

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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UNITED NATIONS CONVENTION
AGAINST CORRUPTION



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Foreword

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

I am therefore very happy that we now have a new instrument to address this scourge at the global level. The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. And it will reaffirm the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and making the world a better place for all.

The new Convention is a remarkable achievement, and it complements another landmark instrument, the United Nations Convention against Transnational Organized Crime, which entered into force just a month ago. It is balanced, strong and pragmatic, and it offers a new framework for effective action and international cooperation.

The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen.

These provisions—the first of their kind—introduce a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. Corrupt officials will in future find fewer ways to hide their illicit gains. This is a particularly important issue for many developing countries where corrupt high officials have

plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies.

For the United Nations, the Convention is the culmination of work that started many years ago, when the word corruption was hardly ever uttered in official circles. It took systematic efforts, first at the technical, and then gradually at the political, level to put the fight against corruption on the global agenda. Both the Monterrey International Conference on Financing for Development and the Johannesburg World Summit on Sustainable Development offered opportunities for Governments to express their determination to attack corruption and to make many more people aware of the devastating effect that corruption has on development.

The Convention is also the result of long and difficult negotiations. Many complex issues and many concerns from different quarters had to be addressed. It was a formidable challenge to produce, in less than two years, an instrument that reflects all those concerns. All countries had to show flexibility and make concessions. But we can be proud of the result.

Allow me to congratulate the members of the bureau of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on their hard work and leadership, and to pay a special tribute to the Committee's late Chairman, Ambassador Héctor Charry Samper of Colombia, for his wise guidance and his dedication. I am sure all here share my sorrow that he is not with us to celebrate this great success.

The adoption of the new Convention will be a remarkable achievement. But let us be clear: it is only a beginning. We must build on the momentum achieved to ensure that the Convention enters into force as soon as possible. I urge all Member States to attend the Signing Conference in Merida, Mexico, in December, and to ratify the Convention at the earliest possible date.

If fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development it can help us achieve the Millennium Development Goals. Be assured that the United Nations Secretariat, and in particular the United Nations Office on Drugs and Crime, will do whatever it can to support the efforts of States to eliminate the scourge of corruption from the face of the Earth. It is a big challenge, but I think that, together, we can make a difference.

Kofi A. Annan
Secretary-General

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**General Assembly resolution 58/4
of 31 October 2003**

**United Nations Convention
against Corruption**

The General Assembly,

Recalling its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

Recalling also its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

Recalling further its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

Recalling its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

Recalling also Economic and Social Council resolution 2001/13 of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds",

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires from 4 to 7 December 2001,

Recalling the Monterrey Consensus, adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002,¹ in which it was underlined that fighting corruption at all levels was a priority,

Recalling also the Johannesburg Declaration on Sustainable Development, adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002,² in particular paragraph 19 thereof, in which corruption was declared a threat to the sustainable development of people,

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,

1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption,³ which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the final text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Merida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

3. *Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

4. *Decides* that, until the Conference of the States Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article 62 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing

¹*Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

²*Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

³A/58/422 and Add.1.

countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the States Parties to the Convention in order to prepare the draft text of the rules of procedure of the Conference of the States Parties and of other rules described in article 63 of the Convention, which will be submitted to the Conference of the States Parties at its first session for consideration;

6. *Requests* the Conference of the States Parties to the Convention to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard;

7. *Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;

8. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the States Parties to the Convention;

9. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against Corruption and to discharge the functions of secretariat of the Conference of the States Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above;

10. *Further requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Merida, Mexico, in accordance with resolution 57/169, for submission to the General Assembly at its fifty-ninth session.

Annex

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 co-operation 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 co-operation in asset recovery,

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

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

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

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

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

Taking note with appreciation of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,¹ the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,² the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,³ the Criminal Law

¹See E/1996/99.

²Official Journal of the European Communities, C 195, 25 June 1997.

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

Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,⁴ the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,⁵ and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

Welcoming the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,⁶

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

⁴Council of Europe, *European Treaty Series*, No. 173.

⁵*Ibid.*, No. 174.

⁶General Assembly resolution 55/25, annex I.

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.

*Article 61. Collection, exchange and analysis of
information on corruption*

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

*Article 62. Other measures: implementation of the Convention
through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Chapter VII

Mechanisms for implementation

Article 63. Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 64. Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Chapter VIII

Final provisions

Article 65. Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 66. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 67. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of

ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 68. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 69. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 70. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

Article 71. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

聯合國反貪腐公約

序 言

本公約締約國，

關注貪腐對社會穩定與安全所造成之問題和構成威脅之嚴重性，破壞民主體制及價值觀、道德觀與正義，並危害永續發展及法治，

並關注貪腐及其他形式犯罪間之聯繫，特別是組織犯罪與經濟犯罪，包括洗錢，

還關注涉及巨額資產之貪腐案件，這類資產可能占國家資源相當大比例，並對這些國家之政治穩定和永續發展構成威脅，

確信貪腐已不再是地方性問題，而是一種影響所有社會和經濟之跨國現象，因此，進行國際合作以預防及控制貪腐，乃至關重要，

並確信為有效預防和打擊貪腐，需採取綜合性及跨學科之方法，

尚確信提供技術援助在強化國家有效預防及打擊貪腐之能力方面得發揮重要作用之作用，包括透過加強能力與設置機構，

確信非法獲得個人財富特別會對民主體制、國民經濟及法治造成損害，

決心更有效預防、查察及抑制非法獲得資產之國際轉移，並加強資產追繳之國際合作，

承認在刑事訴訟程序及判決財產權之民事或行政訴訟程序遵守正當法律程序之基本原則，

銘記預防及根除貪腐為所有國家之責任，及各國應相互合作，並應有政府部門以外個人與團體之支持及參與，如民間社會團體、非政府組織和社區組織，爰此方面之工作始能有效，

尚銘記公共事務及公共財產之妥善管理、公平、盡責及法律之前人人平等原則，及維護廉正與提倡拒絕貪腐風氣之必要性，

讚揚預防犯罪暨刑事司法委員會及聯合國毒品暨犯罪辦公室在預防與打擊貪腐方面之工作，

回顧其他國際和區域組織在此一領域所實施之工作，包括非洲聯盟、歐洲理事會、關務合作理事會（又稱為世界關務組織）、歐洲聯盟、阿拉伯國家聯盟、經濟合作暨發展組織及美洲國家組織之活動，

讚賞地注意到預防及打擊貪腐之各種多邊文件，尤其包括美洲國家組織於一九九六年三月二十九日通過之美洲反貪腐公約¹、歐洲聯盟理事會於一九九七年五月二十六日通過之打擊涉及歐洲共同體官員或歐洲聯盟成員國官員貪腐行為公約²、經濟合作暨發展組織於一九九七年十一月二十一日通過之禁止在國際商業交易賄賂外國公職人員公約³、歐洲理事會部長委員會於一九九九年一月二十七日通過之反貪腐刑法公約⁴、歐洲理事會部長委員會於一九九九年十一月四日通過之反貪腐民法公約⁵，及非洲聯盟國家和政府元首會議於二〇〇三年七月十二日通過之非洲聯盟預防和打擊貪腐公約，

歡迎聯合國打擊跨國組織犯罪公約於二〇〇三年九月二十九日生效，⁶

一致同意如下：

第一章 總 則

第 1 條 宗旨聲明

本公約之宗旨為：

- (a) 促進和加強各項措施，以更加有效率且有力地預防及打擊貪腐；
- (b) 促進、便利及支援預防與打擊貪腐方面之國際合作和技術援助，包括在追繳資產方面；
- (c) 提倡廉正、課責制及對公共事務和公共財產之妥善管理。

第 2 條 用詞定義

在本公約中：

- (a) 公職人員，指：
 - (i) 在締約國擔任立法、行政、行政管理或司法職務之任何人員，無論是經任命或選舉、長期或臨時，有給職或無給職、該人資歷；
 - (ii) 依締約國法律之定義及該締約國相關法律領域之適用，執行公務或提供公共服務之任何其他人員，包括為公營機構或公營事業執行公務；
 - (iii) 依締約國法律定義為公職人員之任何其他人員。但

¹ E/1996/99。

² 歐洲共同體官方公報，C 195，1997 年 6 月 25 日。

³ 開發中國家之反貪倡廉倡議，聯合國出版物，出售品編號：E. 98. III. B. 18。

⁴ 歐洲理事會，歐洲條約集，第 173 號。

⁵ 同上，第 174 號。

⁶ 大會第 55/25 號決議，附件 1。

就本公約第二章所定之一些具體措施而言，公職人員得指依締約國法律之定義與該締約國相關法律領域之適用，執行公務或提供公共服務之任何人員；

- (b) 外國公職人員，指擔任外國立法、行政、行政管理或司法職務之任何人員，無論是經任命或選舉；及為外國執行公務之任何人員，包括公營機構或公營事業；
- (c) 國際組織官員，指國際公務員，或經此種組織授權代表該組織執行職務之任何人員；
- (d) 財產，指各種資產，不論是物質或非物質、動產或不動產、有形或無形，及證明對此種資產享有權利或利益之法律文件或文書；
- (e) 犯罪所得，指透過從事犯罪而直接或間接產生或獲得之任何財產；
- (f) 凍結或扣押，指依法院或其他主管機關之命令暫時禁止財產轉移、轉換、處分或移動，或對財產實行暫時扣留或控制；
- (g) 沒收，在適用之情況還包括沒入，指依法院或其他主管機關之命令對財產實行永久剝奪；
- (h) 前置犯罪，指由其產生之所得可能成為本公約第23條所定犯罪對象之任何犯罪；
- (i) 控制下交付，指為了偵查任何犯罪並查明參與該犯罪之人員，在主管機關知情並在其監控之情況，允許非法或可疑貨物運出、過境或運入一國或多國領域之作法。

第 3 條 適用範圍

1. 本公約應依其規定適用於預防、偵查及起訴貪腐，及本公約所定犯罪所得之凍結、扣押、沒收及返還。
2. 為實行本公約之目的，除本公約另有規定外，本公約所定之犯罪不得以造成國家財產之損害或侵害為必要。

