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THE MEANING AND SCOPE OF CORRUPTION

A. The Meaning of Corruption

Definition of Corruption

The word 'corruption' is derived from the Latin word 'corruptus' meaning to break. Its derivation emphasizes the destructive effect of corruption on the fabric of society and the fact that its popular meaning encompasses all those situations where agents and public officers break the confidence entrusted to them.[1] **1.01**

[1] G Moody-Stuart, 'The Costs of Grand Corruption', in G Moody-Stuart (ed) *Grand Corruption in Third World Development*, prepared for the UNDP Human Development 1994 Report (Berlin: Transparency International, 1994).

1.02 The *Oxford English Dictionary* defines corruption as the 'perversion or destruction of integrity in the discharge of public duties by bribery or favour; the use or existence of corrupt practices, *esp.* in a state, public corporation etc'. It defines the adjective 'corrupt' as 'perverted from uprightness and fidelity in the discharge of duty; influenced by bribery or the like; venal'. It defines the verb 'corrupt' in a similar way, except that it extends it to any duties, 'public' or not, and offers a further definition: 'to induce to act dishonestly or unfaithfully, to make venal; to bribe'. It defines the verb 'bribe' as 'to influence corruptly, by a reward or consideration, the action of (a person), to pervert the judgment or corrupt the conduct by a gift'.[2]

1.03 These definitions correctly emphasize the essence of corruption in its legal sense, which is the inducement to show favour, rather than showing of the favour itself. They also demonstrate the use of the word to cover acts other than what is popularly termed bribery. The restriction of the definition of 'corruption' to 'public' duties no longer reflects the state of English law,[3] or of most modern states. The absence of the restriction in the definition of the verb 'corrupt' reflects the extension of corruption to include all persons who are induced to act corruptly, whether in the discharge of public duties or otherwise. The fact that the restriction appears in one definition and is omitted from the other indicates a tendency which existed until comparatively recently in modern times, to restrict the use of the word to the acts of public officials, having regard to the public nature of the crime and the gravity of its consequences. As will be seen below however, the words 'corrupt' and 'corruptly' do not feature in the new bribery legislation: instead it focuses on the concept of inducing another to act 'improperly'.

1.04 Likewise, the United Nations Convention Against Corruption (UNCAC) does not define corruption. It requires each State Party to adopt legal measures to establish certain criminal offences, including bribery, embezzlement, misappropriation or other diversion of property by public officials, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement in the private sector, money laundering, concealment of property obtained as a result of any of those offences, and obstructing justice.[4] The Council of Europe Criminal Law Convention on Corruption contains similar provisions.[5] The provisions reflect the tendency of international bodies to regard offences of corruption as including offences beyond the confines of bribery as popularly understood. Countries such as South Africa have unbundled the offence and attempted to criminalize specific acts of corruption where no bribery occurs, for example, abuse of power, conflict of interest, patronage, nepotism, theft of state assets, the diversion of state resources, insider trading, illicit enrichment, and money laundering the proceeds of corruption.[6]

1.05 Transparency International (TI) defines corruption as 'the misuse of entrusted power for private gain'. The definition has the advantage of simplicity (although it does not include bribery which occurs wholly in the private sector) and, arguably, it embraces both offences of corruption strictly so-called, such as bribery, and related offences such as misconduct in

[2] 1989 edition.

[3] This was so, even under the Prevention of Corruption Act 1906: The Bribery Act 2010 completely removes the distinction between public and private sector bribery: see Chapter 4 below.

[4] Articles 15–25. See Chapter 12, para 12.02ff.

[5] ETS No 173 and see Chapter 14, para 14.06.

[6] See Chapter 18, para 18.103ff.

public office, extortion, embezzlement, fraud, and theft, which are distinct offences, albeit usually committed in the course of corruption.

1.06 The question for the authors when writing the first edition of the book was where the topic ended: the question has not become any easier to answer in preparing the second edition. The prevalence of grand corruption in addition to petty corruption was cited in support of the authors' previous approach. That approach still holds good, but in the five years which have elapsed since the first edition was written, there has been not only widespread and wide-ranging discussion of the topic, but also a significant increase in state-led action, spurred on by the international conventions. The authors have endeavoured to capture as much of all that as is possible in a volume of this size.

