textsuperscript{52} Transparency International (TI) is an international non-governmental organization dedicated to combating corruption. It has been publishing its annual Corruption Perception Index (CPI) since 1995. CPI is regarded in social sciences as a leading indicator of real levels of corruption from one country to another. It ranks a number of countries (133 in the 2003 Index) in terms of the degree to which corruption is perceived to exist among public officials and politicians. Each country is assigned a score on a scale ranging from 0 (country is perceived highly corrupt) to 10 (country is perceived highly clean). CPI is a composite index, which draws on surveys from several independent institutions carried out among local and expatriate business people, country analysts, and academia. It is not based on hard empirical data, such as the number of prosecutions or court cases, which is difficult to obtain and does not always reflect actual level of corruption. Ukraine’s CPI score fell from 2.8 in 1998 to 1.5 in 2000; it went up to 2.1 in 2001 and has been relatively stable since then.
Appendix A

Biographical Statements of Experts Assessing the Draft Law
Biographical Statements of Experts Assessing the Draft Law

Kenneth Bresler

Kenneth Bresler is a Principal of The Clear Writing Co. and an Adjunct Professor at the Master’s Program in Criminal Justice at Suffolk University in Boston, Massachusetts, where he teaches a course on Ethics for Criminal Justice Professionals that focuses on corruption. In the past, Mr. Bresler prosecuted street crime as a local prosecutor with Middlesex County Office of the District Attorney in Cambridge, Massachusetts, and white-collar crime as a federal prosecutor with the U.S. Department of Justice in Boston. He also worked with the International Criminal Tribunal for the former Yugoslavia, located in The Hague, the Netherlands, as a legal specialist for the Coalition for International Justice.

Mr. Bresler is the author of Citizen’s Guide to Drafting Legislation, the first publication to teach Massachusetts citizens how to draft and file bills in their legislature, as well as of several academic articles on prosecutorial ethics. He also traveled to Haiti to write a case study for the Harvard Law School and the Kennedy School of Government titled, If You Are Not Corrupt, Arrest the Criminals: Prosecuting Human Rights Violators in Haiti. Mr. Bresler holds a J.D. from Harvard Law School and a B.A. from Tufts University.

Ethan Burger

Ethan S. Burger is a Managing Director of International Legal Malpractice Advisors, L.L.C. He is also a Scholar-in-Residence at the Transnational Crime and Corruption Center of the School of International Service and an Adjunct Associate Professor at the Washington College of Law at American University in Washington, D.C., where he teaches comparative corporate governance and professional responsibility.

Mr. Burger has published widely on combating money laundering, issues connected with doing business in the former Soviet Union, and human rights matters. He has also made presentations at numerous conferences and seminars, including at the World Bank, the International Monetary Fund, the Royal Institute of International Affairs (UK), the International Law Institute, and the Institute of State and Law (Russia) on topics such as corporate governance, the USA PATRIOT Act, transnational crime, and corruption (e.g., the U.S. Foreign Corrupt Practices Act). Prior to his academic career, Mr. Burger was engaged in full-time private practice of law, specializing in trade and investment matters in countries of the former Soviet Union. He has served as an expert witness in numerous cases on conduct of lawyers handling international matters and questions of foreign law in both U.S. and foreign courts as well as in international arbitrations. Mr. Burger is a graduate of Harvard University and holds a law degree from the Georgetown University Law Center.

Charles Caruso

Charles A. Caruso, Esq., is presently employed as a Trial Counsel with the Special Court for Sierra Leone in Freetown, Sierra Leone, where he is involved in prosecuting war crimes and crimes against humanity committed within the territory of Sierra Leone during the civil war that took
Mr. Caruso is a former federal prosecutor with extensive experience in the areas of criminal law and procedure, criminal prosecution, and international criminal law. As a trial attorney with the Narcotics and Dangerous Drug Section of the Criminal Division of the U.S. Department of Justice in Washington, D.C. and in Miami and Tampa, Florida, he prosecuted various narcotics violations and related offenses, such as laundering of narcotics-related profits, perjury, and obstruction of justice. He also served as a Supervising Assistant United States Attorney and later as the United States Attorney for the District of Vermont, bearing responsibility for legal supervision of all investigations and resultant federal prosecutions and chairing the Vermont Law Enforcement Coordinating Committee responsible for coordination of joint federal/state investigations and policy making in intergovernmental investigative efforts.

Mr. Caruso holds a Bachelor's degree from Ohio University, a J.D. from the Cleveland-Marshall College of Law in Cleveland, Ohio, and an LL.M. in International Criminal Law and Public International Law from the University of Aberdeen in Scotland.

**Vera Devine**

Vera Devine currently works as an independent consultant on anti-corruption and technical assistance issues, based in Brussels, Belgium. Previously, from 2002 to April 2004, she served as an Administrator with the OECD's Anti-Corruption Division, where she managed the Anti-Corruption Network for Transition Economies. She also spent four years in Bosnia-Herzegovina working on refugee and humanitarian affairs and worked for the European Commission on technical assistance programs for the former Soviet Union and the Western Balkans.

**Dennis Fitzgerald**

Dennis G. Fitzgerald provides legal assistance to government and law enforcement officials in Central and Eastern Europe and the Newly Independent States on designing and implementing new laws and developing institutions for the implementation of legal reforms to combat corruption, organized crime, money laundering and related white-collar crimes. He also designs, develops and executes complex international training projects for prosecutors, judges, lawmakers, investigators and other members of international criminal justice community throughout the region.

Mr. Fitzgerald has worked with ABA-CEELI since 1996, when he was appointed a Criminal Law Liaison to Vilnius, Lithuania, office. He was instrumental in the development of Lithuania’s first independent anticorruption agency, the Special Investigation Service, to which he continues to serve as an intermittent legal and technical advisor. He also assisted Lithuania’s Ministry of Interior in the creation of its first Witness Security Program. In addition, Mr. Fitzgerald served as CEELI’s Kyiv-based Anti-Corruption Strategy Coordinator for Armenia, Georgia, Moldova, Russia, Ukraine and Uzbekistan from 2000 to 2002.

Mr. Fitzgerald has thirty-two years experience in both domestic and international law enforcement and law enforcement training, having served as a police supervisor with the City of Miami Police Department, a Special Agent with the U.S. Drug Enforcement Administration, and the
co-founder and Director of the National Institute for Drug Enforcement Training. He is the author of a nationally recognized criminal law deskbook, INFORMANT LAW DESKBOOK, an upcoming treatise on INFORMANT LAW, POLICY AND PROCEDURE, several criminal justice training manuals, and related magazine articles. Mr. Fitzgerald holds a B.A. in Criminal Justice from Florida International University and a J.D. from Seattle University School of Law, and has obtained extensive specialized training from various agencies of the U.S. government.

**Dennis Hawkins**

*Dennis R. Hawkins* is a retired prosecutor with more than sixteen years experience investigating and prosecuting public corruption, organized crime and financial crimes in New York City. Most recently, he served as ABA-CEELI's Kyiv-based Eurasia Regional Anti-Corruption Advisor. Since his retirement, Mr. Hawkins also has been teaching law and other criminal justice courses at St. John's University and has worked as a consultant for the National Center for State Courts, analyzing anticorruption efforts and developing an anticorruption training program for investigators and prosecutors in Mongolia.

In the past, Mr. Hawkins also served as Counsel to the Association of the Bar of the City of New York, Counsel to the New York City Fire Department, and Counsel to the New York State Assembly Education Committee. He received his J.D. from St. John’s University School of Law.

Mr. Hawkins would like to acknowledge the contribution of Ms. Iryna Zaretska, Legal Advisor to CEELI's Criminal Law Program in Kyiv office, to his analysis of the draft law.

**Carol Kelley**

*Carol A. Kelley* currently advises on criminal law reform in Bulgaria through the U.S. Treasury Department’s Office of Technical Assistance. She has been stationed in Bulgaria since November 2000, when she became a Criminal Law Liaison with the ABA-CEELI office in Sofia. Her efforts in Bulgaria focus on financial crimes law enforcement and training.

Prior to her work abroad, Ms. Kelley was an attorney with a Washington, D.C., law firm of Paul, Hastings, Janofsky & Walker, L.L.P., where she represented domestic and foreign individuals and business entities in complex criminal, civil and administrative investigations and proceedings involving allegations of fraud, money laundering, public corruption and embezzlement, campaign finance improprieties, racketeering, bribery, violations of the Foreign Corrupt Practices Act, and various other regulatory offenses. In addition, she worked with the government contracts practice group at Piper & Marbury, L.L.P., in Washington, D.C.

Ms. Kelley received a B.A. in International Studies from the American University and a J.D. from the Georgetown University Law Center, where she served as a member of the GEORGETOWN JOURNAL OF LEGAL ETHICS. She also participated in the Cornell Law School/Universite Paris I Pantheon-Sorbonne Summer Institute of International and Comparative Law in Paris.

**Stephen Potts**

*Stephen D. Potts, Esq.,* is the Chairman of the Board of Directors of the Ethics Resource Center (ERC), a nonprofit organization whose mission is to strengthen ethical leadership worldwide.
through research, education and partnerships. Previously, he served as the Chairman of the ERC Fellows Program and was actively involved in the program as a Senior Fellow representing the U.S. Office of Government Ethics.

Mr. Potts served as Director of the U.S. Office of Government Ethics for two five-year terms, beginning in 1990. Prior to that, from 1961 until 1990, he was a partner at Shaw, Pittman, Potts & Trowbridge, one of the largest law firms in Washington, D.C. Recently, Mr. Potts was selected to serve on the Ethics Education Task Force of the Association to Advance Collegiate Schools of Business International, the Steering Committee on Engineering Ethics of the National Academy of Engineering, and the Blue Ribbon Commission on Conflict of Interest Policy of the National Institutes of Health. In the past, he has served on the board of directors of a number of companies and nonprofit organizations. Mr. Potts holds an undergraduate degree from Vanderbilt University and an LL.B. from Vanderbilt Law School, where he was an editor of the law review.

Mr. Potts would like to acknowledge the assistance of Ms. Rielle Miller in the preparation of his commentary on the draft law.

**Maria Velikonja**

*Maria Velikonja* is the President of Velikonja Consulting, an international law enforcement and legal consulting firm. She is a former Federal Bureau of Investigation agent and attorney with nearly twenty years of experience, during which she specialized in the areas of international investigations, human rights, war crimes, human trafficking, white collar crime and corruption, and undercover operations.

Ms. Velikonja is actively engaged in international issues. She has previously served as an advisor to the Macedonian Minister of Interior on human trafficking, a task force director with the Southeast European Cooperation Initiative, and Expert-on-Mission to the International Criminal Tribunal for the former Yugoslavia. She also participated as a team leader and instructor at the International Law Enforcement Academy in Budapest, instructing senior police officers from fifteen countries in Central and Eastern Europe and the Newly Independent States on white-collar crime and public corruption issues. In addition, Ms. Velikonja worked as a legal consultant/international expert to the United Nations Development Program in Romania, where she co-authored the *Law Enforcement Manual for Fighting Against Trafficking of Human Beings*, released in December 2003. She has also contributed to previous CEELI legal assessment projects, including analyses of draft laws for Lithuania, Slovakia, Kyrgyzstan, Montenegro, Moldova and Georgia, on issues relating to corruption, ethics, money laundering, and human trafficking.

Ms. Velikonja received her J.D. from the University of Puget Sound Law School in Tacoma, Washington, and her undergraduate degree from the University of Washington. She has also earned a Certificate in Public International Law from The Hague Academy of International Law and has completed graduate studies in international criminal law at the Georgetown University Law Center.
Appendix B

United Nations Convention Against Corruption
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,


Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime (General Assembly Resolution 55/25, Annex I),

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;

(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

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.
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.
Appendix C

Council of Europe Criminal Law Convention on Corruption
CRIMINAL LAW CONVENTION ON CORRUPTION

Strasbourg, 27.I.1999

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the value of fostering co-operation with the other States signatories to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against corruption, including the adoption of appropriate legislation and preventive measures;

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

Believing that an effective fight against corruption requires increased, rapid and well-functioning international co-operation in criminal matters;

Welcoming recent developments which further advance international understanding and co-operation in combating corruption, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the OECD and the European Union;

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe in November 1996 following the recommendations of the 19th Conference of European Ministers of Justice (Valletta, 1994);
Recalling in this respect the importance of the participation of non-member States in the Council of Europe’s activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Further recalling that Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 1997) recommended the speedy implementation of the Programme of Action against Corruption, and called, in particular, for the early adoption of a criminal law convention providing for the co-ordinated incrimination of corruption offences, enhanced co-operation for the prosecution of such offences as well as an effective follow-up mechanism open to member States and non-member States on an equal footing;

Bearing in mind that the Heads of State and Government of the Council of Europe decided, on the occasion of their Second Summit held in Strasbourg on 10 and 11 October 1997, to seek common responses to the challenges posed by the growth in corruption and adopted an Action Plan which, in order to promote co-operation in the fight against corruption, including its links with organised crime and money laundering, instructed the Committee of Ministers, inter alia, to secure the rapid completion of international legal instruments pursuant to the Programme of Action against Corruption;

Considering moreover that Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption, adopted on 6 November 1997 by the Committee of Ministers at its 101st Session, stresses the need rapidly to complete the elaboration of international legal instruments pursuant to the Programme of Action against Corruption;

In view of the adoption by the Committee of Ministers, at its 102nd Session on 4 May 1998, of Resolution (98) 7 authorising the partial and enlarged agreement establishing the “Group of States against Corruption – GRECO”, which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field,

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purposes of this Convention:

a “public official” shall be understood by reference to the definition of “official”, “public officer”, “mayor”, “minister” or “judge” in the national law of the State in which the person in question performs that function and as applied in its criminal law;

b the term “judge” referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;
c in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;

d “legal person” shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Chapter II – Measures to be taken at national level

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

Article 5 – Bribery of foreign public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

Article 6 – Bribery of members of foreign public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.
Article 7 – Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Article 9 – Bribery of officials of international organisations

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

Article 10 – Bribery of members of international parliamentary assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

Article 11 – Bribery of judges and officials of international courts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or
she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

**Article 13 – Money laundering of proceeds from corruption offences**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation.

**Article 14 – Account offences**

Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

- creating or using an invoice or any other accounting document or record containing false or incomplete information;
- unlawfully omitting to make a record of a payment.

**Article 15 – Participatory acts**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

**Article 16 – Immunity**

The provisions of this Convention shall be without prejudice to the provisions of any Treaty, Protocol or Statute, as well as their implementing texts, as regards the withdrawal of immunity.

**Article 17 – Jurisdiction**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:
a  the offence is committed in whole or in part in its territory;

b  the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;

c  the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2  Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1b and c of this article or any part thereof.

3  If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.

4  This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

**Article 18 – Corporate liability**

1  Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   – a power of representation of the legal person; or

   – an authority to take decisions on behalf of the legal person; or

   – an authority to exercise control within the legal person;

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2  Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.
3 Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

**Article 19 – Sanctions and measures**

1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

**Article 20 – Specialised authorities**

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

**Article 21 – Co-operation with and between national authorities**

Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:

a by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or

b by providing, upon request, to the latter authorities all necessary information.

**Article 22 – Protection of collaborators of justice and witnesses**

Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:
a those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;

b witnesses who give testimony concerning these offences.

**Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds**

1 Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.

3 Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.

**Chapter III – Monitoring of implementation**

**Article 24 – Monitoring**

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

**Chapter IV – International co-operation**

**Article 25 – General principles and measures for international co-operation**

1 The Parties shall co-operate with each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal matters, or arrangements agreed on the basis of uniform or reciprocal legislation, and in accordance with their national law, to the widest extent possible for the purposes of investigations and proceedings concerning criminal offences established in accordance with this Convention.

2 Where no international instrument or arrangement referred to in paragraph 1 is in force between Parties, Articles 26 to 31 of this chapter shall apply.

3 Articles 26 to 31 of this chapter shall also apply where they are more favourable than those of the international instruments or arrangements referred to in paragraph 1.
Article 26 – Mutual assistance

1. The Parties shall afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.

2. Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or ordre public.

3. Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

Article 27 – Extradition

1. The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

2. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another 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 criminal offence established in accordance with this Convention.

3. Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.

4. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

5. If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.

Article 28 – Spontaneous information
Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter.

**Article 29 – Central authority**

1 The Parties shall designate a central authority or, if appropriate, several central authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

**Article 30 – Direct communication**

1 The central authorities shall communicate directly with one another.

2 In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

6 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

**Article 31 – Information**

The requested Party shall promptly inform the requesting Party of the action taken on a request under this chapter and the final result of that action. The requested Party shall also
promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

**Chapter V – Final provisions**

**Article 32 – Signature and entry into force**

1. This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
   
   a. signature without reservation as to ratification, acceptance or approval; or
   
   b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteen States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any such State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force.

4. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any signatory State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force in its respect.

**Article 33 – Accession to the Convention**

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite the European Community as well as any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of the European Community and any State acceding to it under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. The European Community and any State acceding to
this Convention shall automatically become a member of GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

**Article 34 – Territorial application**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**Article 35 – Relationship to other conventions and agreements**

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.

2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

**Article 36 – Declarations**

Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will establish as criminal offences the active and passive bribery of foreign public officials under Article 5, of officials of international organisations under Article 9 or of judges and officials of international courts under Article 11, only to the extent that the public official or judge acts or refrains from acting in breach of his duties.
Article 37 – Reservations

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, reserve its right not to establish as a criminal offence under its domestic law, in part or in whole, the conduct referred to in Articles 4, 6 to 8, 10 and 12 or the passive bribery offences defined in Article 5.

2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it avails itself of the reservation provided for in Article 17, paragraph 2.

3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which the requested Party considers a political offence.

4 No State may, by application of paragraphs 1, 2 and 3 of this article, enter reservations to more than five of the provisions mentioned thereon. No other reservation may be made. Reservations of the same nature with respect to Articles 4, 6 and 10 shall be considered as one reservation.

Article 38 – Validity and review of declarations and reservations

1 Declarations referred to in Article 36 and reservations referred to in Article 37 shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such declarations and reservations may be renewed for periods of the same duration.

2 Twelve months before the date of expiry of the declaration or reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the State concerned. No later than three months before the expiry, the State shall notify the Secretary General that it is upholding, amending or withdrawing its declaration or reservation. In the absence of a notification by the State concerned, the Secretariat General shall inform that State that its declaration or reservation is considered to have been extended automatically for a period of six months. Failure by the State concerned to notify its intention to uphold or modify its declaration or reservation before the expiry of that period shall cause the declaration or reservation to lapse.

3 If a Party makes a declaration or a reservation in conformity with Articles 36 and 37, it shall provide, before its renewal or upon request, an explanation to GRECO, on the grounds justifying its continuance.

Article 39 – Amendments

1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe
and to every non-member State which has acceded to, or has been invited to accede to, this Convention in accordance with the provisions of Article 33.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation of the non-member States Parties to this Convention, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

**Article 40 – Settlement of disputes**

1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

**Article 41 – Denunciation**

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

**Article 42 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;
c any date of entry into force of this Convention in accordance with Articles 32 and 33;

d any declaration or reservation made under Article 36 or Article 37;

e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of January 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.
Appendix D

Additional Protocol to the Council of Europe Criminal Law Convention on Corruption
ADDITIONAL PROTOCOL
TO THE CRIMINAL LAW CONVENTION
ON CORRUPTION

Strasbourg, 15.V.2003

The member States of the Council of Europe and the other States signatory hereto,

Considering that it is desirable to supplement the Criminal Law Convention on Corruption (ETS No. 173, hereafter “the Convention”) in order to prevent and fight against corruption;

Considering also that the present Protocol will allow the broader implementation of the 1996 Programme of Action against Corruption,

Have agreed as follows:

Chapter I – Use of terms

Article 1 – Use of terms

For the purpose of this Protocol:

1. The term “arbitrator” shall be understood by reference to the national law of the States Parties to this Protocol, but shall in any case include a person who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.

2. The term “arbitration agreement” means an agreement recognised by the national law whereby the parties agree to submit a dispute for a decision by an arbitrator.