第 4 條 保護主權

1. 各締約國在履行其依本公約所承擔之義務時，應恪守各國主權平等、領土完整及不干涉他國內政原則。
2. 本公約任何規定都不得賦予締約國在另一國領域內行使管轄權，及履行該另一國法律規定專屬於該國機關職務之權利。

第二章 預防措施

第 5 條 預防性反貪腐政策及作法

1. 各締約國均應依其國家法律制度之基本原則，訂定及執行或堅持有效而協調之反貪腐政策。此等政策應促進社會參與，並體現法治、妥善管理公共事務與公共財產、廉正、透明度和課責制等原則。
2. 各締約國均應努力訂定及促進各種預防貪腐之有效作法。
3. 各締約國均應努力定期評估相關法律文書及行政措施，以確定其能否有效預防與打擊貪腐。
4. 各締約國均應依其國家法律制度之基本原則，酌情彼此合作，並與相關國際組織及區域組織合作，以促進和訂定本條所定之措施。此種合作得包括參與各種預防貪腐之國際計畫及方案。

第 6 條 預防性反貪腐機構

1. 各締約國均應依其國家法律制度之基本原則，確保設一個或酌情設多個機構，透過下列措施預防貪腐：
 - (a) 實施本公約第5條所定之政策，並在適當之情況對此等政策之實施進行監督及協調；
 - (b) 累積與傳播預防貪腐之知識。
2. 各締約國均應依其國家法律制度之基本原則，賦予本條第1項所定機構必要之獨立性，使其能有效履行職權，及免受任何不正當之影響。各締約國均應提供必要之物資與專職工作人員，並為此等工作人員履行職權，提供必要之培訓。
3. 各締約國均應將得協助其他締約國訂定及實施具體預防貪腐措施之機關名稱與地址，通知聯合國秘書長。

第 7 條 政府部門

1. 各締約國均應依其國家法律制度之基本原則，酌情努力採用、維持及加強公務員及在適當之情況其他非選舉產生公職人員之招募、聘僱、留用、升遷及退休制度。這種制度應：
 - (a) 以效率與透明化原則、專長、公正及才能等客觀標準為基礎；
 - (b) 對擔任特別容易發生貪腐之政府職位人員，訂定適當之甄選與培訓程序，以及酌情對此等人員實行輪調之適當程序；
 - (c) 促進充分之報酬及公平之薪資標準，並考量締約國經濟發展水準；
 - (d) 促進人員之教育及培訓方案，以使其能夠達到正確、誠實及妥善履行公務之要求，並為其提供適當之專業培訓，

以提高其對履行職權過程所隱含貪腐風險之認識。此種方案得參照適當領域之行為守則或準則。

2. 各締約國均應考慮採取與本公約之目的相一致，並與其國家法律之基本原則相符之適當立法和行政措施，及就公職人員之候選人資格及當選標準訂定規定。
3. 各締約國尚應考慮採取與本公約之目的相一致，並與其國家法律之基本原則相符之適當立法和行政措施，以提高公職人員候選人競選經費籌措及在適當之情況政黨經費籌措之透明度。
4. 各締約國均應依其國家法律之基本原則，努力採用、維持及加強促進透明度及防止利益衝突之制度。

第 8 條 公職人員行為守則

1. 為了打擊貪腐，各締約國均應依其國家法律制度之基本原則，對其國家公職人員特別提倡廉正、誠實及盡責。
2. 各締約國均應特別努力在其國家體制及法律制度之範圍內，適用正確、誠實及妥善執行公務之行為守則或標準。
3. 為實施本條各項規定，各締約國均應依其國家法律制度之基本原則，酌情考量區域、區域間或多邊組織相關倡議，如聯合國大會於一九九六年十二月十二日第五十一/五十九號決議附件所定之公職人員國際行為守則。
4. 各締約國應依其國家法律之基本原則，考慮訂定措施和建立制度，使公職人員在執行公務過程發現貪腐行為時，向有關機關檢舉或告發。
5. 各締約國均應依其國家法律之基本原則，酌情努力訂定措施和建立制度，要求公職人員特別就可能與其職權發生利益衝突之職務外活動、任職、投資、資產及貴重之饋贈或重大利益，向有關機關陳（申）報。
6. 各締約國均應考慮依其國家法律之基本原則，對違反本條所定守則或標準之公職人員，採取處分或其他措施。

第 9 條 政府採購和政府財政管理

1. 各締約國均應依其國家法律制度之基本原則採取必要之步驟，建立對預防貪腐特別有效且以透明度、競爭及依客觀標準決定為基礎之適當採購制度。此類制度得在適用時考量適當之最低門檻金額，所涉及者應包含下列事項：
 - (a) 公開發送採購程序及契約之資料，包括招標文件與決標相關資料，使潛在投標人有充分時間準備和提交投標書；
 - (b) 事先確定參加政府採購之條件，包括甄選與決標標準及

- 投標規則，並予以公布；
- (c) 採用客觀及事先確定之標準作成政府採購決定，以利事後稽核各項規則或程序之正確適用與否；
 - (d) 建立有效之國內復審制度，包括有效之申訴制度，以確保在依本項訂定之規則未受到遵守時得訴諸法律及進行法律救濟；
 - (e) 酌情採取措施，以規範採購承辦人員之相關事項，如特定政府採購之利益關係聲明、篩選程序及培訓要求。
2. 各締約國均應依其國家法律制度之基本原則採取適當措施，促進政府財政管理之透明度和課責制。此等措施應包括下列事項：
- (a) 國家預算之通過程序；
 - (b) 按時報告收入及支出情況；
 - (c) 由會計和審計標準及相關監督構成之制度；
 - (d) 迅速而有效之風險管理及內控制度；及
 - (e) 在本項規定之要求未受到遵守時，酌情加以導正之措施。
3. 各締約國均應依其國家法律之基本原則，採取必要之民事和行政措施，以維持與政府開支和財政收入有關之帳冊、紀錄、財務報表或其他文件完整無缺，並防止竄改此類文件。

第 10 條 政府報告

考量反貪腐之必要性，各締約國均應依其國家法律之基本原則採取必要措施，提高政府行政部門之透明度，包括酌情在其組織之結構、運作及決策過程提高透明度。此等措施得包括下列事項：

- (a) 施行各種程序或法規，酌情使公眾瞭解政府行政部門組織之結構、運作及決策過程，並在考慮保護隱私和個人資料之情況，使公眾瞭解與其有關之決定和法規；
- (b) 酌情簡化行政程序，以利於公眾與主管決策機關間之聯繫；及
- (c) 公布資料，其中得包括政府行政部門貪腐風險問題之定期報告。

第 11 條 與審判和檢察機關有關之措施

1. 考量審判機關獨立及審判機關在反貪腐方面之關鍵作用，各締約國均應依其國家法律制度之基本原則，並在不影響審判獨立之情況採取措施，以加強審判機關人員之廉正，並防止出現貪腐機會。此等措施得包括審判機關人員行為規則。
2. 對各締約國內不屬於審判機關但享有類似審判機關獨立性之檢察機關，得採行及適用與依本條第1項所採取具有相同效力之措

施。

第 12 條 私部門

1. 各締約國均應依其國家法律之基本原則採取措施，以防止涉及私部門之貪腐，加強私部門之會計及審計標準，並酌情對不遵守措施之行為制定有效、適度且具有警惕性之民事、刑事或行政處罰。
2. 為達到這些目的而採取之措施得包括下列事項：
 - (a) 促進執法機構與相關私營實體間之合作；
 - (b) 促進制定各種旨在維護相關私營實體操守標準及程序，包括正確、誠實及妥善從事商業活動和所有相關職業活動，並防止利益衝突之行為守則，及在企業之間及企業與國家間之契約關係，促進良好商業慣例採用之行為守則；
 - (c) 增進私營實體透明度，包括酌情採取措施，以識別參與公司設立及管理之法人與自然人身分；
 - (d) 防止濫用對私營實體之管理程序，包括政府機關對商業活動給予補貼和核發許可證之程序；
 - (e) 在合理期限內，對原公職人員之職業活動，或公職人員辭職或退休後在私部門之任職，進行適當之限制，以防止利益衝突。前揭限制僅須此種活動或任職與該公職人員任期內曾擔任或監管之職權具有直接關連；
 - (f) 確保民營企業依其結構及規模實行有助於預防與發現貪腐之充分內部審計控制，並確保此種民營企業帳冊和必要之財務報表符合適當之審計及核發執照程序。
3. 為了預防貪腐，各締約國均應依其國家關於帳冊和紀錄保存、財務報表揭露及會計和審計標準之法規採取必要措施，以禁止從事下列行為，而觸犯本公約所定之任何犯罪：
 - (a) 設立帳冊外之帳戶；
 - (b) 進行帳冊外之交易或與帳冊不符之交易；
 - (c) 浮報支出；
 - (d) 登錄負債科目時謊報用途；
 - (e) 使用不實憑證；及
 - (f) 故意於法律規定之期限前銷毀帳冊。
4. 鑒於賄賂為本公約第15條和第16條所定犯罪構成要件之一，各締約國均應拒絕對構成賄賂之費用實行稅捐減免，並在適用之情況拒絕對促成貪腐行為所支付之其他費用，實行稅捐減免。

第 13 條 社會參與

1. 各締約國均應依其國家法律之基本原則，在其能力所及之範圍內採取適當措施，推動政府部門以外之個人及團體，如公民團體、非政府組織與社區組織等，積極參與預防和打擊貪腐，並提高公眾認識貪腐之存在、根源、嚴重性及其所構成之威脅。這種參與應透過下列措施予以加強：
 - (a) 提高決策過程之透明度，並促進公眾在決策過程中發揮作用；
 - (b) 確保公眾有獲得訊息之有效管道；
 - (c) 進行有助於不容忍貪腐之公眾宣傳活動，及中小學和大學課程等領域之公共教育方案；
 - (d) 尊重、促進及保護有關貪腐訊息之查詢、接收、公布及傳播自由。這種自由得受到一些限制，但應僅限於法律有明文規定且必要之下列情形：
 - (i) 尊重他人之權利或名譽；
 - (ii) 維護國家安全或公共秩序，或維護公共衛生或公共道德。
2. 各締約國均應採取適當措施，以確保公眾知悉本公約所定之相關反貪腐機構，並應酌情提供途徑，以利於透過匿名等方式向此等機構檢舉可能被視為構成本公約所定犯罪之案件。