Grand Corruption

1.07 The term 'grand corruption' has been used 'to describe cases where massive personal wealth is acquired from States by senior public officials using corrupt means'.[7] It arises mostly where high officials have power over the granting of large public contracts and a local agent receives a commission if the transaction is won. It has three main criteria: size, immediacy of its rewards, and mystification; the more technical and complicated a transaction the less likely it is that questions will be asked.[8] Some of its key mechanisms have been very fully described in George Moody Stuart's book, *Grand Corruption in Third World Development*.[9]

1.08 The Society of Advanced Legal Studies Anti-Corruption Working Group concluded that grand corruption involves two main activities: bribe payments and the embezzlement and misappropriation of state assets. The bribe can either be a direct payment in return for showing favour or payment of part of the proceeds of a contract granted as a result of the bribe, often called a kickback. Examples of high-profile grand corruption cases involving these different types of corruption are given in Chapters 8 and 9 below.

Petty Corruption

1.09 The term 'petty corruption' is used to distinguish between the grand corruption practised by Heads of State, Government Ministers, and senior officials, and the kind of corruption to which, for example, magistrates and judges are subject, due to inadequate remuneration and facilities. The term is often used to describe 'facilitation' or 'grease payments' sought by officials for services the public are entitled to free of charge, for example, payments to customs officers to pass goods through a border, to immigration officers to have travel documents accepted, to medical staff to receive prescription drugs or other benefits, payments for fictitious services, or to avoid prosecution for traffic offences, real or imaginary.[10]

1.10 Petty corruption is even more pervasive than these examples suggest however. The most pernicious examples are to be found amongst the world's poorest people, who are in no position to take action to eradicate it. In the slums of Kibera in Nairobi it is impossible to erect even the humblest dwelling without bribing a local 'fixer', jobs can only be secured by

[7] Report of the Anti-Corruption Working Group of the Society for Advanced Legal Studies, 'Banking on Corruption, the legal responsibilities of those who handle the proceeds of corruption', February 2002.

[8] Ibid, paras 2.1 and 4.1.

[9] Berlin: Transparency International, 1994.

[10] Evidence to the Select Committee on International Development (Transparency International) 4 April 2001.

bribing foremen, 'free' school places require payments to staff, and, once in school, staff require payment before they will mark homework.[11] In all these cases officials are being paid for doing what they are lawfully required to do. The sums involved are usually small, but amount to extortion. Petty corruption is difficult, if not impossible, for 'big government' to deal with, and much of the best work in this area is carried out by dedicated NGOs.[12]

Systemic Corruption

1.11 Systemic corruption, or institutional or entrenched corruption, as it is sometimes called, is corruption brought about, encouraged, or promoted by the system itself. It occurs where bribery on a large scale is routine. The causes are usually brought about by inefficiency, inadequacy, or undue laxity in the system. Petty corruption thrives alongside grand corruption—a state that is perceived to be rife with grand corruption will generally have major petty corruption issues also.

1.12 It arises where corruption permeates a country's political and economic institutions and is no longer restricted to a few dishonest individuals. It thrives where institutions are weak or non-existent and it is closely related to poor governance; where there are inadequate legislative controls, no independent judiciary, or oversight; and where independent media and civil society agencies are absent. There are many countries to which this description could be applied: 'What you really have is a kleptocracy, a Government that has institutionalised theft at its heart.'[13]

1.13 That does not mean to say, however, that such regimes have to be tolerated: in Nigeria, a country whose name is often thought to be synonymous with corruption,[14] the Shell oil company, on whose activities the Nigerian economy is heavily dependant, has a zero tolerance policy towards facilitation payments. Every Shell employee in Nigeria is aware of it, but, more impressively, every petty official in Nigeria is also aware of it. It is now said that any Shell employee approached for a 'grease' payment in any public place, such as an airport, has only to show their Shell identity card to cause the official to back off: if this is correct, it is a considerable achievement.[15] Systemic corruption is a governance issue: Chapter II of UNCAC addresses this, and requires action not only by governments, but also, most importantly, by civil society.[16]

B. The Scope of this Book

The Net Widens

1.14 Although this book was originally intended for use by UK practitioners, it has, particularly since the first edition, become increasingly obvious to the authors that it has a wider significance. The increasingly transnational nature of corruption continues seemingly unabated,

[11] <http://www.allroadsleadtokibera.com/>.

[12] See, eg Slums Information Development and Resource Centres (SIDAREC) website.

[13] Congressman Jim Leach, Chairman of the House of Representatives Banking Committee, TL O'Brien, 'Russian says officials funneled cash to bank in laundering case', *New York Times*, 28 August 1999.

[14] Attributable in no small measure to the notorious international '419' scams: advance fee frauds known in Nigeria by the section in the Nigerian Criminal Code under which they are prosecuted.

[15] See Article13.com on the Shell website which explains Shell's approach: *Shell Integrating Transparency and Anti-corruption Throughout its Business in Nigeria.*

[16] See below, Chapter 20.

and the international and regional efforts to combat corruption and its insidious effects have become ever more intensive. The United Kingdom was once regarded, particularly by its own politicians[17] at least, as virtually corruption-free. Corruption had been regarded as relating almost solely to bribery, until the 'loans for honours' scandals erupted,[18] followed by MPs' expenses.[19] Today, the misuse of public office offence has assumed new significance.