3. The term “juror” shall be understood by reference to the national law of the States Parties to this Protocol but shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial.
In the case of proceedings involving a foreign arbitrator or juror, the prosecuting State may apply the definition of arbitrator or juror only in so far as that definition is compatible with its national law.

Chapter II – Measures to be taken at national level

Article 2 – Active bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to an arbitrator exercising his/her functions under the national law on arbitration of the Party, for himself or herself or for anyone else, for him or for her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by an arbitrator exercising his/her functions under the national law on arbitration of the Party, directly or indirectly, of any undue advantage for himself or herself or for anyone else, or the acceptance of an offer or promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of foreign arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving an arbitrator exercising his/her functions under the national law on arbitration of any other State.

Article 5 – Bribery of domestic jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within its judicial system.

Article 6 – Bribery of foreign jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within the judicial system of any other State.
Chapter III – Monitoring of implementation and final provisions

Article 7 – Monitoring of implementation

The Group of States against Corruption (GRECO) shall monitor the implementation of this Protocol by the Parties.

Article 8 – Relationship to the Convention

1 As between the States Parties the provisions of Articles 2 to 6 of this Protocol shall be regarded as additional articles to the Convention.

2 The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

Article 9 – Declarations and reservations

1 If a Party has made a declaration in accordance with Article 36 of the Convention, it may make a similar declaration relating to Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

2 If a Party has made a reservation in accordance with Article 37, paragraph 1, of the Convention restricting the application of the passive bribery offences defined in Article 5 of the Convention, it may make a similar reservation concerning Articles 4 and 6 of this Protocol at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. Any other reservation made by a Party, in accordance with Article 37 of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3 No other reservation may be made.

Article 10 – Signature and entry into force

1 This Protocol shall be open for signature by States which have signed the Convention. These States may express their consent to be bound by:

   a signature without reservation as to ratification, acceptance or approval; or

   b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date on which five States have expressed their consent to be bound
by the Protocol in accordance with the provisions of paragraphs 1 and 2, and only after the Convention itself has entered into force.

4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of paragraphs 1 and 2.

5 A signatory State may not ratify, accept or approve this Protocol without having, simultaneously or previously, expressed its consent to be bound by the Convention.

**Article 11 – Accession to the Protocol**

1 Any State or the European Community having acceded to the Convention may accede to this Protocol after it has entered into force.

2 In respect of any State or the European Community acceding to the Protocol, it shall enter into force on the first day of the month following the expiry of a period of three months after the date of the deposit of an instrument of accession with the Secretary General of the Council of Europe.

**Article 12 – Territorial application**

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any Party may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made in pursuance of the two preceding paragraphs may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.

**Article 13 – Denunciation**

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2 Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General.

3 Denunciation of the Convention automatically entails denunciation of this Protocol.

**Article 14 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State, or the European Community, having acceded to this Protocol of:

a any signature of this Protocol;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with Articles 10, 11 and 12;

d any declaration or reservation made under Articles 9 and 12;

e any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding Parties.
Appendix E

Council of Europe Civil Law Convention on Corruption
Preamble

The member States of the Council of Europe, the other States and the European Community, signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Conscious of the importance of strengthening international co-operation in the fight against corruption;

Emphasising that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies;

Recognising the adverse financial consequences of corruption to individuals, companies and States, as well as international institutions;

Convinced of the importance for civil law to contribute to the fight against corruption, in particular by enabling persons who have suffered damage to receive fair compensation;

Recalling the conclusions and resolutions of the 19th (Malta, 1994), 21st (Czech Republic, 1997) and 22nd (Moldova, 1999) Conferences of the European Ministers of Justice;

Taking into account the Programme of Action against Corruption adopted by the Committee of Ministers in November 1996;

Taking also into account the feasibility study on the drawing up of a convention on civil remedies for compensation for damage resulting from acts of corruption, approved by the Committee of Ministers in February 1997;
Having regard to Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers in November 1997, at its 101st Session, to Resolution (98) 7 authorising the adoption of the Partial and Enlarged Agreement establishing the "Group of States against Corruption (GRECO)", adopted by the Committee of Ministers in May 1998, at its 102nd Session, and to Resolution (99) 5 establishing the GRECO, adopted on 1st May 1999;

Recalling the Final Declaration and the Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their 2nd summit in Strasbourg, in October 1997,

Have agreed as follows:

Chapter I – Measures to be taken at national level

Article 1 – Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

Article 2 – Definition of corruption

For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Article 3 – Compensation for damage

1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2 Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 4 – Liability

1 Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

i the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

ii the plaintiff has suffered damage; and

iii there is a causal link between the act of corruption and the damage.
2. Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

**Article 5 – State responsibility**

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party’s appropriate authorities.

**Article 6 – Contributory negligence**

Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

**Article 7 – Limitation periods**

1. Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

2. The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

**Article 8 – Validity of contracts**

1. Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.

2. Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

**Article 9 – Protection of employees**

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.
Article 10 – Accounts and audits

1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.

2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company’s financial position.

Article 11 – Acquisition of evidence

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

Article 12 – Interim measures

Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

Chapter II – International co-operation and monitoring of implementation

Article 13 – International co-operation

The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

Article 14 – Monitoring

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

Chapter III – Final clauses

Article 15 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, by non-member States that have participated in its elaboration and by the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteen signatories have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2. Any such signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force.

4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 2. Any signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force in its respect.

5 Any particular modalities for the participation of the European Community in the Group of States against Corruption (GRECO) shall be determined as far as necessary by a common agreement with the European Community.

**Article 16 – Accession to the Convention**

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2 In respect of any State acceding to it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. Any State acceding to this Convention shall automatically become a member of the GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

**Article 17 – Reservations**

No reservation may be made in respect of any provision of this Convention.

**Article 18 – Territorial application**

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the
month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**Article 19 – Relationship to other instruments and agreements**

1. This Convention does not affect the rights and undertakings derived from international multilateral instruments concerning special matters.

2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it or, without prejudice to the objectives and principles of this Convention, submit themselves to rules on this matter within the framework of a special system which is binding at the moment of the opening for signature of this Convention.

3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the present Convention.

**Article 20 – Amendments**

1. Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 16.

2. Any amendment proposed by a Party shall be communicated to the European Committee on Legal Co-operation (CDCJ) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Legal Co-operation (CDCJ) and, following consultation of the Parties to the Convention which are not members of the Council of Europe, may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.
Article 21 – Settlement of disputes

1 The European Committee on Legal Co-operation (CDCJ) of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Legal Co-operation (CDCJ), to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 22 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 23 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council and any other signatories and Parties to this Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Convention, in accordance with Articles 15 and 16;

d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 4th day of November 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State invited to accede to it.
Appendix F

Anti-Corruption Act of Estonia
ANTI-CORRUPTION ACT OF ESTONIA

Passed January 27, 1999 & entered into force February 28, 1999,


Chapter 1     General Provisions

§ 1. Scope of application of Act

This Act provides the legal bases for the prevention of corruption and prosecution of officials involved in corruption.

§ 2. Means of corruption prevention

The means to prevent corruption are the following:

1) declaration of the economic interests of officials and persons listed in § 4 of this Act and disclosure of declarations of economic interests in the cases prescribed by law;

2) restriction on employment and activities specified in Chapter 3 of this Act;

3) procedural restrictions specified in Chapter 4 of this Act.

§ 3. Office and official position

(1) For the purposes of this Act, an office is a place of employment or service to which a person has been elected, appointed, or hired under an employment contract.

(2) Official position is the competence of an official arising from the office to adopt decisions binding to other persons, perform acts, participate in making decisions concerning privatisation, transfer or grant of use of municipal property and the obligation to fulfill his or her official duties honestly and lawfully.

§ 4. Official

(1) Pursuant to this Act, an official is a state or local government official who has an official position provided for in subsection 3 (2), or a non-staff public servant performing his or her duties.

(2) For the purposes of this Act, the following are also deemed to be officials:

1) members of the Riigikogu (the Parliament of Estonia – author’s note);

2) the President of the Republic;
3) members of the Government of the Republic;
4) the Chief Justice and justices of the Supreme Court;
5) the Chairman and members of the Board of the Bank of Estonia, the President of
the Bank of Estonia;
6) the Commander (Commander-in-Chief) of the Defence Forces;
7) the Auditor General and chief auditors of the State Audit Office;
8) the Legal Chancellor;
9) heads of foreign missions of Estonia;
10) the State Secretary;
11) county governors;
12) the Chief Public Prosecutor and prosecutors;
13) judges of administrative, county, city and circuit courts;
14) chairmen and members of rural municipality and city councils;
15) rural municipality mayors and city mayors, members of rural municipality and city
governments;
16) rural municipality district elders and city district elders, members of administrative
councils of rural municipality districts and city districts;
17) notaries;
18) police officers;
19) bailiffs, prison officers and probation officers;
20) officers of the Defence Forces, Defence Forces officials, border guard officials,
rescue service officials, and officials of the National Defence League;
21) the Commander of the National Defence League and members of the central
management and central audit committee of the National Defence League, the Commander of the
General Staff and commanders of structural units of the National Defence League, chiefs of units
and members of the management and audit committees of the National Defence League;
22) members of the management boards and supervisory boards of companies with state participation;

23) members of the management boards and supervisory boards of companies with local government participation;

24) members of the management boards and supervisory boards of companies with the participation of a legal person in public law;

25) members of the management boards and supervisory boards of legal persons in public law, the President of the Estonian Academy of Sciences, rectors of universities in public law, the Chairman of the Estonian Bar Association;

26) heads of state agencies administered by government agencies;

27) trustees in bankruptcy, natural persons who are performing administrative functions in public law assigned to them pursuant to law or who are granted authority to exercise executive power pursuant to law and the members of directing bodies of legal persons in private law which perform the above-mentioned functions or exercise executive power;

28) managers and members of management boards and supervisory boards of foundations in private law founded by the state, a local government or a legal person in public law.

(3) For the purposes of this Act, heads of rural municipality or city government administrative agencies and heads of agencies administered by administrative agencies are considered to be officials if so decided by the rural municipality or city council.

(4) For the purposes of this Act, members of management boards of non-profit associations are considered to be officials if the non-profit association is founded by or with the participation of the state, a local government or a legal person in public law or if so provided for in the Act regulating the activities of the non-profit association or in the articles of association or if a corresponding resolution is adopted by a competent directing body of the non-profit association.

§ 5. Definition of act of corruption, relationship involving risk of corruption and income derived from corrupt practices

(1) An act of corruption is the use of official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts, or fails to make lawful decisions or perform such acts.

(2) A relationship involving the risk of corruption is a relationship of an official with another person which is created or may be created if the official violates the restrictions on employment and activities or the procedural restrictions provided for in Chapters 3 or 4 of this Act.
Income derived from corrupt practices is economic or other benefit which an official directly or indirectly receives from another person for committing an act of corruption or on the condition that an act of corruption will be committed in the future:

1) as a monetary payment;

2) as a gift;

3) as remuneration in kind, a useful favour or advantage;

4) by way of transfer without charge, or sale below the market price of shares, share certificates and other securities and shares of private limited companies to him or her;

5) by way of accepting an offer to become a co-owner of an immovable, a partner or shareholder of a public limited company or other company;

6) as economic or other benefit not set out in clauses 1) - 5) of this subsection.

§ 6. Prohibition on relationships involving risk of corruption

(1) Officials are prohibited from committing acts of corruption, entering into relationships involving risk of corruption with natural or legal persons and from receiving income derived from corrupt practices.

(2) The head of an agency is required, as an employer, to organise work in a manner where the legality of the officials’ activities and the restrictions on employment and activities and procedural restrictions established for officials are monitored.

(3) Officials who have relationships involving the risk of corruption shall inform the head of the agency or a body with election authority thereof and apply for the right to make the corresponding decisions or conclude the corresponding transactions to be granted to another official.

Chapter 2 Declaration of Economic Interests

§ 7. Purpose of declaration of economic interests

The purpose of a declaration of economic interests is to get an overview of the economic interests of an official which may promote or cause a conflict of private and public interests, the commitment of an act of corruption or the creation of a relationship involving the risk of corruption.
§ 8. Definition of declaration of economic interests

A declaration of economic interests (hereinafter declaration) is a document in which an official declares information concerning his or her property, proprietary obligations and other circumstances which allow to determine the economic interests and financial situation of the official.

§ 9. Content of declaration

(1) A declaration shall contain the following information concerning the person submitting the declaration:

1) immovable property (including structures and parts thereof until entry in the land register) (use, location, land registry jurisdiction and registered immovable property number);

2) vehicles entered in the state register (type of vehicle, make, and year of production);

3) the holding of shares, other securities (share certificates in investment funds, bonds, convertible bonds, privatisation vouchers, certificates proving the right or obligation of purchase or sale (option), etc.), and shares (issuer, class, amount, the nominal value of one unit, and the total value of each article in the case of shares and convertible bonds);

4) debts and contracts of suretyship (creditor and amount of debt) to banks and other persons if the amount of debt exceeds six months’ salary or 50 000 kroons a year, if salary is not paid in the corresponding office;

5) other proprietary obligations, if the amount of debt or the possible debt-claim (leasing, contracts of suretyship, pledges, mortgages, real encumbrances, etc.) exceeds six months’ salary or 50 000 kroons a year, if a salary is not paid in the corresponding office;

6) other income (salary and additional remuneration if the official does not receive a salary for the office, including remuneration received from supervisory boards, interest, pensions, and other remuneration and sources of income);

7) bank accounts (bank, type of account and number of accounts);

8) taxable income (shall be completed on the basis of a natural person income tax return of the preceding year submitted to the Tax Board);

9) dividend income (shall be completed on the basis of a natural person income tax return of the preceding year submitted to the Tax Board).

§ 10. Declaration of property in common or joint ownership

(1) The things, rights and obligations in common or joint ownership (joint property of spouses and other joint ownership provided by law) listed in § 9 of this Act shall be declared and the share of the official in the common ownership and the estimated share in joint ownership shall be indicated;
a corresponding notation shall be made concerning the property which belongs to the spouse of the official.

(2) If an official has entered into a marital property contract, he or she shall submit the copy of the marital property contract entered in the marital property register to a depositary of declarations within one month as of entry into the contract or amendment thereof. Upon disclosure of a declaration, the content of the marital property contract shall not be disclosed.

§ 11. Declaration form

(1) A declaration shall be submitted on the form set out in Annex 1 to this Act. For the submission of a declaration, a depositary of declarations shall give or send the form to the person submitting the declaration at least one month before the expiry of the term for the submission of declarations. A depositary of declarations shall make an entry in the register maintained by the depositary and shall indicate the person who submitted the declaration, the date of submission of the declaration and the number of the declaration.

(2) If the person who is required to submit a declaration has not received the declaration form by the time specified in subsection (1) of this section, he or she shall, in order to receive the declaration, address a depositary of declarations at a time which enables the timely submission of the declaration.

§ 12. Depositary of declarations

(1) A depositary of declarations is an official appointed by the head of an agency or a duly authorised body. In the cases provided for in this Act, a depositary of declarations is a committee or supervisory board designated therefor.

(2) A depositary of declarations organises the timely collection of declarations, the verification and depositing thereof according to the requirements and, in the cases provided by law, publication of declarations.

(3) Monitoring compliance with restrictions on employment and activities and procedural restrictions provided by law may be assigned to a depositary of declarations.

(4) A depositary of declarations is required to determine the reasons for a failure to submit a declaration on time or failure to submit a declaration at all.

(5) A depositary of declarations has the right to make proposals concerning disciplinary proceedings to be brought against officials and to submit documentation concerning violations revealed in the course of monitoring to the police.

(6) Officials who, pursuant to this Act, shall submit a declaration are required to provide explanations to the depositary of declarations concerning the contents of the declaration and a failure to submit the declaration on time or failure to submit the declaration at all.
(7) Declarations together with accompanying documents shall be deposited such that nobody except the depositary of declarations, the head of the agency, the person who submitted the declaration, investigative bodies and courts has access thereto.

(8) The head of the agency shall be responsible for creating the working conditions necessary for the depositary of declarations. The work of an official, committee or supervisory board appointed as a depositary of declarations may be compensated for.

(9) Declarations of officials specified in § 4 of this Act shall be deposited in the office of a depositary of declarations as of the submission thereof until the destruction or transfer of the declarations to the archives. Declarations of officials specified in subsection 4 (1) of this Act shall be destroyed after five years or be granted archival value pursuant to the procedure provided for in the Archives Act (RT I 1998, 36/37, 552; 1999, 16, 271; 2000, 92, 597; 2001, 88, 531; 93, 565; 2002, 53, 336; 61, 375; 63, 387; 82, 480). Declarations of officials specified in subsection 4 (2) of this Act and accompanying documents related to the collection, depositing and verification of the declarations shall be given to a public archives after five years pursuant to the procedure provided for in the Archives Act.

§ 13. Term for submission of declaration

(1) A declaration shall be submitted every year one month after expiry of the term for submission of income tax returns or within one month after the date of commencement of work in an office, unless otherwise provided by this Act.

(2) If, after the submission of a declaration during the term specified in subsection (1) of this section, the composition of the property or the structure thereof declared by the official changes significantly, the official shall submit a new declaration within one month after the change occurs. A change in the financial situation is deemed to be significant if it involves a change to the extent of at least 30 per cent or over 100 000 kroons.

(3) Officials specified in subsection 4 (2) of this Act, with the exception of persons specified in clauses (2) 1) and 2), shall submit a declaration to the former depositary of declarations within two years after leaving their posts.

§ 14. Submission of declaration

(1) The head of an agency shall determine, on the basis of this Act, the categories of officials who shall submit declarations. An official shall submit a declaration to the depositary of declarations appointed by the head of the agency or, in the absence thereof, to the head of the agency.

(2) Members of the Riigikogu, the President of the Republic, members of the Government of the Republic, the Chief Justice and justices of the Supreme Court, the Chairman and members of the Board of the Bank of Estonia, the Governor of the Bank of Estonia, the Commander and Commander-in-Chief of the Defence Forces, the Auditor General and chief auditors of the State Audit Office, the Legal Chancellor, ambassadors, the Chief Public Prosecutor and public prosecutors, the chairmen of circuit courts, the chairmen of administrative, county and city courts,
county governors, the State Secretary, assistant ministers, the President of the Estonian Academy of Sciences and rectors of universities in public law shall submit declarations to the committee designated by the Riigikogu.

(3) The chancellors of ministries shall submit declarations to the State Secretary.

(4) Chairmen of rural municipality and city councils, rural municipality mayors and city mayors, rural municipality district and city district elders shall submit declarations to the Minister of Internal Affairs.

(5) Members of local government councils, officials of local governments and non-staff public servants performing the duties of such officials, heads of rural municipality or city government administrative agencies and heads of agencies administered by such administrative agencies and members of management boards and supervisory boards of companies with local government participation, except members of management boards and supervisory boards of local government companies with precluding interest, who do not represent the local governments, shall submit declarations to the committee appointed by the council.

(6) Judges of administrative, county and city courts, judges of circuit courts, senior prosecutors, notaries, the Chairman of the Estonian Bar Association, bailiffs and directors of prisons shall submit declarations to the Minister of Justice.

(7) Members of the management board or supervisory board of a company with state participation, except members of the management board or supervisory board of a state company with precluding interest, who do not represent the state, shall submit declarations to the minister who directs the ministry which exercises the state shareholder rights in the company, unless otherwise provided by law.

(8) Members of the management board (directing body) of a legal person in public law shall submit declarations to the supervisory board of the same person in public law. Members of the supervisory board of a legal person in public law shall submit declarations to the committee appointed by the Riigikogu unless otherwise provided by law.

(9) Members of the management board and supervisory board of a company with the participation of a legal person in public law and the manager and members of the management board and supervisory board of a foundation founded by a legal person in public law shall submit declarations to the head of the legal person in public law. Members of the management board or supervisory board of a company with precluding interest which belongs to a legal person in public law, who do not represent the legal person in public law, need not submit declarations.