第 14 條 預防洗錢措施

1. 各締約國均應：
 - (a) 在其權限範圍內，對銀行和非銀行之金融機構，包括對辦理資金或價值轉移等常規或非常規業務之自然人或法人，並在適當之情況對特別容易涉及洗錢之其他機構，建立全面性之國內管理及監督制度，以利遏制並監測各種形式之洗錢；此種制度應著重於訂定驗證客戶身分，並視情況驗證實際受益人身分、保存紀錄，及報告可疑交易等規定；
 - (b) 在不影響本公約第46條規定之情況，確保行政、管理、執法和專門打擊洗錢之其他機關（在國家法律許可時得包括司法機關）能依其國家法律規定之條件，在國家和國際場合進行合作與交換訊息，並為此目的應考慮設置金融情報機構，作為蒐集、分析及傳遞關於潛在洗錢活動訊息之國家中心。
2. 締約國應考慮實施可行之措施，以監測及追蹤現金與有關流通性票據（有價證券）跨境轉移之情況，但應訂定保障措施，以

確保訊息之正當使用，及不致於以任何方式妨礙合法資金之移動。此類措施得包括要求個人和企業報告大筆現金及有關流通性票據之跨境轉移。

3. 締約國應考慮實施適當且可行之措施，要求匯款業務機構等相關之金融機構：
 - (a) 在電子資金移轉文件和相關電文中，填入關於發端人（匯款人）之準確而有用訊息；
 - (b) 在整個支付過程中，保留這種訊息；
 - (c) 對發端人（匯款人）訊息不完整之資金轉移，加強審查。
4. 籲請締約國在建立本條所定之國家管理和監督制度時，在不影響本公約其他任何條款之情況，以區域、區域間及多邊組織之相關反洗錢倡議作為指導原則。
5. 締約國應努力為了打擊洗錢，在司法、執法及金融監理機關之間進行與促進全球、區域、次區域及雙邊合作。

第三章 定罪和執法

第 15 條 賄賂國家公職人員

各締約國均應採取必要之立法和其他措施，將故意觸犯之下列行為定為刑事犯罪：

- (a) 向公職人員直接或間接行求、期約或交付不正當利益於其本人、其他人員或實體，以使該公職人員於執行公務時作為或不作為；
- (b) 公職人員為其本人、其他人員或實體直接或間接行求或收受不正當利益，以作為該公職人員於執行公務時作為或不作為之條件。

第 16 條 賄賂外國公職人員或國際組織官員

1. 各締約國均應採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：向外國公職人員或國際組織官員直接或間接行求、期約或交付其本人、其他人員或實體不正當利益，以使該公職人員或該國際官員於執行公務時作為或不作為，以利獲得或保有與進行國際商務活動有關之商業或其他不正當利益。
2. 各締約國均應考慮採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：外國公職人員或國際組織官員為其本人、其他人員或實體直接或間接行求或收受不正當利益，以作為其在執行公務時作為或不作為之條件。

第 17 條 公職人員侵占、竊取或挪用財物

各締約國均應採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：公職人員為其本人或其他人員或實體之利益，侵占、竊取或挪用其因職務而受託之任何財物、政府或私有資金、有價證券或其他任何有價物品。

第 18 條 影響力交易

各締約國均應考慮採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：

- (a) 向公職人員或其他任何人員直接或間接行求、期約或交付任何不正當利益，使其濫用本人之實際影響力或被認為具有之影響力，以為該行為之人或其他任何人從締約國之行政部門或政府機關，獲得不正當利益。
- (b) 公職人員或其他任何人員為其本人或他人直接或間接要求或收受任何不正當利益，以作為該公職人員或其他人員濫用其本人實際或被認為具有之影響力，從締約國之行政部門或政府機關獲得任何不正當利益之條件。

第 19 條 濫用職權

各締約國均應考慮採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：濫用職權或地位，即公職人員在執行職務時違反法律而作為或不作為，以為其本人、其他人員或實體獲得不正當利益。

第 20 條 不法致富（資產非法增加或財產來源不明）

在不違背其國家憲法和法律制度基本原則之情況，各締約國均應考慮採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：不法致富或資產非法增加，即公職人員之資產顯著增加，而其本人又無法以其合法收入提出合理解釋。

第 21 條 私部門之賄賂

各締約國均應考慮採取必要之立法和其他措施，將在經濟、金融或商業活動過程中故意觸犯之下列行為定為犯罪：

- (a) 向以任何身分領導私部門實體或為該實體工作之任何人，直接或間接行求、期約或交付其本人或他人不正當利益，以使其違背職務而作為或不作為；
- (b) 以任何身分領導私部門實體或為該實體工作之任何人，為了其本人或他人直接或間接要求或收受不正當利益，以作為其

違背職務而作為或不作為之條件。

第 22 條 私部門財產之竊取或侵占

各締約國均應考慮採取必要之立法和其他措施，將在經濟、金融或商業活動過程中故意觸犯之下列行為定為犯罪：以任何身分領導私部門實體或在該實體中工作之人員，竊取或侵占其因職務而受託之任何財產、私有財物、證券或其他任何有價物品。

第 23 條 犯罪所得之洗錢行為

1. 各締約國均應依其國家法律之基本原則，採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：
 - (a) (i) 明知財產為犯罪所得，為了隱匿或掩飾該財產之非法來源，或幫助任何參與觸犯前置犯罪者逃避其行為之法律後果，轉換或轉移該財產；
 - (ii) 明知財產為犯罪所得，隱匿或掩飾該財產之真實性質、來源、所在地、處分、轉移、所有權或有關權利；
- (b) 在符合國家法律制度基本概念之情況：
 - (i) 在取得財產時，明知該財產為犯罪所得，仍獲取、占有或使用之；
 - (ii) 對觸犯本條所定之任何犯罪，有參與、結夥或共謀、未遂，與幫助、教唆、提供協助及建議行為；
2. 為了實施或適用本條第1項規定：
 - (a) 各締約國均應尋求將本條第1項適用於範圍最為廣泛之前置犯罪；
 - (b) 各締約國均應至少將本公約所定之各類犯罪定為前置犯罪；
 - (c) 為了本項第(b)款之目的，前置犯罪應包括在相關締約國管轄範圍之內和之外觸犯之犯罪。但如犯罪發生在一締約國管轄權範圍之外者，僅在該行為依其發生地所在國法律為犯罪，及依實施或適用本條之締約國法律，該行為若發生在該國也為犯罪時，始構成前置犯罪；
 - (d) 各締約國均應向聯合國秘書長提供其實施本條之法律，及此類法律隨後所為任何修正之影本或說明；
 - (e) 在締約國法律基本原則要求之情況，得明定本條第1項所定之犯罪不適用於觸犯前置犯罪之人。

第 24 條 藏匿犯罪所得財產

在不影響本公約第23條規定之情況，各締約國均應考慮採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：該行為所涉及之人雖未參與觸犯本公約所定之任何犯罪，但在觸犯此等犯罪後，明知財產為本公約所定任何犯罪之結果，藏匿或寄藏此種財產。

第 25 條 妨害司法

各締約國均應採取必要之立法和其他措施，將故意觸犯之下列行為定為犯罪：

- (a) 在涉及本公約所定犯罪之訴訟程序中使用暴力、威脅或恐嚇，或行求、期約或交付不正當利益，以誘使作偽證或干擾證言或證據提供；
- (b) 使用暴力、威脅或恐嚇，干擾審判程序或執法人員對本公約所定之犯罪執行公務。本項規定都不得影響締約國就其他類別公職人員之保護進行立法之權利。

第 26 條 法人責任

1. 各締約國均應採取符合其法律原則之必要措施，確定法人參與本公約所定犯罪，應承擔之責任。
2. 在不違反締約國法律原則之情況，法人責任得包括民事、刑事或行政責任。
3. 法人責任不得影響觸犯此種犯罪之自然人刑事責任。
4. 各締約國均應特別確保，依本條應承擔責任之法人受到有效、適度及具有警惕性之刑事或非刑事處罰，包括金錢處罰。

第 27 條 參與和未遂

1. 各締約國均應採取必要之立法和其他措施，依其國家法律將以共犯、幫助犯或教唆犯等任何身分參與本公約所定之犯罪定為犯罪。
2. 各締約國均得採取必要之立法和其他措施，依其國家法律將觸犯本公約所定犯罪之任何未遂行為定為犯罪。
3. 各締約國均得採取必要之立法和其他措施，依其國家法律將為觸犯本公約所定犯罪之預備行為定為犯罪。

第 28 條 作為犯罪要件之明知、故意或目的

本公約所定犯罪須構成之明知、故意或目的等要件，得依客觀之實際情況予以推定。

第 29 條 時效

各締約國均應依其國家法律酌情訂定一個長期之時效規定，以在此期限內對本公約所定之任何犯罪啟動訴訟程序，並對被控訴犯罪之人已逃避司法處罰之情形，明定更長之時效或時效中斷規定。