1.15 The publication of the first edition of this book was originally intended to coincide with the arrival of a new Corruption Act for the United Kingdom. That Act has now materialized in the form of the Bribery Act 2010, necessitating this second edition, but there have been many other contributory factors.

1.16 In the first edition, the authors opined that, in the first place, a wider examination of the existing law on corruption was needed. That has certainly happened with the intensive consultation process which preceded the Bribery Bill.[20] But the authors also pointed out that, for example, common law bribery overlapped with the ancient offence of misconduct in a public office, which, it was said, had become one of the offences of choice for prosecutors with conduct of police and public official corruption cases in common law jurisdictions. The new Bribery Act does not have retrospective effect; thus, given that corruption investigations are often lengthy, the existing offences are likely to remain relevant for some time to come.

1.17 Secondly, the authors recognized that combating corruption demanded a multifaceted approach that went beyond a consideration of the criminal law alone. The use of civil remedies in tackling corruption was identified as providing a potentially highly effective mechanism for the restraint and recovery of proceeds of corruption. The World Bank has fully recognized that use with the publication of its 'Guide to Non-Conviction Based Asset Forfeiture',[21] urging states to introduce legislation to facilitate this approach. The authors remarked in the first edition that, whilst ten years ago it would have appeared strange that a book on corruption and misuse of public office should include a chapter on the regulation of conduct in public life, this was no longer the case, especially given the impact of the Committee on Standards in Public Life and the extent to which its recommendations have been embodied in legislation and codes of conduct. Little could the authors have guessed just how important this subject would become in the ensuing five years.

1.18 Thirdly, as the authors noted, global efforts to combat corruption continued apace and had an increasing impact in domestic law and practice, both in the UK and abroad. The Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was cited for its importance as a concerted international attempt to address bribery offences committed wholly or partly abroad. Again, the authors could have had little idea that the Bribery Working Group would in the next five years be so devastatingly critical of the UK's performance in combating corruption abroad. The passing of the Anti-Terrorism Crime and Security Act 2001 (ATCSA 2001) and the taking by the UK of nationality jurisdiction was directly attributable to the initial criticism made, but the preparation of the Bribery Bill had to take full account of the criticisms that were being levelled at the UK. The anti-corruption

[17] See, eg Statement at <http://www.justice.gov.uk/news/newsrelease190110a.htm>.
[18] See Chapter 2, paras 2.106–2.107.
[19] See Chapter 10, paras 10.38–10.39.
[20] See Chapter 3 below.
[21] World Bank Group Publications, and see Chapter 8 below.

work of the Council of Europe and the European Union has assumed new significance as corruption scandals have overtaken household name European-based companies such as Siemens, Daimler Benz, Volkswagen, and British Aerospace. The accession to the EU of new countries from Eastern Europe such as Romania and Bulgaria which have long histories of both domestic and international corruption has presented new challenges.

1.19 The coming into force of the United Nations Convention on Corruption in 2005 has had a huge impact across the globe.[22] Its ratification by the United Kingdom again had a considerable impact on the deliberations which preceded the introduction of the Bribery Bill. Article 1, which sets out the purposes of the Convention: (a) to promote and strengthen measures to prevent and combat corruption; (b) to promote, facilitate, and support international cooperation in the prevention of and fight against corruption, including asset recovery; and (c) to promote integrity, accountability, and proper management of public affairs and public property was adopted by the Labour Government almost in its entirety in its 'Foreign Bribery Strategy' paper,[23] which coincided with the third reading of the Bribery Bill.

1.20 In the book the new UK bribery legislation is examined; so is the US Foreign Corrupt Practices Act (FCPA), UNCAC, the OECD Convention on Combating Bribery of Foreign Public Officials, European Anti-Corruption measures, and the laws of a number of foreign jurisdictions; but legislation on its own is not enough. There has to be a change of culture, and that is the essential point that governments are beginning to grasp. In the UK an International Anti-Corruption Champion was appointed for the first time in 2006:[24] the post is in the personal gift of the Prime Minister. The role of such a person is to articulate the wider scope of the fight against corruption: the current holder of the office is the Justice Secretary.[25]

1.21 When Jack Straw was Justice Secretary and appointed International Anti-Corruption Champion in 2008, he enumerated four headings under which the UK anti-corruption strategy would be carried forward: Legislative Reform, Enforcement, Cultural Change, and Good Governance Overseas. This book is very much about the first of these headings; it also touches on the second. The third and fourth headings are far less tangible, but pointers towards the third are to be found in the new UK legislation, and subsequently published Guidance for commercial enterprise on 'Adequate Procedures' (Chapter 5). With regard to the fourth, Mr Straw envisaged aid being given by the UK to developing countries in the implementation of the provisions of UNCAC. Time will tell how effective that aid proves to be.