(10) A trustee in bankruptcy shall submit the declaration to the chairman of the court which appointed the trustee in bankruptcy. Other members of directing bodies of legal persons in private law and natural persons who are performing administrative functions in public law assigned to them pursuant to law or who are granted authority to exercise executive power pursuant to law shall submit declarations to the state agency which exercises supervision over their activities.
(11) Members of the supervisory board of a non-profit association specified in subsection 4 (4) of this Act shall submit declarations to the audit committee of the non-profit association.

(12) If an agency operates in the area of government of a ministry, the head of the agency shall submit a declaration pursuant to the procedure established by the minister. The depositary of declarations of the head of an agency shall not be an official subordinate to the head of the agency.

(13) Depositaries of declarations of economic interest of the categories of officials listed in this section (heads of agencies, committees and officials) are required to inform the committee of the Riigikogu specified in subsection 14 (2) of this Act of the figures of the declarations within two months as of the submission of declarations to a depositary of declarations.

(14) If, pursuant to this Act, several depositaries of declarations are appointed with respect to an official, the official shall submit a declaration to the depositary of declarations of his or her principal place of employment and a copy thereof to the other depositary of declarations.

§ 15. Disclosure of information given in declaration

(1) Everyone has the right to disclose the information given in his or her declaration.

(2) The information given in the declarations of members of the Riigikogu, the President of the Republic, members of the Government of the Republic, the Chairman and members of the Board of the Bank of Estonia, the President of the Bank of Estonia, the Commander and Commander-in-Chief of the Defence Forces, the Auditor General, the Legal Chancellor, ambassadors, the Chief Public Prosecutor, the Chairman and justices of the Supreme Court, the State Secretary, the chairmen and members of circuit courts, the chairmen and judges of administrative, county and city courts, secretaries general of ministries, county governors, chairmen of rural municipality and city councils, heads of rural municipality and city governments shall be disclosed in the Riigi Teataja Lisa (Appendix to the State Gazette – author’s note).

(3) Declarations of members of local government councils and members of city governments and rural municipality governments shall be disclosed in a publication designated by the city council or rural municipality council. The local government council shall decide the disclosure of the declarations of other local government officials and determine the procedure for disclosure.

(4) An agency or official to whom a declaration has been submitted, or a committee designated to be the depositary of declarations shall submit the information given in the declaration for disclosure.

(5) A declaration to be disclosed shall be published without the personal identification code, address and data concerning close relatives and close relatives by marriage and without indicating the income specified in clauses 9 (1) 6), 8) and 9) of this Act

(6) Information contained in a declaration not subject to disclosure shall not be disclosed.
§ 16. Verification of declaration

(1) A depositary of declarations shall examine declarations submitted to him or her. A depositary of declarations has the right to verify the accuracy of information in a declaration and an obligation to do so if an official is suspected of corruption.

(2) A depositary of declarations has the right to make enquiries and to verify whether the declaration of an official has been changed during the period following the submission of the declaration.

(3) A depositary of declarations shall prepare an audit report concerning each verification specified in subsection (1) of this section and the audit report shall be communicated to the head of the agency and the official the accuracy of whose declaration was verified.

(4) In the case of a suspicion of corruption, a depositary of declarations and persons authorised for verification have the right to verify the following information concerning an official specified in § 4 of this Act:

1) the income tax return submitted to the Tax Board;

2) data concerning the official which is deposited in registers and databases maintained by the state and local governments;

3) data which is necessary for the verification of the declaration and is deposited in credit institutions.

(5) If, as a result of verification of a declaration of an official, a material violation of this Act, receiving income derived from corrupt practices or a relationship involving risk of corruption is proved, the verification documents shall be forwarded to an investigative body.

(6) Everyone who has information that an official specified in § 4 of this Act has failed to declare his or her economic interests and financial situation honestly and accurately may contest the declaration by submitting a reasoned application and request that the suspicions be verified by the direct depositary of declarations of the official or a committee of the Riigikogu. Verification of compliance with restrictions on employment and activities and procedural restrictions may be applied for as well. The recipient of an application is required to verify the declaration or suspicions of corruption on the basis of the application within one month as of the date of receipt of the application. The applicant shall be informed of the results of verification. If the reasons presented in an application prove to be even partly right, the declaration of the official together with proof shall be published in the media.

(7) All depositaries of declarations of economic interests are required to report to the head of the agency who appointed them or to authorised bodies and, at the request of the Riigikogu committee, to the Riigikogu committee on the performance of the duties imposed on them by this Act.
§ 17. (Repealed – by Act of June 7, 2001)

§ 18. Failure to submit declaration

(1) Failure to submit a declaration within the term provided for in § 13 of this Act without good reason shall bring about liability pursuant to the procedure provided by law. Illness of the person who is required to submit a declaration or other circumstances independent of such person which prevent him or her from submitting the declaration within the term are deemed to be good reasons.

(2) Failure of an official to submit a declaration by the due date constitutes a violation of duties of employment or a breach of duties and an act which discredits the administrative agency which shall bring about disciplinary liability provided by law or liability imposed for a misdemeanour related to office provided for in this Act.

(3) If an official specified in subsection 15 (2) or (3) of this Act fails to submit a declaration by the due date, the chairman of the Riigikogu, the corresponding minister, head of an agency or chairman of the local government council shall publish a corresponding official notice in the Riigi Teataja Lisa within one month after the offence became known.

Chapter 3 Restrictions on Employment and Activities

§ 19. Definition of restriction on employment and activities

(1) For the purposes of this Act, a restriction on employment and activities means a restriction to operate as an undertaking, hold a second job or work in a relationship of direct subordination with a close relative or close relative by marriage, while in public service.

(2) Officials specified in subsection 4 (1) of this Act shall not:

1) hold a second job with a workload higher and at a time different than permitted by the immediate superior if such employment damages the reputation of the position or office, or if performance of the duties of employment also means supervision over the other employer;

2) be a member of the directing or supervisory body of a company, except the representative of the state, a local government or legal person in public law of a company with the participation of the state, local government or legal person in public law;

3) be the director of a branch of a foreign company;

4) be employed in an office where an official who directly monitors him or her, or is his or her immediate superior is a close relative or close relative of the official by marriage;

5) be a member of a legal person in public law and, at the same time, the directing or supervisory body of a legal person directly monitored by the legal person in public law;
6) be a member of the directing or supervisory body of a company with state or local government holding within three years after resignation from the public service.

(3) An official may operate as an undertaking, be a partner of a general partnership or general partner of a limited partnership only with the permission of the person or agency who has appointed or elected him or her to office or hired under an employment contract if such activity does not hinder the performance of duties of employment or damage the reputation of the position or office. Everyone has the right to obtain information from the official who has appointed or elected an official to office or hired him or her under an employment contract concerning this permission.

(4) An official shall not exercise supervision over the activities of himself or herself as an undertaking, or over a general partnership of which he or she is a partner or a limited partnership of which he or she is a general partner in performing his or her duties of employment or service.

(5) For the purposes of this Act, close relatives mean grandparents, parents, brothers, sisters, children and grandchildren; close relatives by blood mean the spouse, his or her parents, brothers, sisters and children.

§ 20. Special rules for restrictions on employment and activities of officials

(1) The restrictions on employment and activities of officials specified in clauses 4 (2) 1)-16) of this Act are not regulated by § 19 of this Act but are provided for in §§ 63 and 84 of the Constitution of the Republic of Estonia and in the Acts concerning the activities of the Riigikogu, the Government of the Republic, the Legal Chancellor, the State Audit Office, the Bank of Estonia, prosecutor’s offices, Defence Forces and the border guard, judges, the police, notaries’ offices, bailiffs and local governments, and in other legislation which separately regulates the official position, rights and obligations of the officials of such categories.

(2) Taking into account the specific character of some offices, the Government of the Republic may establish a list of offices the employment in which may be permitted, regardless of the restrictions provided for in clauses 19 (2) 4) and 5) of this Act, by the minister in whose area of government the place of employment is, provided there is no risk of corruption involved. The minister shall justify the grant of permission every time. Upon the establishment of exceptions, the person who establishes the exceptions shall exercise regular supervision over the justification thereof and submit a corresponding report together with the opinion of the State Audit Office to the Riigikogu committee specified in subsection 14 (2) of this Act.

(3) Taking into account the specific character of some offices, a local government may establish a list of offices the employment in which may be permitted, regardless of the restrictions provided for in clauses 19 (2) 4) and 5) of this Act, by the executive body of the local government, provided there is no risk of corruption involved. The executive body of a local government shall justify the grant of permission every time. Upon the establishment of exceptions, the person who establishes the exceptions shall exercise regular supervision over the justification thereof and submit a corresponding report together with the opinion of the county governor to the committee or member of the council specified in subsection 14 (4) of this Act.
Chapter 4  Procedural Restrictions

§ 21. Definition of procedural restrictions

(1) For the purposes of this Act, a procedural restriction means a prohibition to perform acts which enable to receive income derived from corrupt practices.

(2) Procedural restrictions do not apply to activities as a result of which income on shares of a company is received, unless otherwise provided by law. An official may also receive income as royalties, revenue from patents, interest on deposits, on immovables which are subjected to commercial lease or use by other persons, fee for the works published in print or electronic media, and other income which does not presume the employment of the recipient thereof to promote the economic benefit of another person, unless otherwise provided by law.

(3) For the purposes of this Act, a trustee in bankruptcy is not deemed violate a procedural restriction if he or she, upon conduct of bankruptcy proceedings, uses the services of an office through which he or she operates.

§ 22. Prohibition on acceptance of remuneration or more than adequate remuneration

(1) An official who is required to provide services or make decisions without charge shall not demand or accept remuneration therefor in money, in kind or as a favour.

(2) An official who is required to provide services pursuant to the official procedure for a specific remuneration in money, shall not demand or accept remuneration therefor different from the remuneration set out in the rates or price lists.

§ 23. Duty to give notification of bribery and gratuities

(1) An official is required to notify the head of the agency and the Security Police in writing of giving or grant, arranging receipt or acceptance of a bribe or gratuities which becomes known to him or her.

(2) Failure to perform a duty set out in subsection (1) of this section shall constitute the basis for the release of an official from service or office for a misdemeanour or for charging with an offence committed.

§ 24. Prohibited transactions

(1) An official shall not engage in self-dealing, or conclude transactions of similar nature or involving a conflict of interest. He or she shall not authorise persons subordinate to him or her to perform such transactions instead of him or her.

(2) Self-dealing, which is prohibited, means *inter alia* the following:
1) concluding, with regard to property entrusted to him or her by an agency, transactions with oneself or a legal person the shares of which belong either wholly or partially to him or her, his or her close relatives or close relatives by marriage, or a board or decision-making body of which he or she is a member;

2) concluding, as a person entitled to represent a state agency in transactions, transactions with the state through an administrative agency concerned, or concluding, as a person entitled to represent a local government agency in transactions, transactions with a local government through an administrative agency concerned;

3) concluding, as a representative of the state or a local government, property transactions with other employers in whose employment he or she is;

4) concluding, as a representative of the state or a local government, property transactions with legal persons specified in subsection 25 (1) of this Act;

5) concluding, as a representative of the state or a local government, property transactions with a non-profit association or political party of which he or she is a member;

6) concluding, as a representative of the state or a local government, property transactions with an employer, company, non-profit association or political party over the activities of which he or she exercises supervision;

7) concluding, as a representative of the state or a local government, property transactions with one’s close relatives, close relatives by marriage or oneself.

(3) The restrictions concerning the representatives of the state or a local government provided for in subsection (2) of this section also apply to the representative of a legal person in public law.

(4) Transactions concluded in violation of the prohibitions provided for in subsection (1) of this section are void.

§ 25. Conflict of interest

(1) A conflict of interest occurs if an official, in the course of his or her duties of employment, is required to make a decision or participate in the making of a decision which significantly influences the economic interests of the official, his or her close relatives or close relatives by marriage or legal persons, if the legal person is:

1) a general partnership, the partner of which the official, his or her close relative or close relative by marriage is;

2) a limited partnership, the general partner or limited partner of which the official, his or her close relative or close relative by marriage is;
3) a private limited company, the shareholder or member of the management board or supervisory board of which the official, his or her close relative or close relative by marriage is;

4) a public limited company, the shareholder or member of the management board or supervisory board of which the official, his or her close relative or close relative by marriage is;

5) a commercial association, the member of the management board or audit committee of which the official, his or her close relative or close relative by marriage is;

6) other legal person in private law, the member of the directing or supervisory body of which the official, his or her close relative or close relative by marriage is.

(2) An official whose duty is to participate in the making of common decisions specified in subsection (1) of this section is required to notify promptly a body concerned and his or her immediate superior or a person or body with the employment or appointment authority thereof and forego the making of the decision. The person or body who has designated an official as a member of a body making common decisions, may designate another person for the one-time substitution of the official.

(3) An official who is competent to make decisions specified in subsection (1) of this section solely, is required to remove himself or herself from making the decision and notify his or her immediate superior of a conflict of interest; the immediate superior shall designate another official to make the decision.

(4) In this section, a decision does not mean legislation of general application.

§ 26. Restriction on acceptance of gifts

(1) An official shall not solicit, in connection with his or her duties of employment, gifts or other benefits made or granted by persons to him or her, his or her close relatives or close relatives by marriage.

(2) An official shall not accept gifts or consent to the benefits which are made or granted to him or her, his or her close relatives or close relatives by marriage, and the acceptance of which may directly or indirectly influence the impartial performance of his or her duties of employment or service.

(3) Gifts received in violation of the restrictions provided for in subsections (1) and (2) of this section shall belong to the employer of the corresponding official, unless otherwise provided by an international custom or diplomatic etiquette.
Chapter 5 Liability

§ 261. Failure to submit declaration of economic interests in compliance with requirements and presentation of false information

(1) Failure to submit a declaration of economic interests not subject to disclosure on time without good reason, or the knowing submission of incomplete or false information in such declaration is punishable by a fine of up to 200 fine units.

(2) Failure to submit a declaration of economic interests subject to disclosure on time without good reason, or the knowing submission of incomplete or false information in such declaration is punishable by a fine of up to 300 fine units.

§ 262. Submission of false information to person, agency or committee verifying declarations of economic interests

Submission of incomplete or false information to a person or agency conducting lawful verification of declarations of economic interests or to a committee specified in this Act is punishable by a fine of up to 300 fine units.

§ 263. Violation of restrictions on employment or activities or of procedural restrictions established by law

Violation of the restrictions on employment or activities or of the procedural restrictions established by law is punishable by a fine of up to 300 fine units.

§ 264. Failure to give notification of relationship involving risk of corruption

Failure to give notification of a relationship involving a risk of corruption is punishable by a fine of up to 300 fine units.

§ 265. Act of corruption

(1) An act of corruption which involves the receipt of income or gains derived from corrupt or illegal practices is punishable by a fine of up to 300 fine units.

(2) A court may confiscate that which was received unlawfully for an act of corruption pursuant to § 83 of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22).

§ 266. Failure to perform duties related to collection, depositing or verification of declarations of economic interests

Failure by the head of an agency or another person responsible for the collection, depositing or verification of declarations of economic interests to perform, or his or her unsatisfactory performance of, the duties relating to the collection, depositing or verification of such declarations is punishable by a fine of up to 300 fine units.
§ 26. Unlawful disclosure of content of declaration of economic interests

Unlawful disclosure of the content of a declaration of economic interests is punishable by a fine of up to 200 fine units.

§ 26. Proceedings


(2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 26–26 of this Act shall be conducted by police prefectures.

(3) If a misdemeanour provided for in §§ 26–26 of this Act is committed by a higher official specified in clause 4 (1) 1) of the State Public Servants Official Titles and Salary Scale Act (RT I 1996, 15, 265; 89, 1590; 1998, 36/37, 552; 1999, 95, 843; 97, 858; 2000, 51, 320; 58, 376; 2002, 21, 117; 2003, 51, 349), the extra-judicial proceedings concerning the misdemeanour shall be conducted by the Security Police Board.

(4) A court shall hear misdemeanours provided for in § 26 of this Act.

§ 27. Liability for violation of Anti-corruption Act

(1) An official who commits an act of corruption or unlawfully accepts remuneration or has relationships involving a risk of corruption or violates the restrictions on employment and activities or procedural restrictions or fails to submit a declaration of economic interests by the due date or submits incomplete or false information in the declaration shall be brought to justice pursuant to the procedure provided by law.

(2) The head of an agency and an official who are assigned the duties of a depositary of declaration shall bear liability imposed for a misdemeanour related to office provided for in this Act for failure to perform or unsatisfactory performance of duties and for unlawful disclosure of the contents of declarations.

(3) Acts listed in subsection (1) of this section shall constitute the basis for the release of an official from service or office, except in the cases provided for in specific Acts.

§ 27. Compensation for damage caused by acts of corruption

(1) Persons who have suffered damage as a result of an act of corruption of an official have the right to demand compensation for such damage on the bases and pursuant to the procedure provided by law.

(2) Damages shall be claimed from an official by way of recourse.
Chapter 6  Implementing Provisions


1) section 86 is amended by adding clause 12) worded as follows:

   “12) due to an act of corruption.”;

2) the title of § 103 is amended by adding the words “or upon commitment of act of corruption”, and the text is amended by adding subsection (3) worded as follows:

   “(3) An employer has the right to terminate an employment contract with each employee who commits an act of corruption on the basis prescribed in clause 86 12) of this Act.”;

3) clauses 104 (2) 4)-7) are repealed.