第 30 條 起訴、審判及處罰

1. 各締約國均應使本公約所定之犯罪受到與其嚴重性相當之處罰。
2. 各締約國均應依其國家法律制度及憲法原則採取必要之措施，以訂定或維持下列事項之適當平衡：既顧及公職人員執行職務所給予之豁免或司法特權，又顧及在必要時對本公約所定之犯罪進行有效偵查、起訴和審判程序之可能性。
3. 在因本公約所定之犯罪起訴任何人而行使其國家法律規定之任何法律裁量權時，各締約國均應努力確保對此等犯罪之執法措施取得最大成效，並適當考量遏止此種犯罪之必要性。
4. 就本公約所定之犯罪而言，各締約國均應依其國家法律，並在適當尊重被告權利之情況採取適當措施，力求確保於候審或上訴期間釋放裁定所定之條件，已考量確保被告在其後刑事訴訟程序中出庭之需要。
5. 各締約國均應在考慮已被判決確定觸犯犯罪之人提早釋放或假釋可能性時，顧及此種犯罪之嚴重性。
6. 各締約國均應在符合其國家法律制度基本原則之範圍內，考慮訂定程序，使相關部門得以對被控訴觸犯本公約所定犯罪之公職人員，酌情予以撤職、停職或調職，但應考量無罪推定原則。
7. 各締約國均應在符合其國家法律制度基本原則之範圍內，依犯罪之嚴重性，考慮訂定程序，透過法院命令或任何其他適當手段，使被判決確定觸犯本公約所定犯罪之人在其國家法律確定之一段期間內，喪失擔任下列職務之資格：
 - (a) 公職；及
 - (b) 全部國有或部分國有事業內之職位。
8. 本條第1項應不妨礙主管機關對公務員行使處分之權力。
9. 本公約之任何規定都不得影響下列原則：對本公約所定之犯罪及適用之法定抗辯事由，或決定行為合法性之其他法律原則，僅應由締約國法律加以闡明，及對此種犯罪，應依締約國法律予以起訴和處罰。
10. 締約國應努力促使被判決確定觸犯本公約所定犯罪之人復歸社會。

第 31 條 凍結、扣押和沒收

1. 各締約國均應在其國家法律制度之範圍內，盡最大可能採取必

要之措施，以利能沒收：

- (a) 來自本公約所定犯罪之所得，或價值與此種犯罪所得相當之財產；
 - (b) 利用於或擬利用於本公約所定犯罪之財產、設備或其他工具。
2. 各締約國均應採取必要之措施，以辨認、追查、凍結或扣押本條第1項所定之任何物品，及最終予以沒收。
 3. 各締約國均應依其國家法律採取必要之立法和其他措施，以規範主管機關對本條第1項和第2項所定凍結、扣押或沒收財產之管理。
 4. 如此類犯罪所得已部分或全部轉變或轉換為其他財產者，應以此類財產代替原犯罪所得，對之適用本條所定之措施。
 5. 如此類犯罪所得已與從合法來源獲得財產相混合者，應在不影響凍結權或扣押權之情況沒收此類財產。沒收價值最高得達到混合於其中犯罪所得之估計價值。
 6. 對來自此類犯罪之所得、犯罪所得轉變或轉換而成之財產，或來自己與此類犯罪所得相混合財產之收入或其他利益，亦應適用本條所定之措施。其方式和程度與處置犯罪所得相同。
 7. 為了本條和本公約第55條規定之目的，各締約國均應使其法院或其他主管機關有權要求提供或扣押銀行、財務或商業紀錄。締約國不得以銀行保密為理由，拒絕依本項規定採取行動。
 8. 締約國得考慮要求由罪犯證明此類犯罪所得或其他應予以沒收財產之合法來源，但此種要求應符合其國家法律之基本原則與司法程序及其他程序之性質。
 9. 本條規定不得解釋為損害善意第三人之權利。
 10. 本條任何規定都不得影響本條所定各項措施均應依締約國法律規定加以認定和實施之原則。

第 32 條 保護證人、鑑定人和被害人

1. 各締約國均應依其國家法律制度並在其能力所及範圍內採取適當之措施，為本公約所定犯罪作證之證人及鑑定人，並酌情為其親屬及其他與其關係密切者，提供有效之保護，使其免於遭到可能之報復或恐嚇。
2. 在不影響被告享有正當程序等權利之情況，本條第1項所定之措施得包括下列事項：
 - (a) 制定為證人和鑑定人提供人身保護之程序，如在必要和可行之情況，將其轉移至其他地點，並在適當之情況允許不揭露或限制揭露有關其身分和所在地之資料；

- (b) 訂定允許以確保證人和鑑定人安全之方式作證之取證規則，如允許藉助視聽（視訊）等通信技術或其他適當手段提供證言。
3. 締約國應考慮與其他國家訂定有關本條第1項所定人員移管之協定或安排。
 4. 本條各項規定尚應適用於同時具證人身分之被害人。
 5. 各締約國均應在不違背其國家法律之情況，並對罪犯提起刑事訴訟之適當階段，以不損害被告權利之方式，使被害人之意見及關切得到表達與考慮。

第 33 條 保護檢舉人

各締約國均應考慮在其國家法律制度中納入適當措施，以利對出於善意及具合理之事證向主管機關檢舉涉及本公約所定犯罪事實之任何人，提供保護，使其不致受到任何不公正待遇。

第 34 條 貪腐行為之後果

各締約國均應在適當顧及第三人善意取得權利之情況，依其國家法律之基本原則採取措施，以消除貪腐行為之後果。在此方面，締約國得在法律程序中將貪腐視為廢止或解除契約、撤銷特許權或其他類似文書，或採取其他任何救濟行動之相關因素。

第 35 條 損害賠償

各締約國均應依其國家法律之原則採取必要之措施，以確保因貪腐行為而受到損害之實體或自然人有權獲得賠償，並對該損害應負責任之人，提起法律程序。

第 36 條 專責機關

各締約國均應依其國家法律制度之基本原則採取必要之措施，確保設置一個或多個機構，或安排人員，專職負責執法與打擊貪腐。此類機構或人員應擁有依締約國法律制度基本原則賦予必要之獨立性，以利能在不受任何不正當影響之情況，有效執行職務。此類人員或機構之工作人員應受到適當培訓，並應有適當資源，以執行職務。

第 37 條 與執法機關之合作

1. 各締約國均應採取適當措施，以鼓勵參與或曾參與觸犯本公約所定犯罪之人提供有助於主管機關偵查和取證之情報，並為主管機關提供可能有助於剝奪罪犯之犯罪所得，並追繳犯罪所得

之實際具體幫助。

2. 對在本公約所定任何犯罪之偵查或起訴中提供實質性配合（合作）之被告，各締約國均應考慮訂定在適當之情況減輕處罰之可能性。
3. 對在本公約所定犯罪之偵查或起訴中提供實質性配合（合作）之人，各締約國均應考慮依其國家法律之基本原則，訂定允許免予起訴之可能性。
4. 為此類人員提供之保護，準用本公約第32條規定。
5. 如本條第1項所定位於任一締約國之人能提供另一締約國主管機關實質性配合，相關締約國得考慮依其國家法律訂定關於由對方締約國提供本條第2項及第3項所定待遇之協定或安排。

第 38 條 國家機關間之合作

各締約國均應採取必要之措施，依其國家法律鼓勵政府機關及其公職人員與負責偵查和起訴犯罪之機關間之合作。這種合作得包括下列事項：

- (a) 在有合理之事證足以相信發生本公約第15條、第21條及第23條所定之任何犯罪時，主動向上述機關檢舉；
- (b) 依請求，向上述機關提供一切必要之訊息。

第 39 條 國家機關與私部門間之合作

1. 各締約國均應採取必要之措施，依其國家法律鼓勵其國家偵查和檢察機關與私部門實體，特別是與金融機構之間，就觸犯本公約所定犯罪涉及之事項進行合作。
2. 各締約國均應考慮鼓勵其國民及在其領域內有習慣住居所之其他人，向國家偵查和檢察機關檢舉觸犯本公約所定犯罪之情況。

第 40 條 銀行保密

各締約國均應在對本公約所定之犯罪進行國家刑事偵查時，確保其國家法律制度訂定適當之機制，以克服因適用銀行保密法規可能產生之障礙。

第 41 條 犯罪紀錄

各締約國均得採取必要之立法或其他措施，依其認為適當之條件及目的，考慮另一國以前曾對被控訴之罪犯所為之任何有罪判決，以利在涉及本公約所定犯罪之刑事訴訟程序中利用此類訊息。

第 42 條 管轄權

1. 各締約國均應在下列情況採取必要之措施，以確立對本公約所定犯罪之管轄權：
 - (a) 犯罪發生在該締約國領域內；
 - (b) 犯罪發生在犯罪時懸掛該締約國國旗之船隻上，或已依該締約國法律註冊登記之航空器內。
2. 在不違背本公約第4條規定之情況，締約國得在下列情況對任何此種犯罪確立其管轄權：
 - (a) 犯罪係針對該締約國之國民；
 - (b) 犯罪係由該締約國之國民，或在其領域內有習慣住居所之無國籍人觸犯；
 - (c) 犯罪係發生在其國家領域以外，且為本公約第23條第1項第(b)款第(ii)目所定犯罪之一者，以利在其國家領域內觸犯本公約第23條第1項第(a)款第(i)目或第(ii)目，或第(b)款第(i)目所定之犯罪；
 - (d) 犯罪係針對該締約國。
3. 為了本公約第44條規定之目的，各締約國均應採取必要之措施，在被控訴之罪犯於其領域內僅因該人為其國民而不予引渡時，確立其國家對本公約所定犯罪之管轄權。
4. 各締約國得採取必要之措施，在被控訴之罪犯於其領域內而不予引渡該人時，確立其國家對本公約所定犯罪之管轄權。
5. 如依本條第1項或第2項行使管轄權之締約國被告知，或透過其他途徑獲悉，其他締約國正對同一行為進行偵查、起訴或審判程序，此等締約國主管機關應酌情相互磋商，以利協調彼此行動。
6. 在不影響一般國際法規範之情況，本公約不得排除締約國行使其國家法律所定之任何刑事管轄權。

第四章 國際合作

第 43 條 國際合作

1. 締約國應依本公約第44條至第50條規定在刑事案件方面相互合作。在適當且符合其國家法律制度之情況，締約國應考慮與貪腐有關民事和行政事件之調查和訴訟程序方面相互協助。
2. 凡將雙重犯罪認定為國際合作事項之一項條件時，如協助之請求所述之犯罪行為在兩個締約國之法律均定為犯罪者，應視為已符合此項條件，不論被請求締約國及請求締約國之法律是否均將此種犯罪定為相同之犯罪類別，或是否使用相同之用詞明定此種犯罪名稱。