C. Arrangement of the Book

1.22 The book has six sections:

- Chapters 2–7: UK criminal law relating to the prosecution of corruption offences under the old law, and under the Bribery Act 2010;
- Chapters 8 and 9: Confiscation and recovery of assets under criminal and civil law;

[22] As set out in Chapters 11 and 12 below.

[23] <http://www.justice.gov.uk/publications/docs/uk-foreign-bribery-strategy.pdf>.

[24] <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/News/files/pressreleases/anticorruption-champion.asp>.

[25] <http://www.number10.gov.uk/news/press-notices/2010/06/appointment-of-international-anti-corruption-champion-51879>.

- Chapter 10: Regulation of conduct in public life in the UK;
- Chapters 11–15: International and regional conventions, initiatives, and instruments;
- Chapters 16–19: Corruption laws of other jurisdictions, including Foreign Corrupt Practices legislation and practice in the US;
- Chapter 20: The role of civil society organizations in fighting corruption.

A summary of the content of each chapter follows. The summary emphasizes the wealth of new material that has emerged in the world of anti-corruption since the first edition.

Part I: Criminal Law

Chapter 2: Corruption and Related Offences before 2011

1.23 This chapter describes the offences under which bribery and corruption were, and will continue to be, prosecuted until 1 July 2011, the date of the coming into force of the Bribery Act, insofar as they are offences which were committed wholly or in part before that date.

1.24 It examines the common law offence of bribery and a series of statutory offences, the most important of which were set out in the Prevention of Corruption Acts 1889–1916 as amended by ATCSA 2001.

1.25 The common law offence of bribery and the 1889 Act dealt with public sector corruption; the 1906 Act covered corruption by agents in both the public and private sector. The 1916 Act extended the classes of public bodies covered by the 1889 Act and introduced a presumption of corruption in cases involving the employees of public bodies involved with public contracts.

1.26 The chapter examines the definition and scope of common law bribery offences and considers various aspects of the offence, including the treatment of facilitation payments, the mental element, entrapment, defences and immunities, and the distinction between bribery and other common law offences.

1.27 The chapter considers the elements of the offences under the Prevention of Corruption Acts, and other statutory offences, including theft, fraud, false accounting, money laundering, conspiracy to defraud, the sale of public offices, offences relating to honours, and election offences. It also considers jurisdiction, the liability of corporate and unincorporated bodies, and sentencing.

Chapter 3: The Movement for Reform

1.28 This chapter outlines the steps taken by the UK Government, mainly in the last half-century, to tackle corruption. It covers the setting up of a series of government committees and commissions appointed to look into the issues, and the work of the Law Commission, which conducted the most extensive review of the law of corruption ever undertaken and produced a Draft Bill.

1.29 In its Consultation Papers and later Reports the Law Commission analysed for the first time the precise nature of corruption as a separate and identifiable offence, distinguishing it from theft, fraud, and dishonesty. Its recommendations centred on the principal/agent relationship and were in large part accepted by the Government, but when the Draft Bill was submitted to the Joint Committee of both Houses of Parliament a number of far-reaching objections to the proposed legislation were advanced.

1.30 The consultation process was sent back to the Law Commission, which adopted an entirely new approach and introduced an offence based on inducement to perform an act improperly. The chapter introduces the draft Bribery Bill, and outlines its passage through Parliament.

Chapter 4: The Bribery Act 2010

1.31 The Act replaces the Prevention of Corruption Acts and all previous and ancillary legislation. The chapter gives an overview of the Act and outlines the new active and passive bribery offences. It then deals in detail with the general bribery offences and the Case Studies which accompany each offence.

1.32 There is a section on the separate offence of bribing foreign public officials, which brings the UK into line with OECD requirements.

1.33 The new strict liability offence for commercial organizations of failing to prevent bribery is addressed, together with some of the implications for business. This topic is closely linked with the Guidance on adequate procedures to effect prevention, which is the subject of Chapter 5.

1.34 Facilitation payments, corporate hospitality, and the use of 'offsets' are all considered, as are territorial issues, defences of 'legitimate purpose', and offences by bodies corporate and partnerships.

1.35 Consent to prosecution, penalties, and application to the Crown are dealt with, as are the consequential provisions regarding abolitions, repeals, and revocations of previous legislation; and commencement and transitional provisions.