§ 29. The Public Service Act (RT I 1995, 16, 228; 1999, 7, 112; 10, 155; 16, 271; 276; 2000, 25, 144; 145; 28, 167; 102, 672; 2001, 7, 17; 18; 17, 78; 24, 133; 42, 233; 47, 260; 2002, 21, 117; 62, 377; 110, 656; 2003, 4, 22; 13, 67; 69; 20, 116; 51, 349) is amended as follows:

1) clause 16 4) is amended and worded as follows:

   “4) who are in a close relationship (grandparents, parents, brothers, sisters, children, grandchildren) or a close relationship by marriage (spouse, spouse’s parents, brothers, sisters, children) with an official or the immediate superior who has direct control over the corresponding position.”;

2) section 16 is amended by adding clause 5) worded as follows:

   “5) a person who has been punished for an act of corruption under administrative or criminal procedure.”;

3) the end of subsection 17 (1) is amended by adding the words “or pursuant to law”;

4) subsection 28 (1) is amended by adding the words “the public service code of ethics and” after the words “I am aware that”;

5) subsection 59 (1) is amended and worded as follows:
“(1) A public servant shall perform his or her duties of employment in an accurate, timely and conscientious manner, expeditiously and without self-interest, pursuant to the public interest. The duties of employment are determined in this Act and other Acts, regulations and job descriptions, and other legislation. A public servant shall also perform his or her duties pursuant to the public service code of ethics set out in Annex 1 to this Act and other codes of ethics established within the administrative agency.”;

6) subsection 69 (1) is amended and worded as follows:

“(1) A state official shall not belong to the permanent directing body or permanent control or audit body of a commercial association, except as a representative of the state to the directing or supervisory body of an enterprise with holding of the state or a person in public law.”;

7) subsection 75 is amended and worded as follows:

“§ 75. Duty to declare economic interest
An official is required to submit to a person or administrative agency with employment authority a declaration of his or her economic interests pursuant to the procedure and under the conditions provided for in the Anti-corruption Act.”;

8) the text of § 76 is amended and worded as follows:

“(1) A public servant is prohibited from:
1) acquiring assets which are entrusted to him or her for concluding a transaction and belong to a person with whom he or she is in employment or service relationship and;
2) concluding, as a person entitled to represent a state agency in transactions, transactions with the state through the administrative agency concerned, or concluding, as a person entitled to represent a local government agency in transactions, transactions with a local government through the administrative agency concerned;
3) concluding, as a representative of the state or a local government, property transactions with legal persons specified in subsection 19 (2) of the Anti-corruption Act;
4) concluding, as a representative of the state or a local government, property transactions with a non-profit association or political party of which he or she is a member;
5) concluding, as a representative of the state or a local government, property transactions with an employer, company, non-profit association or political party, over the activities of which he or she exercises supervision;
6) concluding, as a representative of the state or a local government, property transactions with his or her close relatives, close relatives by marriage or himself or herself.
(2) Transactions concluded in violation of the prohibitions provided for in subsection (1) of this section are void.”;
9) clause 84 3) is amended by adding the words “or ethic standards set for officials” after the words “moral standards”;

10) Annex 1 is added to the Act worded as follows:

“Annex 1 to Public Service Act: Public Service Code of Ethics

1. An official is a citizen in the service of people.
2. The activities of an official shall be based on respect for the Constitution of the Republic of Estonia provided for in the oath of office.
3. An official shall adhere, in his or her activities, to the legally expressed will of politicians who have received a mandate from the citizens.
4. Public authority shall be exercised solely in the public interest.
5. Public authority shall always be exercised pursuant to law.
6. The exercise of public authority shall always involve liability.
7. The exercise of public authority is, as a rule, a public activity.
8. An official shall be prepared to make unpopular decisions in the public interest.
9. A person exercising public authority shall endeavour to achieve as broad participation of citizens in the exercise of authority as possible.
10. An official shall always, in his or her activities, subject departmental interests to public interest.
11. An official shall be politically impartial in his or her activities.
12. An official shall make decisions based on public and generally understandable criteria.
13. An official shall avoid creating a situation which arouses or may arouse suspicion with regard to his or her impartiality or objectivity in considering matters under suspicion.
14. An official shall treat property entrusted to him or her economically, expediently and prudently.
15. An official shall use information which becomes known to him or her through official duties solely in the public interest.
16. A person exercising public authority is characterised by honesty and respect for the public and co-employees.
17. An official shall be polite and helpful when communicating with people.
18. An official shall be respectable, responsible and conscientious.
19. An official shall do his or her best in the public service by constant individual development.
20. An official shall facilitate the spread of the above principles in every way.”
§ 30. The Criminal Code (RT 1992, 20, 288; RT I 1997, 21/22, 353; 28, 423; 30, 472; 34, 535; 51, 824; 52, 833 and 834; 81, 1361; 86, 1461; 87, 1466-1468; 1998, 2, 42; 4, 62; 17, 265; 23, 321; 30, 412; 36/37, 552 and 553; 51, 756 and 759; 59, 941; 98/99, 1576; 107, 1766; 108/109, 1783; 1999, 4, 53) is amended as follows:

1) subsection 27 (1) is amended by adding the words “or employment in the public service” after the words “operation in the particular area of activity”, and the word “three” is substituted by the word “five”;

2) section 162¹ is added to the Code worded as follows:

“§ 162¹. Violation of restrictions on employment and activities, or procedural restrictions established by Anti-corruption Act

Violation of restrictions on employment and activities, or procedural restrictions established by the Anti-corruption Act is punishable by up to two years’ imprisonment together with deprivation the right of employment in the particular office or operation in a particular area of activity or employment in the public service if:

1) a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) an administrative punishment has been imposed on the offender for the same act.”;

3) section 162² is added to the Code worded as follows:

“§ 162². Failure to give notification of relationship involving risk of corruption

Failure to give notification of a relationship involving the risk of corruption is punishable by a fine or up to one year imprisonment together with deprivation of the right of employment in the particular office or operation in the particular area of activity or employment in the public service if:

1) a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) administrative penalty has been imposed to the person at fault for the same act.”;

4) section 162³ is added to the Code worded as follows:

“§ 162³. Failure to perform duties related to collection, depositing or verification of declarations of economic interests

Failure to perform or unsatisfactory performance of the duties of collection, depositing or verification of declarations of economic interests by the head of an agency or another person responsible for the collection, depositing or verification of declarations of economic interests shall be punished by imprisonment for up to two years together with taking away the right of employment in the particular office or
operation in the particular area of activity or employment in the public service if a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby;"

5) the title of § 164₂ and subsections 164₂ (2) and (3) the word "corruption" is substituted by the words "an act of corruption";

6) subsection 164₂ (1) is amended and worded as follows:

“(1) For the purposes of this Act, an act of corruption is the making of undue or unlawful decisions or performance of such acts, or failure to make reasoned and lawful decisions or perform such acts by an official through the use of his or her official position for receiving income derived from corrupt practices or other self-serving purposes.”;

7) section 164³ is amended and worded as follows:

“§ 164. Failure to submit declaration of economic interests subject to disclosure, or presentation of false information therein

(1) Failure to submit a declaration of economic interests subject to disclosure in accordance with the requirements during the term, or presentation of incomplete or false information therein shall be punished by a fine or detention.

(2) The same act shall be punished by a fine or imprisonment for up to one year together with taking away the right of employment in the particular office or operation in the particular area of activity or employment in the public service if a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.”;

8) section 164⁴ is added to the Code worded as follows:

“§ 164. Failure to submit declaration of economic interests not subject to disclosure, or presentation of false information therein

Failure to submit a declaration of economic interests not subject to disclosure in accordance with the requirements during the term or presentation of incomplete or false information therein shall be punished by a fine or imprisonment for up to one year together with taking away the right of employment in the particular office or operation in the particular area of activity or employment in the public service if

1) a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) administrative penalty has been imposed to the person at fault for the same act.”;

9) section 164⁵ is added to the Code worded as follows:
“§ 164. Submission of false information to person or agency or committee which verifies declarations of economic interests

(1) The submission of incomplete or false information or failure to submit information in good time to a person or agency or the committee set out in the Anti-corruption Act which exercises lawful supervision over declarations of economic interests shall be punished by detention or imprisonment for up to six months.

(2) The same act shall be punished by imprisonment between six months and two years together with taking away the right of employment in the particular office or operation in the particular area of activity if a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.”;

10) section 164⁶ is added to the Code worded as follows:

“§ 164. Influence peddling

The acceptance of remuneration by an official who promises to influence another official to make a decision favourable to the person who gives the remuneration shall be punished by imprisonment for up to two years.”;

11) section 166³ is added to the Code worded as follows:

“§ 166. Unlawful acceptance of remuneration by official

The acceptance of a more than adequate remuneration determined by an Act or other legislation for the provision of services or making of decisions by an official, or acceptance of remuneration for services without charge shall be punished by imprisonment for up to two years together with taking away the right of employment in the particular office or operation in the particular area of activity if

1) a significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby, or if

2) administrative penalty has been imposed to the person at fault for the same act.”;

§ 31. Amendment of Credit Institutions Act

Section 46 of the Credit Institutions Act (RT I 1995, 4, 36; 1998, 59, 941; 110, 1811; 111, 1828) is amended by adding subsection 4¹ worded as follows:

“(4¹) On the basis of a written application of the depositary or person who verifies declarations of economic interests, or an official authorised therefor by him or her pursuant to the Anti-corruption Act, a credit institution is required to release information which is deposited in the credit institution, including information subject to banking secrecy which is necessary for the verification of declarations of economic interests, without charge.”
§ 32. The Code of Administrative Offences (RT 1992, 29, 396; RT I 1997, 66-68, 1109; 73, 1201; 81, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561, 1563-1565; 1998, 2, 42; 17, 265; 23, 321; 30, 410; 34, 484; 36/37, 552 and 553; 38, 562; 51, 756 and 759; 52/53, 771; 60, 951 and 952; 64/65, 1004; 86/87, 1409; 98/99, 1574; 103, 1695; 108/109, 1783; 1999, 4, 53) is amended as follows:

1) Chapter 12 is added to the Code worded as follows:

“Chapter 12 Administrative Offences Related to Office

§ 158. Violation of restrictions on employment and activities or procedural restrictions

A fine of 50 to 100 days’ wages shall be imposed for the violation of restrictions on employment and activities or procedural restrictions established by the Anti-corruption Act if no significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

§ 158. Failure to give notification of relationship involving risk of corruption

A fine of 50 to 100 days’ wages or administrative detention shall be imposed for the failure to give notification of a relationship involving the risk of corruption if no significant financial loss has been caused thereby.

§ 158. Failure to submit declaration of economic interests not subject to disclosure during term, or presentation of false information therein

A fine of 50 to 100 days’ wages shall be imposed for the failure to submit a declaration of economic interests not subject to disclosure during the term or presentation of incomplete or false information therein if no significant proprietary damage or other serious consequence to the rights or interests of a person, the state or a local government protected by law has been caused thereby.

§ 158. Failure to perform duties related to collection, depositing or verification of declarations of economic interests

A fine of 100 to 200 days’ wages or administrative detention shall be imposed for the failure to perform the unsatisfactory performance of the duties of the collection, depositing or verification of declarations of economic interests by the head of an agency or another person responsible for the collection, depositing or verification of declarations of economic interests.

§ 158. Unlawful disclosure of content of declaration of economic interests

A fine of 100 to 200 days’ wages or administrative detention shall be imposed for the unlawful disclosure of information contained in a declaration of economic interests.

§ 158. Unlawful acceptance of remuneration by official
A fine of 50 to 200 days’ wages shall be imposed for the acceptance of a more than adequate remuneration determined by an Act or other legislation for the provision of services by an official, or acceptance of remuneration for services without charge.”;

2) subsection 186 (1) of the Code is amended by adding the numbers “158¹, 158², 158³, 158⁴, 158⁵, 158⁶,” after the numbers “154 (1)”;

3) clause 228 (1) 1) of the Code is amended by adding the numbers “158¹, 158², 158³, 158⁴, 158⁵, 158⁶” after the numbers “154 (1)”.

§ 33. Implementation of Act

Transactions concluded in violation of clauses 24 (2) 1), 4) and 7) of this Act as of 16 November 1988 are void.

§ 34. Repeal of Anti-corruption Act

Upon entry into force of this Act, the Anti-corruption Act (RT I 1995, 14, 170; 68, 1142; 1998, 41/42, 625) is repealed.
Appendix G

Law on the Special Investigation Service of the Republic of Lithuania
LAW ON THE SPECIAL INVESTIGATION SERVICE OF THE REPUBLIC OF LITHUANIA

May 2, 2000, No. VIII-1649

CHAPTER I
GENERAL PROVISIONS

Article 1. Scope

This Law lays down the objectives of the Special Investigation Service of the Republic of Lithuania, the legal basis of its activities, its tasks and functions, the organisation of the Service, its financing, ways of control of its activities, and the rights and duties of its officers.

Article 2. Definitions

1. The Special Investigation Service of the Republic of Lithuania (hereinafter - the Special Investigation Service or the Service), is a state law enforcement agency functioning on the statutory basis, accountable to the President of the Republic and the Seimas, which detects and investigates corruption-related criminal acts, develops and implements corruption prevention measures.

2. Corruption is a direct or indirect seeking for, demand or acceptance by a public servant or a person of equivalent status of any property or personal benefit (a gift, favour, promise, privilege) for himself or another person for a specific act or omission according to the functions discharged, as well as acting or omission by a public servant or a person of equivalent status in seeking, demanding property or personal benefit for himself or another person, or in accepting that benefit, also a direct or indirect offer or giving by a person of any property or personal benefit (a gift, favour, promise, privilege) to a public servant or a person of equivalent status for a specific act or omission according to the functions of a public servant or a person of equivalent status, as well as intermediation in committing the acts specified in this paragraph.

3. Corruption-related criminal acts shall mean taking bribes, receiving bribes via an intermediary, offering bribes, and other criminal acts committed in the pursuit of private or other persons' advantage in the public administration sector or by providing public services, namely the abuse of office or exceeding one's authority, abuse of one's authority, tampering with official records and measuring devices, fraud, misappropriation or embezzlement of property, disclosure of an official secret, disclosure of a commercial secret, misrepresentation of information about income, profit or property, legitimization of the proceeds of crime, interference with the activities of a public servant or a person discharging public administration functions, or other criminal acts, if these acts are committed with the aim of seeking or demanding a bribe, offering a bribe, or concealing or covering up the act of taking or offering a bribe.

4. The definition of a public servant or a person of equivalent status provided for in this article corresponds to that set forth in the Criminal Code of the Republic of Lithuania.
5. *A person* is any natural or legal person or a person having a different legal status established by the state where he is registered.

**Article 3. Legal Basis for the Activities of the Special Investigation Service**

1. The Special Investigation Service shall be guided by the Constitution of the Republic of Lithuania, the laws of the Republic of Lithuania, international treaties, the Statute of the Service, and other legal acts.

2. The Statute of the Special Investigation Service shall be approved by a law passed by the Seimas.

3. The Special Investigation Service is a legal entity having its own settlement account with a bank, its seal with the national emblem of Lithuania and the name “The Special Investigation Service of the Republic of Lithuania”, its own flag and insignia.

**Article 4. The Principles of the Activities of the Special Investigation Service**

The activities of the Special Investigation Service shall be based on the rule of law, lawfulness, respect for human rights and freedoms, the principles of equality before the law, openness and confidentiality, as well as on the principle of balance between personal initiative of the officers and the institutional discipline.

**Article 5. Professional Links of the Special Investigation Service**

While performing the tasks assigned to it, the Special Investigation Service shall maintain professional links with other institutions of the Republic of Lithuania, also with various agencies, organisations and enterprises, and shall encourage personal initiative of natural and legal persons in implementing anti-corruption measures. Through the mass media and in other ways, the Special Investigation Service shall inform the public about the enforcement of corruption control and prevention programmes and measures, and the anti-corruption activities carried out by central and local government institutions and agencies.

**Article 6. Obligation to Provide Information to the Special Investigation Service**

1. Upon the request by the Special Investigation Service, the Government of the Republic of Lithuania, ministries and other central and local government institutions and agencies, within five working days, must submit to the Service legal acts which have been adopted but have not yet been published in the "Valstybės žinios" (Official Gazette).

2. Central and local government institutions and agencies must make it possible for the Special Investigation Service to have free and unrestricted access to the data of state registers, cadastres and classifiers, data banks of state institutions, agencies and enterprises, while data banks of other enterprises, agencies, organisations and natural persons may be accessed on a contractual basis.
CHAPTER II
TASKS AND FUNCTIONS OF THE SPECIAL INVESTIGATION SERVICE

Article 7. Tasks of the Special Investigation Service

The Special Investigation Service shall guard and protect an individual, society, and the State from corruption, and shall conduct prevention and detection of corruption.

Article 8. Functions of the Special Investigation Service

The Special Investigation Service shall:
1) carry out operational activities in detecting and preventing corruption-related criminal acts;
2) conduct a pre-trial investigation of corruption-related criminal acts;
3) co-operate with other law enforcement institutions in the manner laid down by legal acts;
4) collect, store, analyse and sum up the information about corruption and related social and economic phenomena;
5) on the basis of the available information prepare and implement corruption prevention and other measures;
6) jointly with other law enforcement institutions implement crime control and prevention programmes;
7) report in writing, at least twice a year, to the President of the Republic and the Chairman of the Seimas about the results of the Service's activities and submit its proposals how to make the activities more effective.

CHAPTER III
THE STRUCTURE AND ADMINISTRATION OF THE SPECIAL INVESTIGATION SERVICE

Article 9. Establishment and Abolition of the Special Investigation Service and its Units

1. The Service shall be established and abolished by a separate law.

2. The Service may consist of boards, divisions, branches and other units.

3. The units of the Service shall be established, reorganised, and abolished, and the number of the staff shall be approved by the Director of the Service.
Article 10. The Staff of the Special Investigation Service

1. The staff of the Service shall be officers, public servants and contractual employees.

2. The status of the officers of the Special Investigation Service shall be established by this Law, the Law on Public Service and the Statute of the Special Investigation Service, the status of the public servants employed at the Service shall be established by the Law on the Public Service, the status of contractual employees – by the Labour Code and other legal acts.

3. The procedure of appointment and dismissal, suspension from duty and disciplinary responsibility of officers of the Service shall be determined by the Statute of the Service.

Article 11. The Management of the Special Investigation Service

1. A candidate to the post of the Director of the Special Investigation Service shall be nominated to the Seimas by the President of the Republic of Lithuania who shall also appoint and dismiss the Director of the Service, by and with the consent of the Seimas. The Director shall be appointed for a term of five years but he may hold this post no longer than for two terms in succession.

2. The First Deputy Director and the Deputy Director shall be appointed and dismissed by the President of the Republic by the advice of the Director.

3. In the absence of the Director of the Special Investigation Services, one of his Deputies shall act for him.

Article 12. Grounds for the Dismissal of the Director of the Special Investigation Service and His Deputies

1. The Director and Deputy Directors of the Special Investigations Service shall be dismissed from office in the event of:
   1) resignation;
   2) breach of the oath;
   3) coming into effect of a conviction;
   4) ill health attested by an opinion of an appropriate medical examining commission;
   5) transfer by their own consent to another job;
   6) transpiring of the circumstances referred to in Article 15;
   7) termination of their term in office;
8) reaching the age of 62 and 6 months;

9) loss of the citizenship of the Republic of Lithuania.

2. The Director of the Special Investigation Service and his deputies, upon reaching the age referred to in Art. 34 (1) of the Statute of the Special Investigation Service or having served the period provided by law to receive the state pension for officers and servicemen, and if their term of office has not been extended in the prescribed manner or the extended term of office has expired, may be dismissed from office.

3. Disputes relating to the dismissal from office shall be settled in the manner set forth in the Law on Administrative Proceedings.

CHAPTER IV
RIGHTS AND DUTIES OF THE OFFICERS OF THE SPECIAL INVESTIGATION SERVICE AND RESTRICTIONS ON THEIR ACTIVITIES

Article 13. The Rights of the Officers of the Special Investigation Service

1. When pursuing a person suspected of commission of a criminal act, preventing a criminal act which is being committed, verifying the information about abuse of office by state officials and public servants, their links with persons connected with criminal organisations, or when discharging his other official duties, if there grounds and causes provided by law, the officer of the Special Investigations Service shall produce his badge and authority card.

2. An officer of the Special Investigation Service shall have the right:

1) to inspect identity documents and take persons suspected of commission of a crime to the offices of the Special Investigation Service or the police;

2) in cases and in the manner provided by law, to use a weapon, special means and other types of force;

3) when investigating criminal acts or having reasonable information that such acts are being planned, committed or have been committed, to enter, without any hindrance, the premises of enterprises of all types of ownership, agencies and organisations, during office hours, at other time - accompanied by a representative of the administration of the organisation, its owner or his representative;

4) in cases and the manner provided by law, to open the premises or means of transport by force;

5) on his way to the scene of a crime, when in pursuit of a person suspected of commission of a criminal act, when transporting a person in need of an urgent medical assistance to a hospital – to use, without any hindrance, all types of means of transport and communications
belonging to enterprises, agencies, organisations or natural persons, with the exception of those belonging to foreign diplomatic missions or consular representations. At the request of the owner or operator of the vehicle or means of communication, he shall be issued a certificate of the form established by the Director of the Special Investigation Service, under which the losses or damage shall be compensated to him from the funds of the Special Investigation Service;

6) when pursuing a person suspected of commission of a criminal act, who is hiding from the law enforcement agencies, as well as preventing a criminal act which is being committed, to stop motor vehicles and check the documents of the driver, passengers or the vehicle, inspect the cargo and other things in the vehicle;

7) on his way to the scene of the criminal act or in pursuit of a person suspected of commission of a criminal act, to use, in the prescribed manner, the blue flash lights and sound signals of the cars;

8) to obtain information or explanation from persons about criminal acts which are being planned, committed or have been committed, and about other violations of law;

9) when investigating criminal acts or having information that such acts are being planned, committed or have been committed, to inspect economic, financial and other activities of all types of enterprises, agencies and organisations;

10) to carry out other actions which an officer of the Special Investigation Service is authorised to carry out by law.

3. An officer of the Special Investigation Service, in the course of his official duties at the border points, customs and other places and territories with their own special internal rules, shall, upon producing the service badge and his authority card, have the right, if there exist solid grounds:

1) to inspect the documents of individuals and officials, of means of transport and cargoes;

2) to detain the infringers of the border and customs rules and other persons, to frisk the person and search his personal effects and, pursuant to laws regulating the detention procedure and guarantees of the detained persons, to take them to the offices of the border police, customs or other law enforcement institutions;

3) to stop and inspect means of transport, and to seize personal effects or documents in the prescribed manner;

4) to carry out other actions which an officer of the Special Investigations Service is authorised to carry out by law.
Article 14. Duties of the Officers of the Special Investigation Service

An officer of the Special Investigation Service must:

1) honour his oath;

2) upon receiving a report or a statement about a crime which is being planned or committed or some other violation of law, or when witnessing a crime, take all immediate measures to prevent the crime which is being planned or committed or some other violation of law, to seal off the scene of the crime, to identify the witnesses, and to report the accident to the police;

3) to safeguard state and official secrets;

4) to guarantee the rights and lawful interests of the detained persons, to provide first aid and any other necessary assistance to the victims of crimes and violations of law and to the persons who are in a helpless state.