第 44 條 引渡

1. 在被請求引渡之人位於被請求締約國領域內時，如引渡請求所依據之犯罪為請求締約國和被請求締約國之法律均屬應受到處罰之犯罪者，本條應適用於本公約所定之犯罪。
2. 儘管有本條第1項規定，如締約國法律允許者，仍得對本公約所涵蓋但依其國家法律不予處罰之任何犯罪，准予引渡。
3. 如引渡請求包括數項獨立之犯罪，其中至少有一項犯罪得依本條規定予以引渡，其他一些犯罪因其監禁期之理由不得引渡，但與本公約所定之犯罪有關者，被請求締約國亦得對此等犯罪適用本條規定。
4. 本條適用之各種犯罪均應視為締約國之間現行任何引渡條約得引渡之犯罪。締約國承諾，將這種犯罪作為得引渡之犯罪訂定於彼此將締結之每一個引渡條約。在以本公約作為引渡之依據時，如締約國法律允許者，本公約所定之任何犯罪均不得視為政治犯罪。
5. 以締結條約作為引渡條件之締約國，如接到未與其締結引渡條約之另一締約國引渡請求者，得將本公約視為本條所定任何犯罪予以引渡之法律依據。
6. 以締結條約為引渡條件之締約國應：
 - (a) 在交存本公約批准書、接受書、同意書或加入書時，通知聯合國秘書長，並說明是否將本公約作為與本公約其他締約國進行引渡合作之法律依據；
 - (b) 如不以本公約作為引渡合作之法律依據者，在適當之情況尋求與本公約其他締約國締結引渡條約，以執行本條規定。
7. 不以締結條約為引渡條件之締約國應承認本條所定之犯罪為彼此得相互引渡之犯罪。
8. 引渡應符合被請求締約國法律或所適用之引渡條約所定之條件，包括引渡之最低刑罰要求，及被請求締約國得拒絕引渡之理由等條件。
9. 對本條所定之任何犯罪，締約國應在符合其國家法律之情況，努力加速引渡程序，並簡化與引渡有關之證據要求。
10. 被請求締約國在不違背其國家法律及引渡條約規定之情況，得在認定情況為有必要且急迫時，依請求締約國之請求，拘禁位於被請求締約國領域內被請求引渡之人，或採取其他適當措施，以確保該人在進行引渡程序時在場。
11. 如被控訴之罪犯被發現位於任一締約國領域內，該國僅以該人

是其國民為理由，不對本條所定之犯罪將其引渡者，該國有義務在尋求引渡之締約國提出請求時，將該案提交其國家主管機關予以起訴，不得有任何不適當之延誤。此等主管機關應以與其國家法律對任何其他重罪所定之相同方式，作成決定及進行訴訟程序。相關締約國應相互合作，特別是在程序與證據方面，以確保此類起訴之效率。

12. 如締約國法律規定允許引渡或移交其國民，須以該人將被送返本國依引渡或移交請求所涉審判或訴訟程序作成之判決而服刑為條件者，該締約國和尋求引渡該人之締約國均同意此一選擇，及其他可能認為適當之條件，此種附條件之引渡或移交應足以履行該締約國依本條第11項所定之義務。
13. 如為執行判決而提出引渡之請求，但因被請求引渡之人為被請求締約國之國民而遭到拒絕者，被請求締約國應在其國家法律允許且符合該法律要求之情況，依請求締約國之請求，考慮執行該請求締約國法律所判處之刑罰或尚未服滿之刑期。
14. 對任何人進行本條所定任何犯罪之訴訟程序時，應確保該人在訴訟程序之所有階段受到公平之待遇，包括享有依所在國法律所提供之一切權利及保障。
15. 如被請求締約國有充分理由認為提出引渡請求是以任何人之性別、種族、宗教、國籍、族裔或政治觀點為基礎，對其進行起訴或處罰，或依該請求執行，將使該人之地位基於上述因素之一而受到損害者，本公約之任何條款不得解釋為課與被請求締約國引渡義務。
16. 締約國不得僅以該犯罪亦被認定涉及財稅事項為理由，拒絕引渡。
17. 在拒絕引渡之前，被請求締約國應在適當之情況與請求締約國進行磋商，使請求締約國有機會充分陳述意見及提供與其陳述有關之資料。
18. 締約國應力求締結雙邊及多邊協定或安排，以執行引渡，或加強引渡之有效性。

第 45 條 受刑人移交

各締約國得考慮締結雙邊或多邊協定或安排，將因觸犯本公約所定之犯罪而被判監禁或其他剝奪自由形式之人，移交其本國服滿刑期。

第 46 條 司法互助

1. 締約國應對本公約所定犯罪之偵查、起訴及審判程序，提供最

廣泛之司法互助。

2. 對請求締約國依本公約第26條規定得追究法人責任之犯罪所進行之偵查、起訴和審判程序，被請求締約國應依其相關法律、條約、協定及安排，盡可能地充分提供司法互助。
3. 為了下列任何目的，得請求依本條規定提供司法互助：
 - (a) 向個人獲取證據或陳述（證言）；
 - (b) 送達司法文書；
 - (c) 執行搜索和扣押，並實行凍結；
 - (d) 檢查物品和場所；
 - (e) 提供資料、物證及鑑定報告；
 - (f) 提供相關文件和紀錄原本或經認證之正本，包括政府、銀行、財務、公司或商業紀錄；
 - (g) 為了取證目的，辨認或追查犯罪之所得、財產、工具或其他物品；
 - (h) 便利相關人員自願在請求締約國出庭；
 - (i) 不違反被請求締約國法律之任何其他協助形式；
 - (j) 依本公約第五章規定之辨認、凍結及追查犯罪所得；
 - (k) 依本公約第五章規定之追繳資產。
4. 締約國主管機關如認為與刑事案件有關之資料可能有助於另一締約國主管機關進行或順利完成調查和刑事訴訟程序，或得促使其依本公約提出請求者，在不影響其國家法律之情況及無事先之請求時，向該另一締約國主管機關提供此類資料。
5. 依本條第4項規定提供此類資料時，不得影響提供資料主管機關之國家進行調查和刑事訴訟程序。接收資料主管機關應遵守資料保密之要求，即使是暫時保密要求，或資料使用限制。但不得妨礙接收資料締約國在其訴訟程序揭露得證明被告無罪之資料。在此種情況，接收資料締約國應在揭露該資料之前通知提供資料締約國。如提供資料締約國要求事先通知者，應與其磋商。如在特殊之情況無法事先通知者，接收資料締約國應毫不遲延地將該資料揭露通知提供資料締約國。
6. 本條規定不得影響任何其他雙邊或多邊條約已規範或將規範之全部或部分司法互助義務。
7. 如相關締約國無司法互助條約約束者，本條第9項至第29項應適用於依本條提出之請求。如相關締約國有此類條約約束者，應適用該條約之相應條款，但此等締約國同意以適用本條第9項至第29項規定取代之者，不在此限。如本條第9項至第29項規定有助於合作者，強力鼓勵各締約國適用此等規定。
8. 各締約國不得以銀行保密為理由拒絕提供本條所定之司法互助。

9. (a) 在非雙重犯罪之情況，被請求締約國對依本條提出之司法互助請求為回覆時，應考量第1條所定之本公約宗旨；
(b) 各締約國得以非雙重犯罪為理由拒絕提供本條規定之司法互助。但被請求締約國應在符合其法律制度基本概念之情況，提供不涉及強制性行動之協助。在請求所涉事項屬極為輕微，或尋求合作或協助之事項得依本公約其他規定獲得時，被請求締約國得拒絕此類協助；
(c) 各締約國均得考慮採取必要措施，使其能在非雙重犯罪之情況，提供比本條規定更為廣泛之協助。
10. 在一締約國領域內被羈押或服刑之人，如被要求到另一締約國進行辨認、作證或提供其他協助，以利就與本公約所定犯罪有關之偵查、起訴或審判程序取得證據，在符合下列條件時，得予以移交：
(a) 該人在知情後自由表示同意；
(b) 雙方締約國主管機關均同意，但應符合雙方締約國認為適當之條件。
11. 為了本條第10項之目的：
(a) 除移交締約國另有其他要求或授權者外，該人被移交前往之締約國應有權力和義務羈押被移交之人；
(b) 該人被移交前往之締約國應毫不遲延地依雙方締約國主管機關事先達成或另外達成之協議，履行其將該人交還移交締約國羈押之義務；
(c) 該人被移交前往之締約國不得要求移交締約國為該人之交還啟動引渡程序；
(d) 該人在被移交前往之國家內之羈押時間，應折抵其在移交締約國應執行之刑期。
12. 除依本條第10項和第11項規定經移交該人之締約國同意者外，不論該人之國籍，均不得因其在離開移交國領域以前之作為、不作為或定罪，在被移交前往之國家領域使其受到起訴、羈押、處罰，或對其人身自由進行任何其他限制。
13. 各締約國均應指定一個中央機關，負責和有權接收司法互助之請求，並執行請求或將請求移轉主管機關執行。如各締約國有實行個別司法互助制度之特別區域或領域者，得另指定一個對該特別區域或領域具有同樣職權之中央機關。中央機關應確保迅速且妥善地執行或移轉其所收到之請求。中央機關在將請求移轉任一主管機關執行時，應鼓勵該主管機關迅速而妥善地執行該請求。各締約國均應在交存本公約批准書、接受書、同意

書或加入書時，將為此目的指定之中央機關通知聯合國秘書長。司法互助請求及與其有關之任何聯繫文件均應送交締約國指定之中央機關。前揭規定不得影響各締約國要求透過外交管道，及在緊急情況時，如經相關締約國同意，得透過國際刑事警察組織，向其傳遞此種請求與聯繫文件之權利。