Chapter 5: Guidance on Adequate Procedures

1.36 This chapter contains details of the various government guidances produced in accordance with the requirement under section 9 of the Act.

1.37 It includes the Guidance produced by the Ministry of Justice, the Attorney General's Office, and the Serious Fraud Office, and reference to the comprehensive Guidance on Adequate Procedures produced by TI (UK).

1.38 There follow references to various national and international standard-setting initiatives taken previously, and the chapter ends with a number of examples of sector-specific initiatives.

Chapter 6: Misconduct in a Public Office

1.39 The common law offences of bribery and misconduct in a public office apply only to public office holders. After falling into disuse during the middle of the twentieth century, prosecutions for misconduct in a public office have undergone a revival in common law jurisdictions. The offence is flexible and can be used in a variety of situations. It has the advantage of enabling the prosecutor to bring a single charge in order to cover an entire course of conduct.

1.40 The chapter considers the case law governing the nature and elements of the offence, including 'public office' and 'breach of duty'. It examines culpability and the mental element in the context of what amounts to an abuse of public trust in the office holder.

1.41 The chapter also includes the tort of misfeasance in public office, a topic which had been neglected until the liquidators of BCCI commenced their proceedings against office holders at the Bank of England. It looks in detail at the elements which constitute the tort, distinguishing it from the criminal offence.

Chapter 7: Investigation, Prosecution, and Sentencing in Corruption Cases

1.42 The chapter commences with a description of the recently formed police-led International Corruption Group and goes on to examine the work of the Serious Fraud Office (SFO), the

Crown Prosecution Service (CPS), the prosecuting authorities in Scotland, and the Financial Services Authority (FSA).

1.43 It examines the comparative merits of reactive and proactive investigations, along with the role of informants, covert methodologies, the impact of the European Convention on Human Rights, the necessity for covert methods in a democratic society, and the use of the Regulation of Investigatory Powers Act 2000 (RIPA 2000) and covert human intelligence sources (CHIS). It considers surveillance in depth, together with the pitfalls of entrapment, and the increasing use of integrity tests as an investigative tool in anti-corruption investigations.

1.44 The chapter moves on to sentencing and the key issue of plea discussions in corruption cases, and the use of Serious Crime Reporting Orders (SCROs) and Financial Reporting Orders as deterrents. Self-reporting and debarment lead into a survey of recent developments in the prosecution of major cases in the UK and examination of the string of important cases, such as BAE, that have been dealt with in the past five years.

1.45 The chapter deals in detail with whistle-blower protection under the Public Interest Disclosure Act 1998 (PIDA 1998), and the Employment Rights Act 1996 and the importance of legislation which has set international standards.

1.46 The chapter ends with an extensive review of mutual assistance and mutual legal assistance and their uses, and extradition and its use in investigating and prosecuting corruption offences. On extradition, the jurisdictions from and to which the UK can extradite suspects are listed, and the criteria that have to be met for successful extradition applications are considered in detail.

Part II: Confiscation and Recovery of Assets

Chapter 8: Criminal Confiscation and Civil Recovery

1.47 Chapter 8 deals with the recovery of the proceeds of corruption, firstly by means of criminal restraint and confiscation under the Proceeds of Crime Act 2002 (PoCA), dealing with the ancillary orders that can be made, the appointment of management receivers, foreign restraint orders, assumptions regarding 'criminal lifestyle', deprivation orders, and seizure of cash and assets.

1.48 Secondly by civil recovery (non-conviction-based forfeiture) under PoCA, the use of civil recovery orders and the interrelationship between fines, confiscation, and compensation, and powers of criminal taxation are described.

1.49 Thirdly by non-PoCA civil recovery, using civil proceedings to obtain freezing orders, search and seize orders, pre-action disclosure, evidence from foreign banks, and other ancillary orders, including secrecy orders.

1.50 The chapter also deals with jurisdiction and choice of law issues in England, restitution and conflict of laws, and bringing claims abroad.

1.51 The chapter ends with descriptions of notable grand corruption cases, and the varying degrees of success achieved in recovery of assets in those cases.

Chapter 9: Civil Actions and Remedies

1.52 Chapter 9 also deals with the recovery of the proceeds of corruption, but in the context of civil cases and arbitration proceedings. It examines the treatment of bribery and corruption

in the civil courts, the relationship of principal and agent, and how those concepts can be extended, to enlarge classes both of claimants and of defendants.

1.53 Remedies against dishonest agents are considered in detail, and include dismissal, restitution, recovery of profits in addition to the bribe, both as against the recipient of the bribe, and the bribe payer. Rescission, voidability, and termination in contractual and other situations are considered, as are remedies against dishonest employees. Unenforceability by the courts as a matter of public policy is examined. Remedies against third parties, including proprietary claims, knowing assistance, and knowing receipt, are also dealt with.