Article 15. Restrictions Applicable to the Officers of the Special Investigation Service

1. It shall be prohibited for the officers of the Special Investigation Service:

1) to be members of political parties or political organisations, to take part in political activities;

2) to be members of administrative bodies of enterprises, agencies or organisations, to receive remuneration for work at such bodies, except where it is necessary for intelligence activities carried out by the Service and for a period not longer than is necessary for attaining the objective of the assignment;

3) to conclude contracts on behalf of the Special Investigation Service with enterprises where they themselves or members of their families are owners or co-owners or to hold by proxy shares owned by third persons;

4) to represent the interests of national or foreign enterprises;

5) to be employed on a labour contract basis, to work in the capacity of an advisor, expert or consultant at enterprises, agencies, organisations and other institutions, also to get remuneration other than laid down by this Law, with the exception of cases when this is necessary for intelligence activities carried out by the Service and for a period not longer than is necessary to attain the objective set by the assignment, also except remuneration for teaching and creative work;

6) to take part in strikes, pickets or rallies which might directly obstruct the activities of the Special Investigation Service or the performance of duties by an officer of the Special Investigation Service, to be a member of a trade union.
2. An officer of the Special Investigation Service may not accept gifts or services directly or indirectly related to his office, except in cases provided by law.

3. An officer of the Special Investigation Service shall also be subject to other restrictions determined by the Law on the State and Official Secrets.

CHAPTER V
LEGAL PROTECTION OF THE OFFICERS OF THE SPECIAL INVESTIGATION SERVICE

Article 16. Independence of the Officers of the Special Investigation Service

1. While discharging their official duties and carrying out assignments of their superiors, the officers of the Special Investigation Service shall be guided by laws and other legal acts.

2. State institutions and agencies or their employees, political parties, public organisations and movements, the mass media, other natural or legal persons shall be prohibited from interfering with operational and other activities carried out in the line of duty by the officers of the Special Investigation Service.

3. Meetings, pickets and other actions on the premises of the Special Investigation Service, and within the distance of 25 metres from the buildings of the Special Investigation Service, shall be prohibited.

4. Filming, taking photos, making audio or video recordings on the premises of the Special Investigation Service shall be permitted only subject to an authorisation by the Director of the Special Investigation Service.

Article 17. Guarantees of the Activities of the Special Investigation Service Officers

1. A pre-trial investigation where an officer of the Special Investigation Service is a suspect may be initiated only by the Prosecutor General of the Republic of Lithuania or his Deputy.

2. In the course of their official duties, the officers of the Service may not be taken to the police or detained, body search, the search of their personal effects and their means of transport shall be prohibited, without participation of the head of the appropriate Special Investigation Service unit or a person authorised by him, with the exception of cases when the officer is detained in flagrante delicto.

3. Information about the officers of the Service who are carrying out or who have carried out special assignments shall be a state secret and may be used and declassified only in cases and the manner set forth by legislation of the Republic of Lithuania.
4. Protection of the officers of the Service and their family members may be provided in the manner prescribed by the Law on the Protection of the Participants of the Criminal Procedure and of Operational Activities, Officers of Judicial and Law Enforcement Institutions from Tampering.

5. Data on the officers of the Special Investigation Service shall not be submitted to the Register of Public Servants.

CHAPTER VI
USE OF FORCE

Article 18. The Right of Officers of the Special Investigation Service to Use Force

1. This Law and the Statute of the Special Investigation Service shall authorise an officer of the Special Investigation Service, when performing the tasks assigned to him, to insist that individuals obey his lawful orders. In the event of disobeying the orders or resistance, the officer of the Service has the right to resort to the use of force.

2. The officers of the Special Investigation Service have the right to possess, keep and use an authorised firearm, explosives and explosive substances.

3. Types of force and grounds for the use of a firearm and explosive substances and the manner of their use shall be regulated by the Statute of the Special Investigation Service and the Law on the Control of Weapons and Ammunition.

CHAPTER VII
SOCIAL GUARANTEES OF THE OFFICERS OF THE SPECIAL INVESTIGATION SERVICE

Article 19. Principles of Social Guarantees

1. Officers of the Special Investigation Service shall be entitled to social guarantees established by law for the staff of law enforcement institutions.

2. The rate of the basic salary of the officers of the Special Investigation Service shall be established by the Law on the Public Service, while the rate and the manner of payment of increments, additional pays, compensations and benefits shall be established by the Statute of the Special Investigation Service of the Republic of Lithuania and other legal acts.

3. The manner of granting pensions to officers of the Special Investigation Service shall be specified by the Statute of the Special Investigation Service of the Republic of Lithuania, laws and other legal acts.
CHAPTER VIII
FINANCING OF THE SPECIAL INVESTIGATION SERVICE, MATERIAL SUPPLIES AND CONTROL OF ITS ACTIVITIES

Article 20. Financing of the Special Investigation Service

1. The Special Investigation Service shall be financed from the state budget of Lithuania and shall manage the allocations assigned to it.

2. The Special Investigation Service may have its own special funds for operational activities.

3. To implement the objectives and functions provided for in this law, the Special Investigation Service shall have the right in the manner prescribed by law to receive assistance from foreign state institutions and agencies and international organizations.

Article 21. Material and Technical Supplies of the Special Investigation Service

1. Material and technical supplies for the Special Investigation Service shall be provided from the funds assigned to it.

2. The assets assigned by the State to the Special Investigation Service shall be managed, used and disposed by it in trust.

Article 22. Supervision of the Activities of the Special Investigation Service

1. The Seimas of the Republic of Lithuania shall carry out the parliamentary control of the Special Investigation Service.

2. Pre-trial investigations conducted by the Special Investigation Service shall be controlled, organized and supervised by a prosecutor.

3. The internal regulations of the Special Investigation Service shall be determined by the Director of the Service.

CHAPTER IX
FINAL PROVISIONS

Article 23. Validity of Other Legal Acts and Tasks of the Government

1. Legal acts regulating social guarantees of the officers of the Special Investigation Service adopted before entry into force of this Law, shall remain effective until appropriate legal acts replacing them and implementing this Law are adopted, but not longer than specified in paragraph 2 of this Article
2. The Government shall:

1) within 3 months from entry into force of this Law, bring into line with this Law the subordinate legislation which does not conform with the provisions of this Law;

2) within 2 months from entry into force of this Law, amend the resolution of the Government of the Republic of Lithuania establishing the list of positions of law officers with account of the list of positions of the Special Investigation Service;

3) within 2 months from entry into force of this Law, amend the procedure of accessing the data of state cadastres, classificators and registers, and include the Special Investigation Service into the list of state government and administration institutions which have the right to obtain free of charge from keepers of state cadastres, classificators and registers the data of these cadastres, classificators and registers;

4) within 3 months from entry into force of this Law, establish the procedure and rates of reciprocal services provided by entities of operational activities and access to the information in the possession of the Operational Activities Service, and Lithuania National Bureau of Interpol of the Police Department, also establish the procedure on how entities of operational activities make use of the services of other units of the Ministry of the Interior (The Department of Information Technology and Communications, the Migration Department, the Bureau of Addresses and Information and the Health Care Service).

Article 24. Entry into Force of the Law on the Special Investigation Service

The Law on the Special Investigation Service shall enter into force on June 1, 2000.

I promulgate this Law passed by the Seimas

PRESIDENT OF THE REPUBLIC

VALDAS ADAMKUS
Appendix H

United States Code – Selected Articles on Corruption
§ 3110. Employment of Relatives; Restrictions

(a) For the purpose of this section –

(1) “agency” means –

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) “public official” means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen
events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

§ 7353. Gifts to Federal Employees

(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person –

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b) (1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.
For purposes of this section—

(1) the term “supervising ethics office” means--

(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;

(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

(D) the Office of Government Ethics for all executive branch officers and employees; and

(E) in the case of legislative branch officers and employees other than those specified in subparagraphs (A) and (B), the committee referred to in either such subparagraph to which reports filed by such officers and employees under title I of the Ethics in Government Act of 1978 are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees; and

(2) the term “officer or employee” means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

§ 207. Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches

(a) Restrictions on all officers and employees of the executive branch and certain other agencies.

(1) Permanent restrictions on representation on particular matters. Any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter—
(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility. Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter –

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) Clarification of restrictions. The restrictions contained in paragraphs (1) and (2) shall apply –

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.
(b) One-year restrictions on aiding or advising.

(1) In general. Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) Definition. —For purposes of this paragraph—

(A) the term “trade negotiation” means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term “treaty” means an international agreement made by the President that requires the advice and consent of the Senate.

(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.

(1) Restrictions. In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) Persons to whom restrictions apply. (A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5,
(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the National Defense Authorization Act for Fiscal Year 2004, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above; or

(v) assigned from a private sector organization to an agency under chapter 37 of title 5.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that –

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) Restrictions on very senior personnel of the executive branch and independent agencies.

(I) Restrictions. In addition to the restrictions set forth in subsections (a) and (b), any person who –

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or
(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) Persons who may not be contacted. The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are –

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(c) Restrictions on Members of Congress and officers and employees of the legislative branch.

(1) Members of Congress and elected officers. (A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) Personal staff. (A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) Committee staff. Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) Leadership staff. (A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) Other legislative offices. (A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.
(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) Limitation on restrictions. (A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) Definitions. As used in this subsection –

(A) the term “committee of Congress” includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term “employee of the House of Representatives” means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term “employee of the Senate” means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term “employee of any other legislative office of the Congress” means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;
(H) the term “employee on the leadership staff of the House of Representatives” means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term “employee on the leadership staff of the Senate” means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term “Member of Congress” means a Senator or a Member of the House of Representatives;

(K) the term “Member of the House of Representatives” means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term “Member of the leadership of the House of Representatives” means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term “Member of the leadership of the Senate” means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) Restrictions relating to foreign entities.

(I) Restrictions. Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection –

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.
(2) Special rule for Trade Representative. With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) Definition. For purposes of this subsection, the term “foreign entity” means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) Special rules for detailees. For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) Designations of separate statutory agencies and bureaus.

(1) Designations. For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) Inapplicability of designations. No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) Definitions. For purposes of this section –

(1) the term “officer or employee”, when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include –

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term “participated” means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and
the term “particular matter” includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) Exceptions.

(1) Official government duties. The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) State and local governments and institutions, hospitals, and organizations. The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of –

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) International organizations. The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) Special knowledge. The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual’s own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) Exception for scientific or technological information. The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.
(6) **Exception for testimony.** Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence –

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) **Political parties and campaign committees.** (A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to –

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than –

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph –

(i) the term “candidate” means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term “authorized committee” means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives
contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term “national committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term “national Federal campaign committee” means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term “State committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

(vi) the term “political party” means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k) (1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify –
(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

(l) Contract advice by former details. Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

§ 216. Penalties and Injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:
(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.
Appendix I

United States Ethics in Government Act of 1978
Title I – Financial Disclosure Requirements of Federal Personnel

§ 101. Persons Required to File

(a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(b) (1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 377, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).
(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are –

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3106 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(7) the Director of the Office of Government Ethics and each designated agency ethics official;

(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission of appointment from the President;
(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13);

(11) a judicial officer as defined under section 109(10); and

(12) a judicial employee as defined under section 109(8).

(g) (1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of –

(i) the last day of the individual's service in such area during such designated period; or

(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year –

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixty-sixth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that –

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,
it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

public financial disclosure by such individual is not necessary in the circumstances.

§ 102. Contents of Reports

(a) Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000,

(vii) greater than $100,000 but not more than $1,000,000,

(viii) greater than $1,000,000 but not more than $5,000,000, or

(ix) greater than $5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as
personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

(B) The identity of the source and a brief description (including a travel itinerary, dates, and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater and received during the preceding calendar year.

(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year, excluding –

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000 –

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.
(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report –

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust, unless the trust instrument was executed prior to July 24, 1995 and precludes the beneficiary from receiving information on the total cash value of any interest in the qualified blind trust.

(b) Each report filed pursuant to subsections (a), (b), and (c) of section 101 shall include a full and complete statement with respect to the information required by –

(A) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(C) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.
(2)(A) In lieu of filling out one or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the supervising ethics office for the branch in which such individual serves or pursuant to a specific written determination by such office for a reporting individual.

(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

(c) In the case of any individual described in section 101(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), (5), and (8) of subsection (a) are as follows:

(A) not more than $15,000;

(B) greater than $15,000 but not more than $50,000;

(C) greater than $50,000 but not more than $100,000;

(D) greater than $100,000 but not more than $250,000;

(E) greater than $250,000 but not more than $500,000;

(F) greater than $500,000 but not more than $1,000,000;

(G) greater than $1,000,000 but not more than $5,000,000;

(H) greater than $5,000,000 but not more than $25,000,000;

(I) greater than $25,000,000 but not more than $50,000,000; and

(J) greater than $50,000,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth
of a business partnership, the equity value of an individually owned business, or with respect to
other holdings, any recognized indication of value, but such individual shall include in his report a
full and complete description of the method used in determining such value. In lieu of any value
referred to in the preceding sentence, an individual may list the assessed value of the item for tax
purposes, adjusted to reflect the market value of the item used for the assessment if the assessed
value is computed at less than 100 percent of such market value, but a full and complete description
of the method used in determining such assessed value shall be included in the report.

(e) (1) Except as provided in the last sentence of this paragraph, each report required by
section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of
this section respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which
exceed $1,000 and the source and amount of any honoraria received by a spouse, except that, with
respect to earned income (other than honoraria), if the spouse is self-employed in business or a
profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to
income derived by a spouse or dependent child from any asset held by the spouse or dependent
child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse or dependent child which are not
received totally independent of the relationship of the spouse or dependent child to the reporting
individual, the identity of the source and a brief description of gifts of transportation, lodging, food,
or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse or dependent child which
are not received totally independent of the relationship of the spouse or dependent child to the
reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all
information required to be reported under these paragraphs other than items (i) which the reporting
individual certifies represent the spouse's or dependent child's sole financial interest or responsibility
and which the reporting individual has no knowledge of, (ii) which are not in any way, past or
present, derived from the income, assets, or activities of the reporting individual, and (iii) from
which the reporting individual neither derives, nor expects to derive, any financial or economic
benefit.

(F) For purposes of this section, categories with amounts or values greater than
$1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or
liabilities of spouses and dependent children only if the income, assets, or liabilities are held jointly
with the reporting individual. All other income, assets, or liabilities of the spouse or dependent
children required to be reported under this section in an amount or value greater than $1,000,000
shall be categorized only as an amount or value greater than $1,000,000.
Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f) (Omitted).

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (a), (d), or (e) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

(i) A reporting individual shall not be required under this title to report –

(1) financial interests in or income derived from –

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.

§ 103. Filing of Reports

(a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code, shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal
Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i) of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers and those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 101(c) who is a candidate for nomination or election to the Office of President or Vice President shall file the reports required by this title with the Federal Election Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) Each supervising ethics office shall develop and make available forms for reporting the information required by this title.

(h) (I) The reports required under this title shall be filed by a reporting individual with –

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Chief Administrative Officer of the House of Representatives, an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; and

(II) the Secretary of the Senate, in the case of a Senator, an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate, an officer or employee of the General Accounting Office, the Office of Technology Assessment, or the Office of the Attending Physician (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Senator; and

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agency or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989--
(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

(B) the Judicial Conference with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position).

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(j) (1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

(2) A copy of each report filed under this title with the Secretary of the Senate shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the 7-day period beginning on the day the report is filed.

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

§ 104. Failure to File or Filing False Reports

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $10,000.

(b) The head of each agency, each Secretary concerned, the Director of the Office of Government Ethics, each congressional ethics committee, or the Judicial Conference, as the case
may be, shall refer to the Attorney General the name of any individual which such official or
committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified
or willfully failed to file information required to be reported. Whenever the Judicial Conference
refers a name to the Attorney General under this subsection, the Judicial Conference also shall
notify the judicial council of the circuit in which the named individual serves of the referral.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, the
Office of Personnel Management, a congressional ethics committee, and the Judicial Conference,
may take any appropriate personnel or other action in accordance with applicable law or regulation
against any individual failing to file a report or falsifying or failing to report information required to
be reported.

(d) (1) Any individual who files a report required to be filed under this title more than 30
days after the later of –

(A) the date such report is required to be filed pursuant to the provisions of this title and
the rules and regulations promulgated thereunder; or

(B) if a filing extension is granted to such individual under section 101(g), the last day of
the filing extension period,

shall, at the direction of and pursuant to regulations issued by the supervising ethics office, pay a
filing fee of $200. All such fees shall be deposited in the miscellaneous receipts of the Treasury.
The authority under this paragraph to direct the payment of a filing fee may be delegated by the
supervising ethics office in the executive branch to other agencies in the executive branch.

(2) The supervising ethics office may waive the filing fee under this subsection in
extraordinary circumstances.

§ 105. Custody of and Public Access to Reports

(a) Each agency, each supervising ethics office in the executive or judicial branch, the Clerk of
the House of Representatives, and the Secretary of the Senate shall make available to the public, in
accordance with subsection (b), each report filed under this title with such agency or office or with
the Clerk or the Secretary of the Senate, except that –

(I) this section does not require public availability of a report filed by any individual in
the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-
Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence
activities in any agency of the United States, if the President finds or has found that, due to the
nature of the office or position occupied by such individual, public disclosure of such report would,
be revealing the identity of the individual or other sensitive information, compromise the national
interest of the United States; and such individuals may be authorized, notwithstanding section
104(a), to file such additional reports as are necessary to protect their identity from public disclosure
if the President first finds or has found that such filing is necessary in the national interest; and
any report filed by an independent counsel whose identity has not been disclosed by the division of the court under chapter 40 of title 28, United States Code, and any report filed by any person appointed by that independent counsel under such chapter, shall not be made available to the public under this title.

(b) (1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) Notwithstanding paragraph (1), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating –

(A) that person's name, occupation and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in section 109(8) or 109(10) of this Act [sections 109(8) or 109(10) of Appendix 4 of this title] if a finding is made by the Judicial Conference, in consultation with United States Marshall Service, that revealing personal and sensitive information could endanger that individual.

(B) A report may be redacted pursuant to this paragraph only –

(i) to the extent necessary to protect the individual who filed the report; and

(ii) for as long as the danger to such individual exists.
The Administrative Office of the United States Courts shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an annual report with respect to the operation of this paragraph including—

(i) the total number of reports redacted pursuant to this paragraph;

(ii) the total number of individuals whose reports have been redacted pursuant to this paragraph; and

(iii) the types of threats against individuals whose reports are redacted, if appropriate.

The Judicial Conference, in consultation with the Department of Justice, shall issue regulations setting forth the circumstances under which redaction is appropriate under this paragraph and the procedures for redaction.

This paragraph shall expire on December 31, 2005, and apply to filings through calendar year 2005.

It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $10,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

Any report filed with or transmitted to an agency or supervising ethics office or to the Clerk of the House of Representatives or the Secretary of the Senate pursuant to this title shall be retained by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 101(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to
§ 106. Review of Reports

(a) (1) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within sixty days after the date of transmittal.

(2) Each congressional ethics committee and the Judicial Conference shall make provisions to ensure that each report filed under this title is reviewed within sixty days after the date of such filing.