14. 請求應以被請求締約國接受之語文及書面形式提出，或在可能情況時，以可製作為書面紀錄之任何形式提出，但須使該締約國能鑑定其真偽。各締約國均應在其交存本公約批准書、接受書、同意書或加入書時，將其所接受之語文通知聯合國秘書長。在緊急情況時經相關締約國同意，請求得先以口頭方式提出，但應立即以書面加以確認。
15. 司法互助請求書應包括下列內容：
 - (a) 提出請求之機關資訊；
 - (b) 請求所涉偵查、起訴或審判程序之事由和性質，及進行該偵查、起訴或審判程序之機關名稱與職權；
 - (c) 相關事實之概述，但為送達司法文書提出之請求，不在此限；
 - (d) 對請求司法互助之事項和請求締約國希望遵循特定程序細節之說明；
 - (e) 在可能之情況，任何相關人員之身分、所在地及國籍；及
 - (f) 獲取證據、資料，或要求採取行動之目的。
16. 被請求締約國得要求提供依其國家法律執行該請求所必要或有助於執行該請求之補充資料。
17. 請求應依被請求締約國之法律執行；在不違反被請求締約國法律且可能之情況，依請求書所述之程序執行。
18. 在任一締約國領域內之任何人須以證人或鑑定人身分，接受另一締約國司法機關詢問時，及如該人無法或不想親自到請求國領域出庭者，被請求締約國得依該另一締約國之請求，在可能且符合其國家法律基本原則之情況，允許以視訊會議方式進行詢問。各締約國得協議由請求締約國司法機關進行詢問，並在詢問時應有被請求締約國司法機關人員在場。
19. 未經被請求締約國事先同意時，請求締約國不得將被請求締約國提供之資料或證據，移轉或利用於請求書所述用途以外之偵查、起訴或審判程序。本項規定不得妨礙請求締約國在其訴訟程序揭露得證明被告無罪之資料或證據。於後一種情形，請求締約國應在揭露之前通知被請求締約國。如被請求締約國要求須事前通知者，應與被請求締約國磋商。如在特殊之情況無法

事先通知者，請求締約國應毫不遲延地將上述揭露通知被請求締約國。

20. 請求締約國得要求被請求締約國對其提出之請求及其內容予以保密，但為實施請求所必要者，不在此限。如被請求締約國無法遵守保密要求者，應立即通知請求締約國。
21. 有下列情況之一者，得拒絕提供司法互助：
 - (a) 請求未依本條規定提出；
 - (b) 被請求締約國認為執行請求可能損害其主權、安全、公共秩序或其他基本利益；
 - (c) 如被請求締約國主管機關依其管轄權已對任何類似犯罪進行偵查、起訴或審判程序者，其國家法律禁止對此類犯罪採取被請求之行動；
 - (d) 同意此項請求，將違反被請求締約國司法互助之法律制度。
22. 締約國不得僅以犯罪亦被認為涉及財稅事項為理由，拒絕司法互助請求。
23. 拒絕司法互助時，應說明理由。
24. 被請求之締約國應儘速執行司法互助請求，並應盡可能充分考量請求締約國所提之任何最後期限，最好是在請求中說明理由。請求締約國得合理要求被請求締約國，提供其執行此一請求所採取措施之現況及進展等訊息。被請求締約國應依請求締約國之合理要求，就其執行請求之現況及進展進行答覆。請求締約國應在其不再尋求協助時，迅速通知被請求締約國。
25. 被請求締約國得以司法互助將妨礙其正進行之偵查、起訴或審判程序為理由，暫緩提供該司法互助。
26. 被請求締約國依本條第21項拒絕任一項請求，或依本條第25項暫緩執行請求事項之前，應與請求締約國協商，以考慮是否得依在其認為必要之條件提供司法互助。請求締約國如接受附帶上述條件之司法互助者，應遵守相關條件。
27. 在不影響本條第12項適用之情況，對依請求締約國請求而同意到請求締約國領域，就任一訴訟作證或為任一偵查、起訴或審判程序提供協助之證人、鑑定人或其他人員，不得因其離開被請求締約國領域前之作為、不作為或定罪，在請求締約國領域對其起訴、羈押、處罰，或使其人身自由受到任何其他限制。證人、鑑定人或其他人員在收到司法機關不再要求其出庭之正式通知時，自該通知之日起連續十五日內，或在各締約國協議之任何期限內有機會離開，但仍自願留在請求締約國領域內，或在離境後又自願返回者，這種安全保障即予失效。

28. 除相關締約國另有協議外，執行請求之一般費用應由被請求締約國負擔。如實施請求需要或將需要支付巨額或特殊之費用者，應由相關締約國協商確定執行該請求之條件及負擔費用之方式。
29. 被請求締約國：
 - (a) 應向請求締約國提供其所保有，且依其國家法律得向公眾公開之政府紀錄、文件或資料影本；
 - (b) 得自行斟酌決定全部或部分或依其認為適當之條件，向請求締約國提供其所保有，且依其國家法律未向公眾公開之任何政府紀錄、文件或資料影本。
30. 締約國應視需要考慮締結雙邊或多邊協定或安排之可能性，以利實現本條之目的、具體實施或加強本條之規定。

第 47 條 刑事訴訟程序之移轉管轄

各締約國如認為相互移轉訴訟程序有利於適當執法者，特別是在涉及數國管轄權時，為了使起訴集中，應考慮相互移轉訴訟程序之可能性，以利對本公約所定之犯罪進行刑事訴訟。

第 48 條 執法合作

1. 各締約國應在符合其國家法律制度及行政管理制度之情況相互密切合作，以加強打擊本公約所定犯罪執法行動之有效性。締約國尤應採取有效措施：
 - (a) 加強並在必要時建立各締約國主管機關、機構及部門間之聯繫管道，以促進安全與迅速地交換本公約所定犯罪之各個方面情報；如相關締約國認為適當者，得包括與其他犯罪活動相連結之情報；
 - (b) 與其他締約國就調查本公約所定犯罪之下列事項進行合作：
 - (i) 此類犯罪嫌疑人之身分、所在地及活動，或其他相關人員之所在地；
 - (ii) 來自此類犯罪之犯罪所得或財產流向；
 - (iii) 利用或意圖利用於觸犯此類犯罪之財產、設備或其他工具流向；
 - (c) 在適當之情況，提供必要數目或數量之物品，以供分析或偵查使用；
 - (d) 在適當之情況，就觸犯本公約所定犯罪而採用之具體手段及方法，與其他締約國酌情交換資料，包括利用假身分、變造、偽造或假冒證件及其他掩飾活動之手段；
 - (e) 促進各締約國主管機關、機構及部門間之有效協調，並

加強人員和其他專家之交流，包括依相關締約國間之雙邊協定和安排，派駐聯絡官員；

(f) 交換情報及協調採取適當之行政和其他措施，以利儘早查明本公約所定之犯罪。

2. 為了實施本公約，各締約國應考慮締結其執法機構間直接合作之雙邊或多邊協定或安排，並在已有此類協定或安排之情況，考慮修正之。相關締約國之間尚未締結此類協定或安排時，此等締約國得考慮以本公約為基礎，就本公約所定之任何犯罪，進行相互執法合作。締約國應在適當之情況充分利用各種協定或安排，包括利用國際或區域組織，以加強各締約國執法機構間之合作。
3. 各締約國應努力在其能力所及之範圍內進行合作，以利回應藉助現代技術觸犯本公約所定之犯罪。

第 49 條 聯合偵查

各締約國應考慮締結雙邊或多邊協定或安排，以利相關主管機關得就涉及一國或多國偵查、起訴或審判程序等事由之情事，設置聯合偵查機構。在無此類協定或安排時，得在個案基礎上協議進行此類聯合偵查。相關締約國應確保在一締約國領域內進行此種偵查時，其主權受到充分尊重。

第 50 條 特殊偵查手段

1. 為了有效打擊貪腐，各締約國均應在其國家法律制度基本原則之許可範圍內，依其國家法律規定之條件，在其能力所及之情況採取必要之措施，允許其主管機關在其領域內酌情使用控制下交付，並在其認為適當時，使用電子或其他監視形式及臥底行動等其他特殊偵查手段，及允許法庭採信由此等手段取得之證據。
2. 為了偵查本公約所定之犯罪，鼓勵各締約國於必要時締結適當之雙邊或多邊協定或安排，以利在國際合作時使用此類特殊偵查手段。此類協定或安排之締結及實施應充分遵循各國主權平等原則；執行時並應嚴格遵守此類協定或安排之規定。
3. 在無本條第2項所定之協定或安排時，於國際場合使用此種特殊偵查手段之決定，應在個案基礎上為之；必要時得考量相關締約國就行使管轄權所達成之財務安排或瞭解書。
4. 於國際場合使用控制下交付之決定，經相關締約國同意時，得包括攔截貨物或資金，及允許其原封不動地繼續運送，或將其全部或部分取出或替換等方法。

第五章 追繳資產

第 51 條 一般規定

依本章返還資產為本公約之基本原則。各締約國應在這方面相互提供最廣泛之合作及協助措施。

第 52 條 預防和監測犯罪所得轉移

1. 在不影響本公約第14條之情況，各締約國均應依其國家法律採取必要措施，要求其管轄範圍內之金融機構確認客戶身分，並採取合理之步驟，以確定存入大額資金帳戶之實際受益人身分，及對正在或曾經擔任重要公職之個人、其家庭成員及與其關係密切之人，或此等人員之代理人所要求開立或持有之帳戶，加強審查。此種加強審查應予以合理設計，以監測可疑交易並向主管機關申報；及不得解釋為妨礙或禁止金融機構與任何合法客戶之業務往來。
2. 為利本條第1項所定措施之實行，各締約國均應依其國家法律及參照區域、區域間和多邊組織之相關反洗錢措施（倡議）：
 - (a) 就其國家管轄範圍內之金融機構，應對哪類自然人或法人帳戶實行加強審查、哪類帳戶和交易予以特別注意，及就此類帳戶之開立、管理及紀錄採取哪些適當之措施，發布諮詢意見；及
 - (b) 對應由其國家管轄範圍內金融機構實行加強審查帳戶之特定自然人或法人身分，除此等金融機構得自行確定者外，酌情依另一締約國請求或依職權自行決定，通知此等金融機構。
3. 在本條第2項第(a)款之情況，各締約國均應實行措施，以確保其金融機構在適當之期限內保持本條第1項所定人員帳戶和交易之充分紀錄，至少應包括與客戶身分相關之資料，並盡可能包括與實際受益人身分相關之資料。
4. 為了預防和監測本公約所定犯罪之所得轉移，各締約國均應採取適當及有效之措施，以在監理機構幫助之下禁止設立無實體存在且不附屬於受監理金融集團之銀行。此外，各締約國得考慮要求其金融機構，拒絕與此類機構建立或保持代理銀行關係（通匯往來銀行關係），並避免與允許無實體存在且不附屬於受監理金融集團之銀行使用其帳戶之外國金融機構，建立關係。
5. 各締約國均應考慮依其國家法律，對相關公職人員訂定有效之