1.54 The final section of the chapter deals with arbitration, public policy, and corruption, citing examples from leading arbitral awards.

Part III: Integrity in Public Life

Chapter 10: The Regulation of Conduct in Public Life

1.55 This chapter sets out the Seven Principles of Public Life and examines the legislation and codes relating to conduct in public life affecting the three organs of government—the legislature, the executive, and the judiciary. It considers the work of the Committee on Standards in Public Life (CSPL), and the Committee on Standards and Privileges.

1.56 The chapter deals with the MPs' Code of Conduct, and in detail with the Registration and Declaration of Members' Financial Interests, and, in particular, the work of the Electoral Commission on political donations. MPs' expenses and the setting up of the Independent Parliamentary Standards Authority (IPSA) are fully covered. The 2009 Code of Conduct for Members of the House of Lords and the appointment of the first Lords Commissioner for Standards in 2010, plus the issue of loans for honours and reform of the honours system are all included, as are the rules regulating the Executive: the Ministerial Code, and investigation of allegations of misconduct.

1.57 The chapter deals with the reforms relating to the setting up of the Supreme Court, the independence of the judiciary set out in the United Kingdom in the Constitutional Reform Act 2005, and the Guide to Judicial Conduct published in 2004.

1.58 The Civil Service Code and the Civil Service Management Code 2010, setting out standards of conduct, discipline, and propriety are covered, as are the Business Appointments Rules, dealing with conflicts of interest. Guidance on contact between civil servants and lobbyists, and the Code of Conduct for Special Advisers are also included.

1.59 Finally, the chapter deals with codes of conduct in local government, and the accountability of Quangos.

Part IV: International and Regional Anti-Corruption Initiatives

Chapter 11: United Nations Convention Against Corruption I: Preventive Measures

1.60 The first of the two chapters on the UNCAC records the background to the Convention and sets out its purposes and structure. It then deals with the Preventive Measures articles, covering the development by states of preventive policies and practices, and, in detail, the setting up and role of anti-corruption agencies and related institutions.

1.61 The bulk of the chapter is devoted to measures for maintaining integrity in the public sector. These include candidature for public office, political funding, detailed treatment of managing

and avoiding conflicts of interest, asset declaration, codes of conduct for public officials, and whistle-blowing guidelines.

Public procurement and the management of public finances, and access to information are covered. The role of the judiciary, the courts, and prosecution services in upholding the rule of law, and maintaining their independence and establishment of core values in accordance with the Bangalore Principles of Judicial Conduct endorsed by UNCHR members in 2003, are all described. **1.62**

The chapter concludes with brief sections on the private sector, the participation of civil society, and measures to prevent money laundering. **1.63**

Chapter 12: The United Nations Convention Against Corruption II: Criminalization, International Cooperation, Asset Recovery, and Mechanisms for Implementation

The second UNCAC chapter deals with the provisions relating to bribery of national and foreign public officials, embezzlement, misappropriation or other diversion of property by public officials, trading in influence, abuse of functions, illicit enrichment, and offences concerning the private sector. **1.64**

There is an extensive section on money laundering prevention, followed by coverage of the liability of legal persons, jurisdiction, law enforcement, sanctions and related issues, including immunities, investigations, and the protection of witnesses, experts, and victims. **1.65**

International cooperation is a major focus of the Convention; extradition and mutual legal assistance receive detailed coverage: other forms of international cooperation are also covered briefly. **1.66**

A whole Chapter of UNCAC is devoted to asset recovery, and it receives extensive consideration in this chapter, including the important topic of return and disposal of recovered assets. **1.67**

Finally, the chapter deals with mechanisms for the implementation of UNCAC, the Conference of States Parties (CoSP), and UNCAC Working Group Meetings. The setting up of the all-important peer review mechanism is dealt with, as are the setting up of Working Groups, the first of which was IWGAR—the Inter-governmental Working Group on Asset Recovery, whose initial work is reviewed. **1.68**

The chapter closes with the setting up at the 2009 Doha CoSP of an interim open-ended intergovernmental Working Group to advise and assist the Conference in the implementation of its mandate on the prevention of corruption. **1.69**

Chapter 13: The Bribery of Foreign Public Officials

This chapter focuses on the 1999 OECD Convention on Combating Bribery of Public Officials in International Business Transactions, dealing first with its background and scope, the inception of the Working Group on Bribery (WGB), and the important Phase 1 and Phase 2 peer review mechanisms covering state anti-corruption measures, their implementation and enforcement. It describes how a new Phase 3 review process will maintain an up-to-date assessment of progress in Convention Party states. **1.70**

The chapter highlights difficulties which arise in defining offences under the common law and achieving compatibility with the civil law jurisdictions which comprise the majority of **1.71**

the membership. Differences of approach on questions such as scope of criminalization, defences, facilitation payments, liability of legal persons, sanctions, jurisdiction, enforcement, and prosecutorial discretion and limitation periods pose difficult questions which are examined in the chapter.