(b) (1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by the congressional ethics committee, or a person designated by the Judicial Conference, after reviewing any report under subsection (a) –

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

(3) If the Director of the Office of Government Ethics, the Secretary concerned, the designated agency ethics official, a person designated by a congressional ethics committee, or a person designated by the Judicial Conference, reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official or committee shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official or committee be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate –

(A) divestiture,
(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the supervising ethics office may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch (other than in the Foreign Service or the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency, the congressional ethics committee, or the Judicial Conference, for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) Each supervising ethics office may render advisory opinions interpreting this title within its respective jurisdiction. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

§ 107. Confidential Reports and Other Additional Requirements

(a) (1) Each supervising ethics office may require officers and employees under its jurisdiction (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as the supervising ethics office may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in rules or regulations prescribed by the supervising ethics office, and may be less extensive than otherwise required by this title, or more extensive when determined by the supervising ethics office to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or
the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 101 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Subsections (a), (b), and (d) of section 105 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

§ 108. Authority of Comptroller General

(a) The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

(b) No later than December 31, 1992, and regularly thereafter, the Comptroller General shall conduct a study to determine whether the provisions of this title are being carried out effectively.

§ 109. Definitions

For the purposes of this title, the term –

(1) “congressional ethics committees” means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) “dependent child” means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who –

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;
(3) “designated agency ethics official” means an officer or employee who is designated to administer the provisions of this title within an agency;

(4) “executive branch” includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office, and any other entity or administrative unit in the executive branch;

(5) “gift” means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include –

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) “honoraria” has the meaning given such term in section 505 of this Act;

(7) “income” means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(8) “judicial employee” means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;
(9) “Judicial Conference” means the Judicial Conference of the United States;

(10) “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

(11) “legislative branch” includes –

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the General Accounting Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) “Member of Congress” means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) “officer or employee of the Congress” means –

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;

(B)(i) each officer or employee of the legislative branch who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(ii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is
equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(14) “personal hospitality of any individual” means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) “reimbursement” means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are--

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971;

(16) “relative” means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(17) “Secretary concerned” has the meaning set forth in section 101(a)(9) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration;

(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(C) the Secretary of State, with respect to matters concerning the Foreign Service;

(18) “supervising ethics office” means—

(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;
(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees;

(19) “value” means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

§ 110. Notice of Actions Taken to Comply with Ethics Agreements

(a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, a Senate confirmation committee, a congressional ethics committee, or the Judicial Conference, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, the appropriate committee of the Senate, the congressional ethics committee, or the Judicial Conference, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the appropriate supervising ethics office within the time prescribed in the last sentence of subsection (a).

§ 111. Administration of Provisions

The provisions of this title shall be administered by--

(1) the Director of the Office of Government Ethics, the designated agency ethics official, or the Secretary concerned, as appropriate, with regard to officers and employees described in paragraphs (1) through (8) of section 101(f);
(2) the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives, as appropriate, with regard to officers and employees described in paragraphs (9) and (10) of section 101(f); and

(3) the Judicial Conference in the case of an officer or employee described in paragraphs (11) and (12) of section 101(f).

The Judicial Conference may delegate any authority it has under this title to an ethics committee established by the Judicial Conference.

Title II – Repealed

Title III - Repealed

Title IV – Office of Government Ethics

§ 401. Establishment; Appointment of Director

(a) There is established an executive agency to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the “Director”), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years.

(c) The Director may –

(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.
§ 402. Authority and Functions

(a) The Director shall provide, in consultation with the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include –

(1) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;
(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14) providing information on and promoting understanding of ethical standards in executive agencies; and

(15) developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d) (1) The Director shall, by the exercise of any authority otherwise available to the Director under this title, ensure that each executive agency has established written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements filed by any of its officers or employees.

(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order.

(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which –

(1) each executive agency shall be required to submit to the Office an annual report containing –

(A) a description and evaluation of the agency's ethics program, including any educational, counseling, or other services provided to officers and employees, in effect during the period covered by the report; and

(B) the position title and duties of –
(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and

(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion of such period; and

(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and

(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law.

(f) (1) In carrying out subsection (b)(9) with respect to executive agencies, the Director –

(A) may –

(i) order specific corrective action on the part of an agency based on the failure of such agency to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or

(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and

(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide).

(2)(A) In carrying out subsection (b)(9) with respect to individual officers and employees –

(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director considers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director –

(I) may recommend to the head of the officer's or employee's agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or
dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; and

(II) shall notify the President in writing if the Director determines that the head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action;

(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director –

(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; and

(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, notify, in writing, the head of the officer's or employee's agency of the officer's or employee's noncompliance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and

(iv) if the Director finds that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director –

(I) may recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and

(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.

(B)(i) In order to carry out the Director's duties and responsibilities under subparagraph (A)(iii) or (iv) with respect to individual officers and employees, the Director may conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

(ii)(I) Subject to clause (iv) of this subparagraph, before any finding is made under subparagraphs (A)(iii) or (iv), the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

(iii) Subject to clause (iv) of this subparagraph, before any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a
hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title 2 of this Act. For those findings and orders, the procedures in section 206 of this Act shall apply.

(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to –

(A) the officer or employee who is the subject of such order; and

(B) the head of officer's or employee's agency or, if such officer or employee is the agency head, to the President.

(4) For purposes of paragraphs (2)(A)(ii), (iii), (iv), and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than by a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officer's or employee's appointing authority.

(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or Executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this subsection shall affect the application of the provisions of section 552(b) of title 5, United States Code, to any record so identified.

§ 403. Administrative Provisions

(a) Upon the request of the Director, each executive agency is directed to –

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

The authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting investigations pursuant to the Office of Government Ethics responsibilities under this Act. The head of any agency may detail such
personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act.

(b) (1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

(2) No gift may be accepted –

(A) that attaches conditions inconsistent with applicable laws or regulations; or

(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

§ 404. Rules and Regulations

In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Director shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

§ 405. Authorization of Appropriations

There are authorized to be appropriated to carry out this title such sums as may be necessary for each of fiscal years 2002 through 2006.

§ 408. Reports to Congress

The Director shall, no later than April 30 of each year in which the second session of a Congress begins, submit to the Congress a report containing--

(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Director's functions and responsibilities under this title; and

(2) such other information as the Director may consider appropriate.
Title V – Government-Wide Limitations on Outside Earned Income and Employment

§ 501. Outside Earned Income Limitation

(a) Outside earned income limitation.

(1) Except as provided by paragraph (2), a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

(2) In the case of any individual who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member or such an officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member or such officer or employee during such calendar year and the denominator of which is 365.

(b) Honoraria prohibition. An individual may not receive any honorarium while that individual is a Member, officer or employee.

(c) Treatment of charitable contributions. Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

§ 502. Limitations on Outside Employment

(a) Limitations. A Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule shall not –
(1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;

(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

(3) receive compensation for practicing a profession which involves a fiduciary relationship;

(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.

(b) Teaching compensation of justices and judges retired from regular active service.-- For purposes of the limitation under section 501(a), any compensation for teaching approved under subsection (a)(5) of this section shall not be treated as outside earned income —

(1) when received by a justice of the United States retired from regular active service under section 371(b) of title 28, United States Code;

(2) when received by a judge of the United States retired from regular active service under section 371(b) of title 28, United States Code, for teaching performed during any calendar year for which such judge has met the requirements of subsection (f) of section 371(b) of title 28, United States Code, as certified in accordance with such subsection; or

(3) when received by a justice or judge of the United States retired from regular active service under section 372(a) of title 28, United States Code.

§ 503. Administration

This title shall be subject to the rules and regulations of —

(1) and administered by —

(A) the Committee on Standards of Official Conduct of the House of Representatives, with respect to Members, officers, and employees of the House of Representatives; and

(B) in the case of Senators and legislative branch officers and employees other than those officers and employees specified in subparagraph (A), the committee to which reports filed by such officers and employees under title I are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees;
the Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and

and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

§ 504. Civil Penalties

(a) Civil action. The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than $10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.

(b) Advisory opinions. Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

§ 505. Definitions

For purposes of this title:

(1) The term “Member” means a Senator in, a Representative in, or a Delegate or Resident Commissioner to, the Congress.

(2) The term “officer or employee” means any officer or employee of the Government except any special Government employee (as defined in section 202 of title 18, United States Code).

(3) The term “honorarium” means a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

(4) The term “travel expenses” means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

(5) The term “charitable organization” means an organization described in section 170(c) of the Internal Revenue Code of 1986.
Appendix J

United States Standards of Ethical Conduct for Employees of the Executive Branch (Selected Articles)
SUBPART B – GIFTS FROM OUTSIDE SOURCES

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

   (1) From a prohibited source; or

   (2) Given because of the employee's official position.

(b) Relationship to illegal gratuities statute. Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) Limitations on use of exceptions. Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:

   (1) Accept a gift in return for being influenced in the performance of an official act;

   (2) Solicit or coerce the offering of a gift;

   (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than $6 and the aggregate value from any one manufacturer does not exceed the $50 aggregate limitation in § 2635.204(a) on
de minimis gifts of $20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term “public official” is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(f).

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Agency has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;
(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-53.

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about $20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only $20, the market value of the ticket is its $250 face value.
(d) Prohibited source means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

Note: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.
Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) Vendor promotional training means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of $20 or less. An employee may accept unsolicited gifts having an aggregate market value of $20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed $50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $20, the employee may not pay the excess value over $20 in order to accept that portion of the gift or those gifts worth $20. Where the aggregate value of tangible items offered on a single occasion exceeds $20, the employee may decline any distinct and separate item in order to accept those items aggregating $20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of $30 each. The aggregate market value of the gifts offered on this single occasion is $60, $40 more than the $20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full $60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth $10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly $50 limitation on gifts of $20 or less from any one source, the employee received $40 during the year. This exceeds the $50 limit. After accompanying the employee received the $40, the employee may decline any distinct and separate item in order to accept those items aggregating $20 or less.
person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the $50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at § 2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on “The Chernobyl Experience.” While at the conference, the employee may accept a gift of $20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of $20 or less accepted under § 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a $15 computer program disk at X Company's booth, a $12 appointments calendar at Y Company's booth, and a deli lunch worth $8 from Z Company. The employee may accept all three of these items because they do not exceed $20 per source, even though they total more than $20 at this single occasion.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is $500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.
(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by § 2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

   (i) Offered to members of a group or class in which membership is unrelated to Government employment;

   (ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

   (iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of $50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the $50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its $5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) Awards and honorary degrees.

(1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide...
award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of $200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth $200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds $200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;
Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a $50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.
Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) Widely attended gatherings and other events —

(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of $285 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) Determination of agency interest. The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees.
(4) Free attendance. For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying spouse or other guest. When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of $400 and anticipates attendance of approximately 400. An Air Force contractor pays $2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid $2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the non-sponsor contractor because the market value of the gift exceeds $285.

Example 2: An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets
for the event cost $285 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed $285. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be $570 and the invitation is from a person other than the sponsor of the event.

Example 3: An employee of the Department of Energy (DOE) and his wife have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 4: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a), he may accept a token of appreciation for his speech having a market value of $20 or less.

Example 5: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a $15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the $20 de minimis exception at § 2635.204(a).

Example 6: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

(1) The invitation is from a person who is not a prohibited source; and

(2) No fee is charged to any person in attendance.
Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC, FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(i) Gifts to the President or Vice President. Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.
(k) Gifts authorized by supplemental agency regulation. An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(l) Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

Note: 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

§ 2635.205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth $200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor $200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.
(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a $300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g), he may attend if he reimburses the donor the $300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

SUBPART H – OUTSIDE ACTIVITIES

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;
(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.

d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty;

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;

(5) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;
(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 et seq.;

(7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees; and

(8) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not
currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of § 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

§ 2635.803 Prior approval for outside employment and activities.

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) Presidential appointees to full-time noncareer positions. A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) Covered noncareer employees. Covered noncareer employees, as defined in § 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in §§ 2636.301 through 2636.304 of this chapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in §§ 2636.305 through 2636.307 of this chapter.

(c) Definitions. For purposes of this section:

(1) Outside earned income has the meaning set forth in § 2636.303(b) of this chapter, except that § 2636.303(b)(8) shall not apply.
(2) Presidential appointee to a full-time noncareer position means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS-9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) Restriction. An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) Additional restriction applicable to certain special Government employees.

(1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;
(ii) Serves on a commission established by statute; or

(iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) Authorization to serve as an expert witness. Provided that the employee's testimony will not violate any of the principles or standards set forth in this part, authorization to provide expert witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

(1) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or

(2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i).

(d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

§ 2635.806 Participation in professional associations.

[Reserved]

§ 2635.807 Teaching, speaking and writing.

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

(1) Relationship to other limitations on receipt of compensation. The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:

(i) The requirement contained in § 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(ii) The prohibitions and limitations in § 2635.804 and in § 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

(2) Definitions. For purposes of this paragraph:
(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(2) Any ongoing or announced policy, program or operation of the agency; or

(3) In the case of a noncareer employee as defined in § 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

(4) The restrictions in paragraphs (a)(2)(i)(E)(2) and (3) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(1) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

Note: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject
Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

Example 4: An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.

Example 5: An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.

Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for
writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.

Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.

Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.

Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.

(ii) Agency has the meaning set forth in § 2635.102(a), except that any component of a department designated as a separate agency under § 2635.203(a) shall be considered a separate agency.

(iii) Compensation includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;
(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place;

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity; or

(D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

Note to Paragraph (a)(2)(iii): Independent of § 2635.807(a), other authorities, such as 18 U.S.C. 209, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses. In addition, employees who file financial disclosure reports should be aware that, subject to applicable thresholds and exclusions, travel and travel reimbursements accepted from sources other than the United States Government must be reported on their financial disclosure reports.

Example 1 to paragraph (a)(2)(iii): A GS-15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a $200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speaking activity is related to her official duties under § 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a GS-15 employee.

Example 2 to paragraph (a)(2)(iii): Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to official duties under § 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in section 2636.303(a) of this chapter, the travel expenses are prohibited compensation as to her.

Example 3 to paragraph (a)(2)(iii): A GS-14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(1) and (a)(2)(i)(E)(2) of § 2635.807, but because he is not a covered noncareer employee as defined in section 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other
hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. 1353 and the implementing General Services Administration regulation, as codified under 41 CFR chapter 304, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under 31 U.S.C. 1353, they are not prohibited compensation under § 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. 4111, or the foreign gifts law, 5 U.S.C. 7342.

(iv) Receive means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(v) Particular matter involving specific parties has the meaning set forth in § 2637.102(a)(7) of this chapter.

(vi) Personal and substantial participation has the meaning set forth in § 2635.402(b)(4).

(3) Exception for teaching certain courses. Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or
(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government.

Example 2: An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.

Example 3: An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

Note: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product
contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

§ 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) Definitions. For purposes of this section:

(1) Fundraising means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) Participation in the conduct of an event means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used
by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

Note: This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost $150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) Official speech means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g)(1), he may partake of the meal provided to him at the dinner.
(4) Personally solicit means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) Fundraising in an official capacity. An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) Fundraising in a personal capacity. An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of § 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties;

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.
Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.
Appendix K

OECD Regional Anti-Corruption Action Plan: Summary of Assessment and Recommendations for Ukraine
Regional Anti-Corruption Action Plan
for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine

Ukraine
Summary of assessment and recommendations

Endorsed on 21 January 2004

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General assessment

The development of a legal framework to address corruption began in 1995, was continued throughout 1997, and is since 1998 governed by a seven-year Presidential strategy – the ‘Anti-Corruption Concept for 1998-2005’. The legal framework for fighting against corruption builds on a significant number of laws and regulations; the effectiveness and interrelation of these legal acts is often difficult to assess, in part due to their overwhelming quantity.

The anti-corruption strategy is overseen by the Coordinating Committee against Corruption, which reports to the President. There is also a committee of the Supreme Rada (the Parliament) that deals with organized crime and corruption. Each of the line ministries charged with responsibilities in anti-corruption policies has specialized units to that effect: at the Ukrainian Interior Ministry – the Anti-Corruption Division of the Ukrainian Interior Ministry Main Department Against Organized Crime; at the Ukrainian Security Service – the Chief Department Against Corruption and Organized Crime, “K”; at the Ukrainian State Tax Administration – the Anti-Corruption and Security Department of the Tax Police. The Civil Service also has responsibilities to prevent corruption among civil servants. Ukraine has recently established a specialised unit within the Prosecution service to deal explicitly with corruption and organised crime.

While Ukraine has a rich array of legal instruments and broad strategic documents, efficient coordination, implementation and enforcement remain insufficient. Currently, the adoption and enforcement of corruption provisions needs to be channeled to a greater extent towards prevention.

General recommendations

In the near future, Ukraine should analyse and take stock of progress made in implementing the national anti-corruption policies currently embodied in numerous legal and policy documents. Such a critical and transparent analysis would help to identify clear priorities, focus at implementation and build broad public support for anti-corruption measures.

In the framework of this exercise, it is recommended that Ukraine analyses and introduces improvements in its current institutional set up in order to streamline and strengthen policy formulation and to coordinate capacities of an independent anti-corruption body responsible for
strategic, analytical, preventive and coordinative tasks of the fight against corruption. Ukraine needs to concentrate repressive measures against corruption by enhancing inter-agency cooperation between investigation and law-enforcement agencies.

Strengthening and building up of exemplary professional and corruption-free agencies, and conducting vigorous investigation and prosecutions in selected corruption-prone institutions are necessary to demonstrate the possibility of a positive example and to make a wider positive impact in the society.

It is difficult to tackle corruption in all public agencies at the same time. It is therefore necessary to identify a limited number of public institutions or sectors where corruption is most widespread and particularly harmful. The regulatory and institutional settings and operational practices of such agencies or sectors will need to be reviewed and reformed in order to minimize factors which favour corruption (e.g. by limiting discretion allowed by the gaps in regulations, strengthening internal control, introducing preventive actions, recruiting new officials through transparent procedures etc.).

### Specific recommendations

1. **On the basis of the analysis of the implementation of “the Anti-corruption Concept for 1998-2005”** update the national anti-corruption strategy, which will take into account the extent of corruption in the society and its patterns in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems. The strategy should focus at the implementation of priority pilot projects with preventive and repressive aspects in selected public institutions with a high risk of corruption, including the elaboration of anti-corruption action plans. The strategy should envisage effective monitoring and reporting mechanisms.

2. **On a conceptual level, more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative or organisational gaps that create corruption-prone environments.** Preventive actions should not only focus on codes of ethics and similar preventive devices, but also reforming regulatory frameworks to reduce discretionary powers of civil servants, ‘open government’ measures such as increased transparency of decision-making procedures, access to information and public participation.

3. **Strengthen the Anti-corruption Coordination Committee by ensuring high moral and ethical standards of its members, who should include representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.).** Strengthen the independent status of the Committee, ensure a more appropriate frequency of the Committee’s meetings (currently it meets twice a year), strengthen its staff to carry out analytical tasks, and ensure sufficient resources. Upgrade statistical monitoring and reporting of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor’s Offices, and the Courts, which would enable comparisons among institutions – by introducing strict reporting mechanisms on the basis of a harmonised methodology to the Committee. Encourage stronger links, cooperation and exchange of information between the Committee and the Parliamentary Committee.

4. **Concentrate law enforcement capacities in the specific area in the fight against corruption, which are currently fragmented, and develop operational specialised anti-corruption prosecution units, consider establishing a national Specialised Anti-corruption Unit, specialised and empowered to detect, investigate and prosecute corruption**
offences. Such a Unit could be an integrated, but structurally independent, or separate unit of an existing law-enforcement agency and/or the Prosecution Service. Apart from working on actual important corruption cases, one of the main tasks of such a Unit would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.). Ensure that sub-national (oblast and local) levels of law enforcement agencies are properly integrated.

II. LEGISLATION AND CRIMINALISATION OF CORRUPTION

General assessment and recommendations

Ukraine has criminalised active (Art. 369) and passive (Art. 368) corruption in the public sector in its Criminal Code. Additionally, the Law on the Fight against Corruption provides for a broad administrative liability of civil servants.

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that there is room for improvements, which would bring the above mentioned criminal offences in line with international standards (such as the Council of Europe’s Criminal Law Convention on Corruption, the United Nation’s Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), and which would in particular ensure the complementarities and harmonisation of relevant offences between the administrative liability under the Law on the Fight against Corruption and the Criminal Code.

Specific recommendations


6. Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards. In particular, clarify elements of bribery through a third person; delineation of offences between an offer/solicitation and extortion, criminalise trading in influence. Consider increasing the punishments for active and passive bribery as well as the statute of limitations for corrupt offences.