財產申報制度，並應對不遵守制度之情形，明定適當之處罰。各締約國尚應考慮採取必要措施，允許其國家主管機關在必要時與其他國家主管機關交換此種資料，以利對本公約所定犯罪之所得進行調查、主張權利，並予以追繳。

6. 各締約國均應依其國家法律考慮採取必要措施，要求對在外國設立之金融帳戶擁有利益、對該帳戶擁有簽名權或其他權限之相關公職人員，向相關機關申報此種關係，並保持與此種帳戶有關之適當紀錄。此種措施尚應對違反之情形，明定適當之處罰。

第 53 條 直接追繳財產之措施

各締約國均應依其國家法律：

- (a) 採取必要措施，允許另一締約國在其國家法院提起民事訴訟，確立對觸犯本公約所定犯罪而獲得財產之權利或所有權；
- (b) 採取必要措施，允許其國家法院命令觸犯本公約所定犯罪之人，向受到此種犯罪損害之另一締約國支付補償或損害賠償；及
- (c) 採取必要措施，允許其國家法院或主管機關於須作沒收決定時，承認另一締約國對觸犯本公約所定犯罪而獲得之財產，主張合法所有權。

第 54 條 透過沒收事宜之國際合作追繳資產機制

1. 為了依本公約第55條規定對透過或涉及觸犯本公約所定犯罪而獲得之財產提供司法互助，各締約國均應依其國家法律：
 - (a) 採取必要措施，使其主管機關得執行另一締約國法院核發之沒收命令；
 - (b) 採取必要措施，使有管轄權之主管機關得透過洗錢犯罪或可能發生在其管轄範圍內其他犯罪之法院判決，或其國家法律授權之其他程序，要求沒收此類外國來源之財產；及
 - (c) 考慮採取必要措施，以利在犯罪人死亡、潛逃或缺席而無法對其起訴或其他適當情形，允許不經刑事定罪，即予沒收此類財產。
2. 為了提供司法互助於本公約第55條第2項之請求，各締約國均應依其國家法律：
 - (a) 採取必要措施，以利被請求締約國於收到請求締約國法院或主管機關核發之凍結或扣押命令時，依該凍結或扣

押命令提供之合理事證，相信有充足理由採取凍結或扣押該財產之行動，及相關財產將依本條第1項第(a)款之沒收命令處理者，允許其主管機關得依該凍結或扣押命令為之；

- (b) 採取必要措施，以利被請求締約國於收到請求時，依該請求提供之合理事證，相信有充足理由採取凍結或扣押該財產之行動，及相關財產將依本條第1項第(a)款之沒收命令處理者，允許其主管機關得依該請求為之；及
- (c) 考慮採取補充措施，允許其主管機關保全擬沒收之財產，如基於涉及獲取上述財產之外國逮捕或刑事控訴。

第 55 條 沒收事宜之國際合作

1. 各締約國在收到對本公約所定犯罪有管轄權之另一締約國，請求沒收本公約第31條第1項所定且位於被請求締約國領域內之犯罪所得、財產、設備或其他工具後，應在其國家法律制度之範圍內盡最大可能：
 - (a) 將這種請求提交其主管機關，以利取得沒收命令，並在取得沒收命令時執行之；或
 - (b) 將請求締約國領域內法院依本公約第31條第1項和第54條第1項第(a)款規定核發之沒收命令，提交其國家主管機關，以利依請求之範圍，就該沒收命令關於本公約第31條第1項所定且位於被請求締約國領域內之犯罪所得、財產、設備或其他工具執行之。
2. 在對本公約所定犯罪有管轄權之締約國提出請求後，被請求締約國應採取措施，以辨認、追查及凍結或扣押本公約第31條第1項所定之犯罪所得、財產、設備或其他工具，以利最後由請求締約國命令，或依本條第1項所定之請求，由被請求締約國命令沒收之。
3. 本公約第46條之規定，於本條準用之。依本條規定提出之請求，除第46條第15項所定之資料外，尚應包括下列事項：
 - (a) 在本條第1項第(a)款之請求時，沒收財產之說明，並盡可能包括財產之所在地和在相關之情況財產之估計價值，及請求締約國所依據事實之充分陳述，以利被請求締約國能依其國家法律取得沒收命令；
 - (b) 在本條第1項第(b)款之請求時，請求締約國核發其請求所依據且法律上許可之沒收命令影本、事實及對沒收命令所請求執行範圍之說明、請求締約國為向善意第三人提供充分通知與確保正當程序所採取措施之具體陳述，

及該沒收命令為已終局確定沒收命令之陳述；

(c) 在本條第2項之請求時，請求締約國所依據事實之陳述，和對請求採取行動之說明；如有請求所依據且法律上許可之沒收命令影本，一併附上。

4. 被請求締約國依本條第1項和第2項規定作成之決定或採取之行動，應符合並遵循其國家法律及程序規則之規定，或可能約束其與請求締約國關係之任何雙邊或多邊協定或安排規定。
5. 各締約國均應向聯合國秘書長提供實施本條規定之任何法規及其隨後任何修正規定影本，或其說明。
6. 如締約國選擇以現行條約作為採取本條第1項和第2項所定措施之條件者，應將本公約視為必要且充分之條約依據。
7. 如被請求締約國未收到充分和及時之證據，或財產價值輕微者，亦得拒絕本條規定之合作，或解除臨時（保全）措施。
8. 在解除依本條規定採取之任何臨時（保全）措施前，如情況可行者，被請求締約國應提供請求締約國說明繼續維持該措施理由之機會。
9. 本條規定不得解釋為損害善意第三人之權利。

第 56 條 特別合作

在不影響其國家法律之情況，各締約國均應努力採取措施，以利在認為揭露本公約所定犯罪之所得資料，可能有助於接收資料締約國啟動或實行偵查、起訴或審判程序，或促使該締約國依本章提出請求時，及在不影響其國家偵查、起訴或審判程序之情況，無須事先請求，即向該另一締約國傳送此類資料。

第 57 條 資產返還和處分

1. 締約國應依本公約和其國家法律規定，處分依本公約第31條或第55條規定沒收之財產，包括依本條第3項規定返還原合法之所有權人。
2. 各締約國均應依其國家法律之基本原則，採取必要之立法和其他措施，使其國家主管機關在另一締約國請求其採取行動時，得在考量善意第三人權利之情況，依本公約返還沒收之財產。
3. 依本公約第46條和第55條及本條第1項和第2項規定：
 - (a) 對本公約第17條和第23條所定貪污政府資金之非法侵占或竊取或其洗錢行為，被請求締約國應依第55條規定實行沒收後，基於請求締約國之確定判決，將沒收之財產返還請求締約國，但被請求締約國亦得放棄要求該確定判決；

- (b) 對本公約所定之其他任何犯罪所得，被請求締約國應依本公約第55條規定執行沒收後，基於請求締約國之確定判決，在請求締約國向被請求締約國合理證明其對沒收財產之原所有權，或被請求締約國承認請求締約國受到之損害為返還沒收財產之依據時，將沒收之財產返還請求締約國，但被請求締約國亦得放棄要求該確定判決；
 - (c) 在其他所有之情況，被請求締約國應優先考慮將沒收之財產返還請求締約國、返還原合法之所有權人，或賠償犯罪被害人。
- 4. 在適當之情況，除締約國另有決定外，被請求締約國得在依本條規定返還或處分沒收之財產前，扣除為此進行偵查、起訴或審判程序所生之合理費用。
 - 5. 在適當之情況，締約國亦得特別考慮就沒收財產之最後處分，逐案（在個案基礎上）締結協定或相互接受之安排。

第 58 條 金融情報機構

各締約國應相互合作，以預防和打擊本公約所定犯罪產生之所得轉移，並推廣追繳此類所得之方式及方法。為此，各締約國應考慮設金融情報機構，負責接收、分析及向主管機關傳送可疑之金融交易報告。

第 59 條 雙邊和多邊協定及安排

各締約國應考慮締結雙邊或多邊協定或安排，以利強化依本章進行國際合作之有效性。

第六章 技術援助和訊息交流

第 60 條 培訓和技術援助

- 1. 各締約國均應在必要之情況，為其國家負責預防和打擊貪腐之人員，啟動、制定或改善具體培訓計畫。這些培訓計畫得處理下列事項：
 - (a) 預防、監測、偵查、懲罰及控制貪腐之有效措施，包括使用取證與偵查手段；
 - (b) 策略性反貪腐政策制定和規劃之能力建構；
 - (c) 對主管機關進行符合本公約要求所提出司法互助請求之培訓；
 - (d) 機構、政府部門管理之評估和加強，與政府財政、政府採購及私部門之管理；