1.72 Money laundering, accounting, mutual legal assistance, extradition, and tax deductibility are all considered. The chapter concludes with comments on progress under the Convention and the future work of the WGB, including the potential for extension of the coverage given by the OECD to countries such as China, India, and Russia.

Chapter 14: European Anti-Corruption Initiatives and Instruments

1.73 This chapter examines the work of the Council of Europe (COE) and the European Union (EU) in combating corruption. The work of the COE is built on a series of COE instruments and Recommendations by the Committee of Ministers and Parliamentary Assembly. These are examined in turn, commencing with the Criminal Law Convention on Corruption which includes mandatory requirements on the criminalization of bribery, trading in influence, money laundering and accounting offences, plus provisions for the investigation and prosecution of such offences.

1.74 The other COE instruments examined are the Additional Protocol to the Criminal Convention, the Civil Law Convention on Corruption, The Twenty Guiding Principles for the Fight Against Corruption, the Model Code of Conduct for Public Officials, the Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and Resolution 1703 on Judicial Corruption.

1.75 The work of the Group of States against Corruption (GRECO), which monitors compliance with the COE instruments is described and evaluated, note being taken of the dangers of 'monitoring fatigue', with UNCAC monitoring beginning to be put in place, as well as the OECD and a possible EU monitoring process being developed.

1.76 The chapter goes on to deal with EU instruments and policy. It examines the Convention on the Protection of the Financial Interests of the Communities and Protocols, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the EU, and the Council Framework Decision on Combating Corruption in the Private Sector.

1.77 The establishment of European Partners Against Corruption (EPAC), with its brief to strengthen cooperation between the EU's national police oversight bodies and anti-corruption agencies is recorded and the scope of its activities described. OLAF, the European Anti-Fraud Office, which is part of the European Commission, and its work protecting the financial interests of the EU by investigating fraud, corruption, and misconduct in European institutions, is summarized, along with the work of OAFCN, the Anti-Fraud Communicators Network, established by OLAF.

1.78 The chapter ends with a note on the Stockholm Programme of the European Council, the European Neighbourhood Policy, and the work of the OECD in developing an Anti-Corruption Network for Eastern Europe and Central Asia (ACN), which was established in 1998 with a view to providing a regional forum for the promotion of anti-corruption activities, exchange of information, elaboration of best practices, and donor coordination amongst member states.

Chapter 15: Other International Anti-Corruption Initiatives

1.79 This chapter looks at other regional anti-corruption initiatives, Commonwealth efforts, and a note on the work of the World Bank. It commences with African Initiatives: the African Union Convention on Preventing and Combating Corruption (the AU Convention), and the South African Development Community (SADC) Protocol Against Corruption, and looks at the work of the Africa Forum on Fighting Corruption.

1.80 The Inter-American Convention against Corruption is then examined, as are initiatives such as the Asian Development Bank/OECD Anti-Corruption Action Plan for Asia and the Pacific, and the work of APEC—the Asia-Pacific Economic Cooperation forum's Santiago Commitment, and the work of APEC's Anti-Corruption and Experts' Task Force which has produced a number of Codes of Conduct.

1.81 The chapter goes on to deal with the contribution to the fight against corruption made by the fifty-four states that comprise the modern Commonwealth. It records a series of initiatives produced at Commonwealth Heads of Government Meetings (CHOGMs), in particular the 'Framework Principles', endorsed at the 1999 CHOGM, on 'Promoting Good Governance and Combating Corruption', from which have flowed a number of initiatives, including the important 2005 Report on Asset Repatriation.

1.82 The World Bank Group's Global and Anticorruption Strategy (GAC) was launched in 2007: its seven principles are set out, and the GAC Implementation Plan reviewed. Procurement Guidelines have been produced, and a Department of Institutional Integrity (INT) was set up to investigate allegations of corruption or fraud in Bank-financed operations or amongst WBG staff. The Voluntary Disclosure Programme is considered, and sanctions that can be meted out by the Bank's Sanctions Committee are listed, including the potentially powerful deterrent of debarment.