7. Harmonise the concept of an “official” from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.

8. Ensure the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

9. Introduce a proposal to amend the Criminal Code ensuring that the ‘confiscation of proceeds’ measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for
confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

10. Introduce a proposal to criminalise non-reporting of instances of possible corruption of public officials, if as a result of the investigation it can be shown that corruption in fact existed, and that those who failed to report it can be shown to have been fully aware of it.

11. Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent the investigation and prosecution of acts of bribery. Specify procedures for the lifting of immunity for criminal proceedings and consider abolishing the requirement of authorisation on lifting the immunity in cases when a person is caught in flagrante delicto.

12. Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Ukraine should with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe) consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

13. Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.

III. TRANSPARENCY OF THE CIVIL SERVICE

General note

The information which was provided under this heading was originally not sufficient to support a comprehensive assessment. Therefore, only a number of specific recommendations on selected sections can be made. It is recommended to Ukraine to further develop and elaborate these sections for the second review meeting, aiming at the publication of the report that would contain the full information.

Specific recommendations:

14. Support further actions by the Main Civil Service Department to conduct general training on anti-corruption for public officials; in particular, develop and implement specific anti-corruption and ethics trainings, in particular for those public officials who work in corruption-risk areas. The in-service training should focus on operational and procedural issues, rather than on academic degrees, i.e. everyday job-related duties, including ethical standards.

15. Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government (executive, legislative and judicial), as well as the legislation on conflicts of interest which would include members of the Parliament and would be open for public. Ensure that enforcement of these rules is entrusted to an independent agency, possibly subordinate to the Anti-corruption Committee. In parallel, review and specify the provisions of the “Law on the Fight against Corruption” regarding the acceptance of gifts.
16. Update and disseminate a Code of Conduct or other similar rules for public officials. Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.

17. Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of “whistleblowers” and launch a public (or internal) campaign to raise the awareness of these measures among civil servants.

18. Improve the system of internal investigations in cases of suspected or reported corruption offences. A separate, independent investigatory and reporting entity should be established, possibly within the general civil service, to receive and investigate complaints on corruption. Disciplinary proceedings should be conducted in line with international standards and afford the accused the possibility to defend himself; sanctions coming from a process that is perceived as fair and not politically motivated will be more effective in deterring corruption.

19. Analyse and introduce improvements in the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices in Ukraine or abroad to support such limiting eligibility criteria.

20. Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials. Ensure that the powers which are required for effective tax and customs administration are well balanced with respect for citizens’ rights and are not abused.

21. Enhance cooperation with civil society in addressing the corruption phenomena, including working more closely with university programs and a wide range of NGOs and the business community on anti-corruption and ethics, both to enhance monitoring in civil society, and to encourage training and research resources in the field.

22. In the area of access to information and open government, consider creating an independent office of an Information Commissioner to receive appeals under the “Law on Information”, conduct investigations, and make reports and recommendations. Consider adopting a Public Participation Law that provides citizens with an opportunity to use information to affect government decisions. Consider revising libel and defamation laws to grant greater scope for journalistic reporting.

23. In the sphere of money laundering, pursue the implementation of the FATF recommendations and MONEYVAL.

24. Ensure that competent authorities conducting investigation and prosecution of corruption offences have relevant financial expertise at their disposal (either by employing financial and auditing experts or by ensuring full cooperation of relevant experts in other state institutions).
Appendix L

Writing an Effective Anticorruption Law
Richard E. Messick and Rachel Kleinfeld (World Bank)
Writing an Effective Anticorruption Law

Richard E. Messick and Rachel Kleinfeld.

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“Justice howls when she is dragged about by bribe-devouring men whose verdicts are crooked when they sit in judgment.”
– Hesiod, Works and Days, circa 800 BCE

When Hesiod discovered that a corrupt judge had deprived him of his patrimony, his only recourse was to memorialize his loss in verse. But as growing numbers of citizens in developing countries have suffered at the hands of corrupt officials, they have started to demand government action.

An obvious first step is ensuring that laws are in place to deter corruption. Law enforcement measures are not the first, or necessarily the preferred, method of defense. An informed and vigilant citizenry, government employees imbued with a service ethic, and other measures can be more effective in combating corruption. But achieving those objectives takes time, while enacting an anticorruption law is a relatively speedy, inexpensive way to start addressing the problem.

As a result laws that punish bribery and other forms of corruption have proliferated throughout the developing world (Ofosu-Amaah, Soopramanien, and Upadhyay 1999). Yet while these new statutes represent a strong commitment to eradicating corruption, they often do not reflect the limitations of the institutions that enforce them – whether the police and public prosecution service or a non-criminal administrative agency. Many recent anticorruption initiatives have also overlooked complementary legal reforms that can prevent or expose corrupt acts.

Tailoring the law to enforcement capacity

Anticorruption and ethics laws generally encompass a variety of statutes that prohibit bribery, nepotism, conflicts of interest, and favoritism in the award of contracts or the provision of government benefits. Such laws often also require public servants to disclose their incomes and assets. When drafting such acts, the instinct is to list every activity that could conceivably be considered corrupt and then write language making each illegal. But people are endlessly creative in finding ways to enrich themselves or their friends and family at the public's expense. As drafters realize this, the rules they write become more general. The result is often a broadly drawn provision setting out a general standard – such as the provision found in the laws of several nations making the “abuse of public office for private gain” a crime.

Such sweeping language does address bribery, nepotism, and conflicts of interest. But bureaucratic and political rivals can also invoke it to question perfectly innocent actions. If the person responsible for investigating an allegation is tainted by personal animosity, open to political
pressure, or fearful of criticism for being weak on corruption, false charges can trigger a judicial or administrative proceeding. If the court or administrative agency is not impartial or is incompetent, cases driven by extralegal considerations may not be weeded out. Even if charges are eventually dismissed, a prolonged investigation can itself be a severe punishment.

Accordingly, those who draft anticorruption legislation should ask several questions: What is the capacity of the institutions that will enforce the law? Are the police, prosecutors, courts, and other enforcement agencies staffed by honest, technically competent professionals? Are they independent of the executive in theory? In practice? To whom, and in what ways, are they accountable?

The answers to these questions will often not be reassuring. In many countries enforcement institutions lack skilled professionals. Moreover, the employees of such institutions are often easily manipulated for political purposes. Indeed, World Bank surveys have found that the poor rate the police and other enforcement agencies as some of the most corrupt and least trusted government agencies. Reformers may believe that anticorruption work cannot proceed until enforcement agencies are strengthened. But while capacity building is essential for the long-term sustainability of an anticorruption program, it takes time.

In the meantime those writing anticorruption statutes must take into account the weaknesses of the agencies that will enforce the law they draft. In most cases that means writing a law that is easy to understand, simple to apply, and demands little or no judgment in determining its applicability. Laws written this way are said to contain “bright-line rules” and are contrasted with those containing standards that are open to interpretation by enforcement agencies (Kaplow 1992).

**Bright-line rules**

How do bright-line rules eliminate enforcers’ discretion? A recent proposal from Argentina provides an example. There, nepotism and favoritism in government hiring are perceived as serious problems. Draft legislation would have prohibited government employees from hiring a friend or relative unless he or she was "qualified" for the position. But if prosecutors and courts were left to determine who was qualified, they would have tremendous leeway in enforcing the law. Suppose instead that the law were to prohibit the hiring of any friend or relative – with no exceptions or qualifications. Were this kind of bright-line rule the law, enforcers would have no discretion.

Such a rule would make it easier to monitor compliance and enforcement. If hiring a relative were against the law, and an official’s nephew suddenly appeared on the payroll, the ethical breach would be obvious. On the other hand, if the law contained an exception for “qualified” individuals, endless arguments about the nephew’s qualifications could ensue, muddying the question. With bright-line rules, citizens, the media, and watchdog groups can readily determine whether government is serious about enforcing anticorruption laws.

Bright-line rules are not costless. First, they rob the law of flexibility. In the case of an anti-nepotism law, the government may lose the best person for the job if that person happens to be related to someone already working in the relevant department. Second, bright-line rules often must be simplified to the point of arbitrariness – making them harder to accept than broadly worded
standards, which often conform to intuitive social understandings. But in countries with weak legal traditions, courts may be unable to enforce standards effectively (Hay and Shleifer 1998). In addition, the costs of bright-line rules are often more than offset by their deterrence value and their value in facilitating monitoring in countries with weak enforcement agencies (Posner 1998).

Countries with weak enforcement institutions should consider including the following bright-line rules in their anti-corruption laws:

- No government employee may receive any gift, payment, or anything of value in excess of a small sum from anyone who is not a member of that person's immediate family.
- No employee may hold, directly or indirectly (that is, through family or other agents), an interest in a corporation or other entity affected by that employee's decisions.
- Every year all employees above a certain pay level must publicly disclose all assets they hold directly or indirectly.
- No employee may hire a relative (with a precise specification on how distant a relation must be before he or she is not a “relative”).
- All employees must disclose any relationship with people hired and with firms or entities to whom they award a contact or concession. (Since in many countries the pool of talented workers and qualified firms is small, this rule leaves decisions about “corruption” to public opinion.)

**Complementary measures**

No statute can avoid some open-textured provisions. When a section in an anticorruption law must leave something open to question, one way to reduce enforcers’ discretion is to establish a procedure for obtaining advance rulings. Employees concerned about doubtful cases can then ask representatives of the enforcement unit, perhaps located within their agency, for an advance ruling on the legality of a proposed action. If, based on the facts disclosed, the enforcement authority concludes that the action proposed would not constitute a violation, the employee would be free from later prosecution. To prevent the process from unduly slowing government action, agency representatives can be required to rule on the request within a set period. If they do not, the law can provide that the action in question is legal.

At first the agency may be deluged with petitions for assistance. Gradually, however, its accumulated opinions will develop into a body of law to guide both the courts and those subject to ethics guidelines. An advance ruling procedure can also turn what could be an adversarial relationship into a cooperative one as civil servants work with ethics officers to structure transactions in ways consistent with the law. In addition, if a questionable action is later discovered that was not blessed with an advance ruling, it is one sign that an intent to evade the law was present.
Statutes outlawing bribery, nepotism, and other corrupt acts should be complemented by laws that help bring corruption to light. A freedom of information law is one example. Such laws require government to disclose information about its activities at the request of any citizen and can be used by watchdog groups to monitor government behavior (Blanton 2001). Similarly, in recent years several countries have adopted whistle-blower protection laws, which encourage government employees to reveal – without fear of retaliation – corrupt acts uncovered in the course of their work (Hall and Davies 1999; Pack 2001).

Libel law reform can also be an important part of anticorruption legislation. Some countries' laws make it a crime to publish anything that brings the government into disrepute or insults a government official. Under such laws a journalist who accuses an officeholder of accepting bribes or otherwise acting corruptly can be fined and jailed regardless of whether the allegation is true or false.

To ensure that fear of prosecution does not deter the press from exposing corruption, many industrial nations make it difficult for government officials to obtain redress if they are libeled by the press (World Bank 2001; Schwartz 1996). Different nations will strike different balances between protecting the reputation of government and its employees and allowing journalists to write about corrupt behavior. But reformers concerned about suppressing corruption will want to review whether the balance their nation strikes reflects the public interest in combating corruption.

Finally, national legislation alone is not a panacea—international cooperation is also required. In cases involving large sums of money, recouping stolen funds is often problematic because corrupt officials can stash assets abroad. Treaties should be considered that would permit the requesting country to overcome bank secrecy laws and other obstacles to recovery. Transparency International’s Source Book (2000) lists dozens of other systemic reforms needed to root out corruption. And as study in the field grows, the number of needed reforms only increases.

Over the past 10 years a number of factors have combined to place corruption firmly on the global agenda. Under pressure from civil society and fueled by a growing body of literature detailing the deleterious effects of corruption on development, policymakers have come to realize the truth of Hesiod’s ancient observation:

Obey justice and restrain reckless wrongdoing, for such wrongdoing harms the poor, and even the noble find it an unwelcome burden that weighs them down and brings them ruin.

Ridding government of corruption may require deep, systemic reform. But the legal reforms detailed above offer a straightforward, inexpensive way to take the first step toward reducing the endemic corruption that plagues so many countries.

Further reading


Appendix M

Draft Law of Ukraine “On Basic Principles of Preventing and Combating Corruption in Ukraine”
LAW OF UKRAINE
On Basic Principles of Preventing and Combating Corruption in
Ukraine

This Law determines legal and organizational principles of preventing, disclosing and combating corruption in public and private spheres of social relations, recovery of damage caused by corruption offences, resumption of rights and lawful interests of natural and legal persons and the State, and regulates international cooperation in the sphere of combating corruption.

Chapter I. General Provisions

Article 1. Definition of Terms

In this Law and other legislative acts that regulate social relations in the sphere of preventing and combating corruption, the terms mentioned below shall be used in the following meaning:

*Anti-corruption expert examination of draft normative legal acts* – the activity aimed to identify, in drafts of normative legal acts, provisions that may facilitate commission of corruption offences and to elaborate recommendations as to how they should be eliminated.

*Immediate relatives* – parents, spouses, children, blood brothers and sisters, grandparents, grandchildren, adopting parents, and adopted children.

*Relatives* – other persons, save for immediate relatives, who are on family terms or in close relations with the subject of a corruption offence, custodians, legal guardians.

*Conflict of interests* – clash between private and public interests of persons authorized to fulfill the functions of the State, of authorities of the Autonomous Republic of Crimea and bodies of local self-governance, where private interests of a person can wrongfully affect his fulfillment of official duties and powers.

*Corruption* – illicit use of power, its prestige, authority and possibilities related thereto for procuring any assets (advantages, benefits, privileges) of pecuniary and non-pecuniary nature (both for himself and for other persons), as well as also granting to persons designated in parts one, two and three of Article 2 of this Law any unlawful advantages, both for them personally and for other natural or legal persons, so that these persons, while using their position, perform or refrain from performing certain actions.

*Corruption crime* – an intentional act provided for by the Criminal Code of Ukraine, which contains signs of corruption committed by a subject designated in Article 2 of this Law.
Corruption offence – an intentional act comprising signs of corruption committed by a subject designated in Article 2 of this Law, for which criminal, administrative, disciplinary and civil liability has been established.

**Article 2. Subjects of Corruption Offences**

The following shall be held liable for the commission of corruption offences:

1. Persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance:

   1) President of Ukraine, Chairman of the Verkhovna Rada of Ukraine and his Deputies, chairmen of standing committees of the Verkhovna Rada of Ukraine and their Deputies, Prime-Minister of Ukraine, Chairman of the National Bank of Ukraine, Chairman of the Accounting Chamber, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, and Chairman of the Council of Ministers of the Autonomous Republic of Crimea;

   2) National Deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, deputies of village, settlement, city, district, city district, and oblast radas;

   3) civil servants;

   4) officials of bodies of local self-governance;

   5) military officials of the Armed Forces of Ukraine and other military formations;

   6) professional judges, people’s assessors and jurors;

   7) officers of law enforcement bodies.

2. Persons equated to persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance:

   1) officials of legal entities of public law who in accordance with the Law of Ukraine “On Civil Service” do not enjoy the status of a civil servant but receive salary at the expense of the state or local budget; officials who permanently or temporarily hold positions in legal entities of public law in the authorized capital stock of which the share of the State constitutes 50 per cent or more, that are related to the fulfillment of organizational or administrative duties or who fulfill such duties under special authorization;

   2) officials of foundations and charitable organizations, which receive funding from the state or local budgets;

   3) leaders of political parties, their oblast, city, district organizations and other structural units;
4) aides to National Deputies of Ukraine and other elected persons, who receive salaries at the expense of the state budget or local budgets;

5) persons who do not enjoy the status of a civil servant but fulfill the public functions delegated to them by the State (auditors, notaries, experts, appraisers, advocates, arbitration executives, representatives of the President of Ukraine on issues of entrepreneurs’ rights defence, labor disputes arbiters and independent intermediaries in considering collective labor disputes, as well as other persons in cases designated by the laws of Ukraine).

6) officials and officers of international organizations, foreign officials.

3. Officials who permanently or temporarily hold, at enterprises, institutions or organizations of private form of ownership, positions related to fulfillment of organizational or administrative duties or who fulfill such duties under special authorization.

4. Officials of subjects of economic activity of all forms of ownership, natural and legal persons who illicitly grant to persons designated in parts one and two of this Article, as well as with their participation to other persons, pecuniary and non-pecuniary assets (advantages, benefits, privileges).

**Article 3. Bodies Authorized to Put into Effect Measures to Prevent and Combat Corruption**

1. Measures to prevent and combat corruption shall be taken by specially authorized state authorities and other bodies.

2. Specially authorized state authorities shall conduct activity in detecting, terminating and investigating corruption offenses.

3. Bodies determined by the legislation of Ukraine as specially authorized to prevent and combat corruption include subdivisions of:

   1) the Ministry of Internal Affairs of Ukraine;

   2) Security Service of Ukraine;

   3) State Tax Administration of Ukraine;

   4) Procuracy of Ukraine.

4. Other bodies shall participate in prophylactics, prevention, detection and in the cases determined by the legislation – in the measures aimed to terminate corruption offenses, resume violated rights of natural and legal persons and the State, to facilitate information and research on preventing and combating corruption, international cooperation in the area of prevention and combating corruption.
5. Bodies designated in part four of this Article shall include:

- other subdivisions of the specially authorized bodies designated in part three of this Article;
- authorized structural subdivisions of ministries, other central bodies of executive power;
- bodies of local self-governance;
- private enterprises, institutions and organizations.

The competence of these bodies shall be determined by the legislation of Ukraine and/or by their statutory documents.

6. Heads of enterprises, institutions and organizations or their structural subdivisions in the event of detecting or obtaining information about commission of a corruption offense by the employees, within the limits of their competence, shall be obliged to take measures in order to prevent such offenses and promptly report their commission to any specially authorized body.

7. Coordination of activity of the bodies of executive power with regard to preventing and combating corruption shall be vested in the Coordinating Committee on Combating Corruption and Organized Crime under the President of Ukraine. The Coordinating Committee on Combating Corruption and Organized Crime under the President of Ukraine shall draw up and submit for approval by the President of Ukraine annual programs on preventing and combating corruption.

**Chapter II. Measures on Preventing and Combating Corruption in Public Sphere**

**Article 4. Restrictions Aimed at Preventing and Combating Corruption**

1. Persons designated in part one of Article 2 of this Law, save for people’s assessors and jurors, are prohibited from:

   1) assisting, through the use of their official position, natural and/or legal persons in their conduct of entrepreneurial activity, in giving subsidies, subventions, grants, loans or privileges for the purpose of illicitly obtaining pecuniary and non-pecuniary assets (advantages, benefits, privileges);

   2) engaging in entrepreneurial activity directly or through intermediaries or straw men, working on the principles of dual job-holding (except research, teaching, creative activity, and medical practice);

   3) acting independently – save for the cases where they fulfill the functions of administration of stock (parts, shares) belonging to the State and where they represent interests of the State in a company board (supervisory board), auditing committee of a business company – through representatives or straw men, as a member of the board or other governing bodies of subjects of entrepreneurial activity;
4) denying natural and/or legal persons information the granting of which is provided for by legislative acts, intentionally delaying the granting of information, granting incorrect or incomplete information;

5) furthering, through the use of official position, the appointment to office of a person whose business and professional qualities do not give him advantages over other candidates;

6) interfering, through the use of official position, in the activity of other state authorities, authorities of the Autonomous Republic of Crimea, bodies of local self-governance or officials for the purpose of obstructing the exercise of their powers;

7) being agents of third parties in cases of state authorities, authorities of the Autonomous Republic of Crimea, bodies of local self-governance;

8) giving preference to natural and/or legal persons in the process of preparing and making decisions or normative legal acts.

Legal and natural persons shall be prohibited from funding state authorities, authorities of the Autonomous Republic of Crimea, bodies of local self-governance, including giving pecuniary and/or non-pecuniary aid, gratuitous fulfillment of works, rendering services, providing funds, property, donations and charitable contributions.