- (e) 本公約所定犯罪所得轉移之防止和打擊，及此類所得之追繳；
 - (f) 本公約所定犯罪所得轉移之監測和凍結；
 - (g) 本公約所定犯罪所得流向及此類所得轉移、藏匿或寄藏方法之監控；
 - (h) 便利返還本公約所定犯罪所得之適當且有效法律和行政機制及方法；
 - (i) 與司法機關合作之被害人及證人保護方法；及
 - (j) 國家和國際法規及語言之培訓。
2. 各締約國應依各自之能力，考慮為彼此反貪腐計畫及方案，提供最廣泛之技術援助，特別是向開發中國家提供援助，包括本條第1項所定事項之物質支持和培訓，及將有利於締約國之間在引渡和司法互助領域之國際合作所提供之培訓和援助及相互交流相關經驗和專門知識。
 3. 各締約國應加強努力在國際和區域組織及相關雙邊和多邊協定或安排之架構，進行最大程度之業務執行和培訓活動。
 4. 各締約國應考慮依請求相互協助，對各自國家貪腐行為之類型、根源、影響及代價進行評價、分析及研究，以利在主管機關和社會之參與下，制定反貪腐策略和行動計畫。
 5. 為利於追繳本公約所定犯罪之所得，各締約國得進行合作，互相提供可協助實現此一目標之專家名單。
 6. 各締約國應考慮利用分區域、區域及國際性會議和研討會，促進合作與技術援助，並推動共同關切問題之討論，包括討論開發中國家和經濟轉型國家之特殊問題和需求。
 7. 各締約國應考慮建立自願機制，以利透過技術援助計畫和方案，對開發中國家及經濟轉型期國家適用本公約之努力，提供財政捐助。
 8. 各締約國均應考慮向聯合國毒品暨犯罪辦公室提供自願捐助，以利透過該辦公室，促進開發中國家為實施本公約所進行之計畫及方案。

第 61 條 貪腐資料之蒐集、交換及分析

1. 各締約國均應考慮分析其領域內之貪腐趨勢及觸犯貪腐犯罪之環境，並諮詢專家意見。
2. 各締約國應考慮彼此並透過國際及區域組織，發展和分享統計資料，及貪腐與資料之分析專業能力，以利盡可能擬訂共同之定義、標準及方法，及最佳預防和打擊貪腐作法之資料。
3. 各締約國均應考慮對其反貪腐政策和措施，進行監測並評估其

有效性和效率。

第 62 條 其他措施：透過經濟發展和技術援助實施公約

1. 各締約國應盡可能透過國際合作採取措施，以利達到本公約實施之最佳化，並考量貪腐普遍對社會之消極影響，尤其是對永續發展之影響。
2. 各締約國應相互協調，並與國際及區域組織協調，盡可能作出具體努力於：
 - (a) 加強與開發中國家在各種層級上之合作，以提高開發中國家預防及打擊貪腐之能力；
 - (b) 加強財政和物質援助，以支持開發中國家為有效預防及打擊貪腐所作出之努力，並幫助其順利實施本公約；
 - (c) 向開發中國家及經濟轉型國家提供技術援助，以協助其符合實施本公約之需求。為此，各締約國應努力向聯合國籌資機制中為此目的所專門指定之帳戶，提供適當且經常性之自願捐款。各締約國亦得依其國家法律和本公約規定，特別考慮向該帳戶捐出依本公約規定沒收之犯罪所得或財產中一定比例之金額或具有相當價值之財物；
 - (d) 酌情鼓勵和說服其他國家及金融機構參與本條所定之各項努力，特別是透過向開發中國家提供更多培訓計畫和現代化設備，以協助其實現本公約之各項目標。
3. 此等措施應儘量不影響現行對外援助之承諾，或其他雙邊、區域或國際金融合作安排。
4. 各締約國得締結物資及後勤援助之雙邊或多邊協定或安排，並考量為使本公約所定之國際合作方式有效，和預防、偵查及控制貪腐所必要之各種財務安排。

第七章 實施機制

第 63 條 本公約締約國會議

1. 為了實現本公約所定之目標及促進與檢視本公約之實施情形，特設本公約締約國會議，以增進各締約國之能力及締約國間之合作。
2. 聯合國秘書長應於本公約生效後一年內召開締約國會議。其後，締約國會議之例會應依締約國會議通過之議事規則召開。
3. 締約國會議應通過議事規則和本條所定各項活動之運作規則，

- 包括觀察員之加入、參加及其支付此等活動所生之費用等規則。
4. 締約國會議應就本條第1項所定目標之實現，議決各項活動、程序和工作方法，包括：
 - (a) 促進各締約國實施本公約第60條、第62條及第二章至第五章所定之活動，包括鼓勵自願捐助；
 - (b) 透過出版發行本條所定之相關訊息等方式，促進締約國之間就貪腐方式和趨勢、預防和打擊貪腐及返還犯罪所得等成功作法之訊息交換；
 - (c) 與相關國際和區域組織與機制及非政府組織進行合作；
 - (d) 適當利用其他國際和區域機制從事打擊和預防貪腐所產生之相關訊息，以避免工作上不必要之重複；
 - (e) 定期檢視各締約國實施本公約之情況；
 - (f) 提出建議，以利改進本公約及其實施情況；
 - (g) 關注各締約國實施本公約所需之技術援助要求，並就此一方面其可能認為必要之任何行動，提出建議。
 5. 為了本條第4項規定之目的，締約國會議應透過各締約國所提交之訊息，及締約國會議可能建立之補充性審查機制，就各締約國實施本公約所採取之措施及實施過程中所遇到之困難，進行必要之瞭解。
 6. 各締約國均應依締約國會議之要求，向締約國會議提交其本國為實施本公約所採取之計畫、方案、作法及立法與行政措施等訊息。締約國會議應就審查訊息接收和依訊息採取行動之最有效方法。此種訊息包括從各締約國和相關國際組織收到之訊息。締約國會議亦得考慮取自於依締約國會議決議之程序經正式認可之相關非政府組織提交之訊息。
 7. 依本條第4項至第6項規定，締約國會議應在其認為必要時設置任何適當之機制或機構，以協助本公約之有效實施。

第 64 條 秘書處

1. 聯合國秘書長應為本公約締約國會議提供必要之秘書處服務。
2. 秘書處應：
 - (a) 協助締約國會議進行本公約第63條所定之各項活動，並為締約國會議之各屆會議進行安排和提供必要之服務；
 - (b) 依請求，協助各締約國向締約國會議提交本公約第63條第5項和第6項所定之訊息；及
 - (c) 確保與相關國際和區域組織秘書處之必要協調。

第八章 最後條款

第 65 條 公約實施

1. 各締約國均應依其國家法律之基本原則採取必要之措施，包括立法及行政措施，以切實履行其依本公約所承擔之義務。
2. 為預防和打擊貪腐，各締約國均得採取比本公約規定更為嚴格或嚴厲之措施。

第 66 條 爭端解決

1. 締約國應努力透過談判，解決與本公約之解釋或適用有關之爭端。
2. 兩個或兩個以上締約國對本公約之解釋或適用發生任何爭端，在合理時間內無法透過談判解決者，應依其中一方請求交付仲裁。如自請求交付仲裁之日起六個月內此等締約國無法就仲裁安排達成協議，其中任何一方均得依國際法院規約之規定，請求將爭端提交國際法院。
3. 各締約國在締結、批准、接受、同意或加入本公約時，均得聲明不受本條第2項規定之約束。對提出此種保留之任何締約國，其他締約國也不受本條第2項規定之約束。
4. 凡依本條第3項規定提出保留之締約國，均得隨時通知聯合國秘書長撤回該項保留。

第 67 條 簽署、批准、接受、同意及加入

1. 本公約自二〇〇三年十二月九日至十一日在墨西哥梅里達開放各國簽署，隨後直至二〇〇五年十二月九日止在紐約聯合國總部開放各國簽署。
2. 如區域經濟整合組織至少有一個成員國已依本條第1項規定締結本公約者，本公約尚應開放該區域經濟整合組織簽署。
3. 本公約須經批准、接受或同意。批准書、接受書或同意書應交存聯合國秘書長。如任一區域經濟整合組織至少有一個成員國已交存批准書、接受書或同意書者，該組織得比照辦理。該組織應在該項批准書、接受書或同意書中，宣布其在本公約管轄事項之權限範圍。該組織尚應將其權限範圍之任何相關修正情況，通知保存人。
4. 任何國家，或至少已有一個成員國加入本公約之任何區域經濟整合組織，均得加入本公約。加入書應交存聯合國秘書長。區域經濟整合組織加入本公約時，應宣布其在本公約管轄事項之權限範圍。該組織尚應將其權限範圍之任何相關修正情況，通

知保存人。

第 68 條 生效

1. 本公約應自第三十份批准書、接受書、同意書或加入書交存之日起第九十日生效。為達本項之目的，區域經濟整合組織交存之任何文書均不得在該組織成員國所交存文書以外另行計算。
2. 對在第三十份批准書、接受書、同意書或加入書交存以後批准、接受、同意或加入本公約之國家或區域經濟整合組織，本公約應自該國或該組織交存相關文書之日起第三十日後，或自本公約依本條第1項所定生效之日起生效，以較晚者為準。

第 69 條 修正

1. 締約國得在本公約生效已滿五年後提出修正案，並將其送交聯合國秘書長。聯合國秘書長應立即將所提修正案轉送各締約國和締約國會議，以進行審議及決定。締約國會議應盡力就每項修正案達成共識。如已就達成共識作出一切努力而仍未能達成者，作為最後手段，該修正案應經出席締約國會議並參加表決之締約國三分之二多數決，始得通過。
2. 區域經濟整合組織對屬於其權限之事項依本條行使表決權時，其票數相當於其成員國已成為本公約締約國之數目。如此等組織之成員國行使表決權者，此等組織不得行使表決權，反之亦然。
3. 依本條第1項通過之修正案，應經各締約國批准、接受或同意。
4. 依本條第1項通過之修正案，應自各締約國向聯合國秘書長交存批准、接受或同意該修正案之文書之日起九十日後，對該締約國生效。
5. 修正案一經生效，即對已表示同意受其約束之締約國具有約束力。其他締約國則仍受本公約原條款和其以前批准、接受或同意之任何修正案約束。

第 70 條 退出

1. 締約國得以書面通知聯合國秘書長退出本公約。此項退出應自秘書長收到上述通知之日起一年後生效。
2. 區域經濟整合組織在其所有成員國均已退出本公約時，即不再為本公約之締約方。

第 71 條 保存人和語文

1. 聯合國秘書長應為本公約指定之保存人。

2. 本公約原本應交存聯合國秘書長。本公約阿拉伯文、（簡體）中文、英文、法文、俄文及西班牙文之各文本，同一作準。

茲由各自政府正式授權之下列署名全權代表簽署本公約，以昭信守。