Part V: Corruption Laws of Other Jurisdictions

Chapter 16: The Investigation and Prosecution of Foreign Corruption in the United States

1.83 This chapter focuses firstly on the implementation and effect of the 1977 Foreign Corrupt Practices Act (FCPA), commencing with a short history and overview of the Act. The Act's Anti-Bribery offence is explained and its constituent parts critically examined: the treatment of facilitation payments and affirmative defences available under the Act are set out.

1.84 The chapter deals secondly with the two parts of the FCPA accounting provisions; the 'books and records' provisions and the 'internal controls' provisions, breaches of which generally attract civil penalties, liability for the acts of subsidiaries, and the circumstances in which a criminal offence may be committed are explained. The impact of the 2002 Sarbanes-Oxley and 2010 Dodd-Frank legislation is explained and considered.

1.85 Maximum penalties for violations of the anti-bribery and accounting provisions by natural and legal persons are set out in comprehensive tabular form, together with US Federal Sentencing Guidelines. The importance of the role of the Department of Justice (DoJ) in sentencing is fully considered, with examples drawn from recent high-profile cases, and a section on monitoring and corporate probation.

1.86 The chapter goes on to deal with offences frequently associated with FCPA violations. These include: money laundering, mail and wire fraud, offences under the Travel Act, and the Racketeer Influenced and Corrupt Organizations Act (RICO).

1.87 The concluding section of the chapter deals with enforcement of the FCPA, both against US corporations and, increasingly, against overseas companies with US links, an extraordinary growth which, as the chapter remarks, 'has become big business'. Proactive investigations, successor liability, the actions against non-US entities and asset recovery are all covered, and DoJ and SEC policies are examined, including the 2010 SEC Enforcement Cooperation Initiative. The section concludes with the protection and compensation of whistle-blowers, and the potentially revolutionary introduction of remuneration for SEC informants in July 2010.

Chapter 17: Common Law Jurisdictions

1.88 The chapter provides an overview of the criminal laws relating to corruption in both a domestic and international setting in a number of key common law jurisdictions. In addition to the corruption offences under each jurisdiction, specific topics of particular relevance in certain jurisdictions are dealt with. These include: bribery of foreign public officials, the role of anti-corruption agencies, investigation and prosecution, jurisdiction, defences, and penalties.

1.89 The jurisdictions covered are: Australia, Canada, Hong Kong, India, Ireland, Kenya, New Zealand, Nigeria, Singapore, and the United States. The majority of these are Commonwealth jurisdictions, and the Commonwealth principles and guidelines are frequently referred to, as are the international Conventions, particularly the OECD Convention, and UNCAC.

Chapter 18: Civil Law and Other Jurisdictions

1.90 Key civil law and other jurisdictions are covered in this chapter. As with the 'Common Law Jurisdictions' chapter, the corruption offences under each jurisdiction are set out, plus particular topics of relevance.

1.91 The jurisdictions are: Brazil, China, France, Russia, South Africa, and the United Arab Emirates. In addition, a brief guide to sources of information on accessing corruption-related legal materials in other countries and regions is given (much of it is located elsewhere in this book).

Chapter 19: Offshore Financial Centres

1.92 The chapter identifies the difficulties of defining Offshore Financial Centres (OFCs), suggests defining characteristics, and sets out IMF, OECD, and FATF categorizations. The role of OFCs is considered, and concerns about them are highlighted, in particular their designation as secrecy jurisdictions, and the issues surrounding banking secrecy.

1.93 The consequences that flow from the existence of OFCs, particularly as they relate to developing economies, and in relation to corruption and money-laundering implications, are considered, and the chapter concludes with a brief survey of the international political agenda regarding OFCs.

Part VI: The Role of Civil Society

Chapter 20: The Role of Civil Society Organizations in Combating Corruption

1.94 The chapter deals with the growing importance of Civil Society Organizations (CSOs) in the fight against corruption, and their role, enhanced by the official endorsement of Article 13 (Participation of Society) of UNCAC. Examples cited are the advocacy of the anti-corruption agenda, research, awareness-raising publications, guidance given to companies and the

private sector, promotion of citizen accountability mechanisms, and, more recently, direct intervention in legal challenges to government and, now, suspected corrupt PEPs and officials.

1.95 Specific examples given in the chapter of CSO involvement are: promoting standard-setting in the corporate sector; providing access to legal materials; involvement in the development of international and regional anti-corruption instruments; providing education and training; seeking to quantify corruption; and scrutinizing and contributing to the development of anti-corruption laws, procedures, and jurisprudence.

1.96 The chapter ends with a note on leading anti-corruption CSOs mentioned in the chapter, including: Transparency International; The Corner House; Tiri—the Governance-Access-Learning Network; the U4 Anti-Corruption Resource Centre; the Basel Institute on Governance; and the Open Society Institute.