2. Restrictions envisaged by part one of this Article, save for the restrictions designated in paragraphs 2 and 3, cover the persons designated in part two of Article 2 of this Law.

3. A person who applies for a position related to the fulfillment of the functions of the state, authorities of the Autonomous Republic of Crimea or bodies of local self-governance shall sign an obligation to comply with these restrictions.

4. In the event that a person who applies for a position related to the fulfillment of the functions of the State, authorities of the Autonomous Republic of Crimea or bodies of local self-governance, refuses to comply with the requirement provided for by part two of this Article, this refusal shall be the basis for denying the application for a position.

Article 5. Special Examinations of Persons Applying for Positions Related to Fulfillment of Functions of the State, Authorities of Autonomous Republic of Crimea and Bodies of Local Self-Governance

1. With regard to persons applying for positions related to fulfillment of the functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance, special examinations shall be conducted, with their consent.

2. Special examinations shall be conducted by authorized subdivisions of the Ministry of Internal Affairs of Ukraine and Security Service of Ukraine, with involvement, if necessary, for
fulfilling individual assignments, of subdivisions of other ministries and other central bodies of executive power.

3. The special examinations comprise a complex of measures aimed to establish:

1) the fact of bringing a person to criminal liability and responsibility for corruption offenses;

2) sources and amounts of the person’s income and their conformity with that stipulated in the tax return;

3) availability of corporate rights.

4. The procedure for conducting special examinations and the list of offices with regard to which they shall be performed is established by the Cabinet of Ministers of Ukraine.

**Article 6. Prohibition to Receive Gifts and Souvenirs**

1. Persons designated in parts one and two of Article 2 of this Law shall be prohibited to receive gifts and souvenirs, except for the cases where gifts or souvenirs are presented during official events.

2. Any gift or souvenir received during official events shall be recognized as property of the state authority, enterprise, organization or institution for which the recipient of the gift or souvenir works.

**Article 7. Financial Monitoring**

1. Declaring incomes of persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance shall be effected pursuant to the procedure and on the grounds provided for by Article 13 of the Law of Ukraine “On Civil Service” and Article 13 of the Law of Ukraine “On Service in Bodies of Local Self-governance”. Data of incomes and obligations of financial nature shall be submitted annually.

2. In the event of opening accounts in institutions of non-resident banks, a person authorized to fulfill the functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance shall be obliged, within a ten-day term, to notify thereof in writing the tax agency at the place of residence, with the specification of the account number and legal address of the foreign bank.

3. Person authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance shall be obliged, within a month, pursuant to the procedure provided for by the Cabinet of Ministers of Ukraine, to notify the tax agency at the place of his residence of purchasing by him, as well as his immediate relatives and relatives, of property if the value thereof exceeds 12 salaries attached to his position, or of acquiring financial or property obligations exceeding 12 salaries.
4. Data on incomes, securities, real estate, valuable immovable property (valued above 12 salaries attached to the position) and deposits in banks of officials designated in part one of Article 9 of the Law of Ukraine “On Civil Service”, their immediate relatives and relatives, shall be filed prior to the candidate’s appointment or election for the relevant position, with the bodies or officials who effect election or appointment to these offices.

5. Persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance and persons equated thereto shall be prohibited to conclude transactions not in their own names – through straw men, anonymously, using assumed names.

**Article 8. Codes of Conduct of Persons Authorized to Fulfill Functions of the State, Authorities of the Autonomous Republic of Crimea and Bodies of Local Self-Governance**

1. Legislation of Ukraine determines requirements to professional ethics of persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance as well as the grounds and procedure for bringing to liability for their violation.

2. The legislation that determines legal principles of the activity of particular state authorities, authorities of the Autonomous Republic of Crimea or bodies of local self-governance, provision of specific types of state services or activity of particular categories of persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance establishes special requirements to proper conduct and responsibility.

**Article 9. Inadmissibility of Immediate Relatives and Relatives Working Together**

1. Immediate relatives and relatives of the persons designated in paragraphs 1, 3-7 of part one and paragraph 1 of part two of Article 2 of this Law, save for people’s assessors and jurors, shall not hold positions that are directly subordinated to or dependent upon such persons.

2. Unless the persons who violate the requirements of part one of this Article, within 15 days from the moment the violation is detected, eliminate such violation voluntarily, they shall, within a month, be subject to transfer to another office that excludes subordination and dependence. In the event that such transfer is impossible, one of these persons shall be subject to dismissal from the office.

3. Immediate relatives and relatives of the persons designated in paragraphs 1, 3-7 of part one and paragraph 1 of part two of Article 2 of this Law, save for people’s deputies and jurors, shall be prohibited to participate in the work of collegiate bodies in considering issues of immediate relatives’ and relatives’ appointments to offices or to influence such decisions in any other form.

**Article 10. Anti-Corruption Expert Examination of Draft Normative Legal Acts**
1. Anti-corruption expert examination of draft normative legal acts shall be effected pursuant to the procedure determined by the legislation. Anti-corruption expert examination of draft laws submitted for the consideration to the Verkhovna Rada of Ukraine shall be effected by the Ministry of Justice of Ukraine.

2. The procedure for the conduct and funding of mandatory anti-corruption expert examination of draft normative legal acts, as well as determination of cases of its mandatory expert examination shall be established by the Cabinet of Ministers of Ukraine.

3. Conduct of unofficial anti-corruption expert examination and publication of its results shall be effected upon decisions of natural and legal persons and shall be funded at their own expense or at the expense of other sources.

Article 11. Official Investigations

1. For the purpose of detecting reasons and conditions that facilitated commission of a corruption offense, on the basis of submissions (decisions, rulings, etc.) by specialized bodies authorized to take measures to prevent corruption or by the court, supervisors of the persons who committed such offenses shall conduct official investigations.

2. The procedure for the conduct of official investigations shall be determined by the Cabinet of Ministers of Ukraine.

Article 12. Participation of the Public in Preventing and Combating Corruption

1. Natural and legal persons participate in the measures taken to prevent corruption through public organizations, deputies of representative bodies of power, their associations and in person.

2. Bodies specially authorized to put into effect measures to combat corruption shall inform the public through mass media of the measures taken in this area.

3. The Coordinating Committee on Combating Corruption and Organized Crime under the President of Ukraine prepares and makes public the annual report on the nationwide measures taken in the area of preventing and combating corruption. The inclusion of the following information in the report shall be mandatory:

   1) statistical data on the results of the activity of the State bodies specially authorized to prevent and combat corruption with mandatory reflection of the following indicators:

      - total number of the persons with regard to whom protocols were drawn up concerning commission of corruption offenses;
      - total number of persons with regard to whom judgments of courts entered into force;
      - mandatory reflection of the data by specific categories of subjects of corruption offenses designated in Article 2 of this Law;
mandatory reflection of the data by specific types of responsibility for corruption offenses;

2) summarization of the results of anti-corruption expert examination of draft normative legal acts;

3) report on the results of implementation of anti-corruption programs implemented by state authorities of Ukraine, including the ones within the framework of international cooperation;

4) information on the extent of the inflicted damage and the scale of its recovery;

5) results of sociological opinion surveys of the pervasion of corruption in Ukraine that are conducted by the state and non-governmental research institutions.

4. Citizens’ associations that are registered pursuant to the established procedure, in conformity with the Constitution of Ukraine, this Law and statutory provisions, are guaranteed the right to:

1) request and obtain, pursuant to the established procedure, from state authorities, authorities of the Autonomous Republic of Crimea and bodies of local self-governance information, which does not comprise a state secret or any other secret protected by law, concerning their activity to prevent and combat corruption;

2) undertake research on the issues of preventing and combating corruption, creating for this purpose public foundations, centers, experts’ collectives, etc.;

3) undertake unofficial (public) anti-corruption expert examination of draft laws and other normative legal acts, decisions, programs, submit their opinions and proposals to the relevant state authorities;

4) participate in open parliamentary hearings concerning issues of preventing and combating corruption;

5) through subjects of the right to legislative initiative, initiate legislation in the sphere of preventing and combating corruption.

5. It shall be prohibited to impose restrictions on information concerning competence of the bodies specially authorized to implement measures aimed to prevent and combat corruption and the guidelines on their activity, as well as on instances of unlawful actions of the persons who committed a corruption offense.


Persons who informed of a fact of corruption or in another way facilitated the measures of specially authorized states authorities operating in the sphere of preventing and combating corruption shall be entitled to state protection pursuant to the procedure established by law. If
necessary, authorized subdivisions of the Ministry of Internal Affairs or Security Service of Ukraine shall ensure personal safety of persons participating in criminal proceedings.

**Article 14. Regulation of Conflict of Interests**

Adoption of normative legal acts determining the powers of state authorities and bodies of local self-governance, the procedure for rendering particular types of state services and exercising other types of activity pertaining to fulfillment of functions of the State shall be prohibited in the absence of procedure for regulating conflict of interests, ways of its regulation and requirements in respect of persons’ adequate behavior in such situations.

**Article 15. Restrictions on Persons Who Left Civil Service or Terminated Activity Pertaining to Fulfillment of the Functions of the State**

Restrictions imposed by this Law and other laws of Ukraine on persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance, who left civil service or terminated the activity pertaining to fulfillment of the functions of the State, shall remain in force for two years after these persons’ vacating their positions or terminating their activity, if their new activity or work is directly related to the functions which the public officers were fulfilling during the period of their holding the positions or if they exercised control over the fulfillment thereof.

**Chapter III. Measures to Prevent and Combat Corruption in Private Sphere**

**Article 16. Requirements Concerning Transparency of Information in Private Sphere**

There shall not be any commercial or banking secrecy with regard to information about:

1) the amount and kinds of charitable aid that is granted to and obtained by natural and legal persons;

2) the amount and kinds of remuneration received in cases envisaged by law by persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance, their immediate relatives and relatives;

3) employment and activity on the basis of civil contracts entered into by immediate relatives and relatives of persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance;

4) transactions pertaining to acquisition of property and funds by persons authorized to fulfill functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance, their immediate relatives and relatives.

**Article 17. Codes of Conduct in Private Sphere**
The State shall contribute to determination and normative regulation of the requirements in respect of professional ethics of particular types of activity in private sphere and shall recognize these norms.

**Article 18. Restrictions on Legal Persons That Committed Corruption Offenses**

1. Legal persons that committed a corruption offense shall not participate, for a period of five years, in the types of activity related to obtaining funds or property from state authorities, authorities of the Autonomous Republic of Crimea and bodies of local self-governance, legal persons of public law, legal persons that are funded from the State Budget of Ukraine or local budgets, and shall not effect activity on behalf of the State or any other activity in rendering state services on a contractual basis.

2. The Cabinet of Ministers of Ukraine shall establish the procedure for keeping and making public the information on such legal persons.

**Article 19. Mandatory Participation of the Public in Making Regulatory Decisions**

1. Drafting and adoption of normative legal acts that envisage granting privileges and advantages to particular subjects of economic activity and also delegation of particular functions of the State, authorities of the Autonomous Republic of Crimea and bodies of local self-governance to non-governmental organizations shall be permissible solely on conditions of ensuring participation of the public in preparing and discussing the drafts of such acts.

2. The procedure for public participation in preparing and discussing the drafts of such acts shall be established by laws of Ukraine.

**Chapter IV. Liability for Corruption Offenses**

**Article 20. General Principles of Liability for Corruption Offenses**

1. Persons shall be brought to criminal, administrative, disciplinary and civil liability for the commission of corruption offenses.

2. The grounds and procedure for bringing to liability shall be determined by laws of Ukraine.

**Article 21. Disciplinary Liability for Corruption Offenses**

1. Persons shall be subject to disciplinary liability for the commission of corruption offenses.

2. The owner of an enterprise, institution, organization or the body authorized thereby shall not terminate a labor contract with a person, save for the cases designated in part four of Article 4 of this Law in respect of whom a decree was issued on initiating a criminal case or a protocol was drawn up on his committing a corruption offense on the basis of paragraph 1 of part one of Article 36 of the Code of Labor Laws of Ukraine. In the event that such a person files an application requesting that he be dismissed from office on the basis of Articles 38 and 39 of the Code of Labor
Laws of Ukraine, the labor contract concluded with him shall be terminated not earlier than in two months from the day the application was submitted.

3. A person with regard to whom a decree was issued on the initiation of criminal case or a protocol was drawn up shall be subject to suspension from exercising the authority attached to his position pursuant to the procedure envisaged by Article 22 of the Law of Ukraine “On Civil Service” or Article 46 of the Code of Labor Laws of Ukraine pending trial.

4. A person with regard to whom a court judgment, by which he was convicted for the commission of a corruption crime, entered into legal force or on whom an administrative penalty was imposed for a corruption offense shall be, within three days, dismissed from office by the order of the owner of the enterprise, institution, organization or the body authorized thereby. The order shall designate the reason for the person’s dismissal with reference to the relevant Article of this Law. The ground for such dismissal is a judgment that entered into legal force or a decree on the imposition of an administrative penalty.

5. An entry on the person’s dismissal from office for a corruption offense shall be made in his work record card with the designation of the grounds and with reference to the relevant Article of this Law.

6. The owner of the enterprise, institution, organization or the body authorized thereby shall, within a three-day term, notify the court which issued the decree on imposition of administrative penalty and the specially authorized central body of state executive power on issues of civil service.

7. Pre-term termination of authority in elected office and dismissal from military service of a military official of the Armed Forces of Ukraine and other military formations shall be effected in conformity with the legislation of Ukraine.

**Article 22. Liability of Legal Persons for Corruption Offenses**

1. In the event that a legal entity, its head, governing body or another authorized person, acting in the interests of the legal person grants material and non-material assets (benefits, advantages, privileges) to a subject of a corruption offense (as well as to state authorities, authorities of the Autonomous Republic of Crimea and bodies of local self-governance in cases not envisaged by the legislation of Ukraine), legal entities shall be brought to liability judicially. Grounds and procedure for bringing legal entities to liability for the commission of a corruption offense shall be determined by law.

2. Legal person’s liability for committing a corruption offense shall not exclude liability of officials and other natural persons who acted in the interests of the legal entity.

**Chapter V. Elimination of Consequences of Corruption Offenses**

**Article 23. Recovery of the Damage Inflicted to the State**
The damage inflicted on the State as a result of a corruption offense shall be subject to recovery by the guilty persons pursuant to the procedure established by the legislation of Ukraine.

**Article 24. Resumption of Rights and Lawful Interests and Recovery of Damage Caused to Natural and Legal Persons**

1. Natural and legal persons whose rights were violated as a result of corruption offenses and who sustained moral or pecuniary damage shall be entitled to resumption of these rights and recovery of the damage pursuant to the procedure established by law.

2. Damage inflicted to a legal entity or a natural person by unlawful actions of the bodies specially authorized to put into effect measures taken to prevent and combat corruption shall be recovered from the State Budget of Ukraine.

**Article 25. Annulment of Unlawful Normative Legal Acts and Decisions and Voiding Transactions Concluded as a Result of Corruption Offenses**

1. Unlawful normative legal acts and decisions adopted as a result of corruption offenses shall be subject to annulment by the body or official authorized to adopt or annul relevant acts and decisions or shall be voided judicially upon an application of natural persons or legal entities concerned, procurator and state authorities, authorities of the Autonomous Republic of Crimea and bodies of local self-governance.

2. Transactions concluded as a result of corruption offenses shall be found null and void in conformity with the Civil Code of Ukraine.

**Article 26. Seizure of Property Obtained as a Result of Commission of a Corruption Offense**

1. In the event of commission of a corruption offense, unlawfully acquired property shall be subject to seizure pursuant to the procedure established by law, whereas the cost of unlawfully obtained services and benefits shall be subject to recovery to public revenue.

2. In the event that a person refuses to voluntarily transfer the unlawfully obtained property or to pay to the State its cost or the cost of unlawfully obtained services and benefits, the recovery shall be effected judicially. Prior to issuance of judgment by a court, authorized bodies shall place the property belonging to the person who committed corruption offense under arrest.

**Chapter VI. Control and Supervision over Compliance with Laws in the Sphere of Preventing and Combating Corruption**

**Article 27. Control over Compliance with Laws in the Sphere of Preventing and Combating Corruption**
Control over compliance with laws in the sphere of preventing and combating corruption shall be exercised by state authorities within the limits of their powers pursuant to the procedure determined by law.

**Article 28. Public Control over Compliance with Laws in the Sphere of Preventing and Combating Corruption**

Public control over compliance with laws in the sphere of preventing and combating corruption shall be exercised on the basis and pursuant to the procedure determined by the Law of Ukraine “On Democratic Civil Control over War Organization and Law Enforcement Bodies of the State”.

**Article 29. Procurators’ Supervision over Compliance with Laws in the Sphere of Preventing and Combating Corruption**

Supervision over compliance with laws in the sphere of preventing and combating corruption shall be exercised by the Procurator General of Ukraine and subordinated procurators.

**Chapter VII. International Cooperation**

**Article 30. International Treaties of Ukraine in the Sphere of Preventing and Combating Corruption**

In the event that international treaties of Ukraine agreed to be binding by the Verkhovna Rada of Ukraine prescribe other rules than those envisaged by the legislation of Ukraine on preventing and combating corruption, rules of the international treaties shall apply.

**Article 31. General Principles of International Cooperation in the Sphere of Preventing and Combating Corruption**

1. Ukraine, in conformity with the international treaties concluded by it, cooperates in the sphere of preventing and combating corruption with foreign states, their law enforcement bodies and special agencies, as well as with international organizations that implement measures to prevent and combat corruption.

2. Priority orientations of international cooperation in the sphere of corruption combating shall be the following:

   1) legal assistance in cases of corruption offenses;
   2) conduct of anti-corruption research and expert examinations;
   3) development of strategies and programs of cooperation in the sphere of preventing and combating corruption;
4) exchange of experts and technologies in the sphere of preventing and combating corruption;

5) sharing experience of work and organization of scientific methodological provision of the measures aimed to prevent and combat corruption, creation and functioning of information systems oriented at combating corruption;

6) assistance in training and increasing the expertise of personnel for preventing and combating corruption.

3. International cooperation in the sphere of combating corruption shall be effected through the following:

1) concluding international treaties;

2) participating in the activity of international organizations;

3) participating in the implementation of international projects related to preventing and combating corruption, taking in consideration interests of the national security of Ukraine;

4) harmonization and bringing provisions of the legislation of Ukraine in the sphere of preventing and combating corruption in line with international standards, norms and rules in the sphere of corruption combating;

5) cooperation of the bodies authorized to implement measures taken to prevent and combat corruption with competent bodies of foreign states.

Article 32. International Exchange of Information in the Sphere of Preventing and Combating Corruption

1. Relevant authorized bodies of Ukraine may provide to competent bodies of foreign states and obtain from them information, including the one with restricted access.

2. Provision to competent bodies of foreign states of information related to preventing and combating corruption shall be possible solely in the event that:

   the information will be used exclusively for the fulfillment of the tasks they were charged with pursuant to the legislation;

   the relevant body may ensure such regime of access to information that would not result in disclosure of the information for other purposes or its divulgence in any manner, including the through unauthorized access.

3. Information to foreign states concerning issues related to corruption combating shall be provided by Ukraine on the basis of a request in compliance with requirements of the legislation of Ukraine and its obligations under international law.
Article 33. Legal Assistance in Criminal and Civil Cases Concerning Corruption Offenses

Legal assistance in criminal and civil cases concerning corruption offenses shall be rendered by competent authorities in conformity with legislation and international treaties of Ukraine that are in force.

Chapter VIII. Final Provisions

1. This Law shall enter into force from the day of its official publication.

2. With the entry into force of this Law, the Law of Ukraine “On Combating Corruption” (1995), shall lose its effect.

3. The Cabinet of Ministers of Ukraine, within three months from the day of entry into force of this Law, shall:

   submit for the consideration of the Verkhovna Rada of Ukraine proposals with regard to bringing legislative acts of Ukraine in conformity with this Law;

   bring normative legal acts in line with this Law;

   ensure revision and annulment by ministries and other central bodies of executive power of their normative legal acts that contravene this Law.

President of Ukraine

L. KUCHMA