

## FINAL CLAUSE

Articles 17–25 [Omitted].

# UNITED NATIONS CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT, 1996

## CHAPTER I

### SCOPE OF APPLICATION

#### Article 1 Scope of application

- (1) This Convention applies to an international undertaking referred to in article 2 –
  - (a) if the place of business of the guarantor/issuer at which the undertaking is issued is in a Contracting State; or
  - (b) if the rules of private international law to the application of the law of a Contracting State,  
unless the undertaking excludes the application of the Convention.
- (2) This Convention applies also to an international letter of credit not falling within article 2 if it expressly states that it is subject to this Convention.
- (3) The provisions of articles 21 and 22 apply to international undertakings referred to in article 2 independently of paragraph (1) of this article.

#### Article 2 Undertaking

- (1) For the purposes of this Convention, an undertaking is an independent commitment, known in international practice as an independent guarantee or as a stand-by letter of credit, given by a bank or other institution or person ('guarantor/issuer') to pay to the beneficiary a certain or determinable amount upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the performance of an obligation, or because of another contingency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant or another person.
- (2) The undertaking may be given –
  - (a) at the request or on the instruction of the customer ('principal/applicant') of the guarantor/issuer;
  - (b) on the instruction of another bank, institution or person ('instructing party') that acts at the request of the customer ('principal/applicant') of that instructing party; or
  - (c) on behalf of the guarantor/issuer itself.
- (3) Payment may be stipulated in the undertaking to be made in any form, including –
  - (a) payment in a specified currency or unit of account;
  - (b) acceptance of a bill of exchange (draft);
  - (c) payment on a deferred basis;
  - (d) supply of a specified item of value.
- (4) The undertaking may stipulate that the guarantor/issuer itself is the beneficiary when acting in favour of another person.

**Article 3 Independence of undertaking**

For the purposes of this Convention, an undertaking is independent where the guarantor/issuer's obligation to the beneficiary is not –

- (a) dependent upon the existence or validity of any underlying transaction, or upon any other undertaking (including stand-by letters of credit or independent guarantees to which confirmations or counter-guarantees relate); or
- (b) subject to any term or condition not appearing in the undertaking, or to any future, uncertain act or event except presentation of documents or another such act or event within a guarantor/issuer's sphere of operations.

**Article 4 Internationality of undertaking**

(1) An undertaking is international if the places of business, as specified in the undertaking, of any two of the following persons are in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer.

(2) For the purposes of the preceding paragraph –

- (a) if the undertaking lists more than one place of business for a given person, the relevant place of business is that which has the closest relationship to the undertaking;
- (b) if the undertaking does not specify a place of business for a given person but specifies its habitual residence, that residence is relevant for determining the international character of the undertaking.

**CHAPTER II****INTERPRETATION****Article 5 Principles of interpretation**

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

**Article 6 Definitions**

For the purposes of this Convention and unless otherwise indicated in a provision of this Convention or required by the context –

- (a) 'Undertaking' includes 'counter-guarantee' and 'confirmation of an undertaking';
- (b) 'Guarantor/issuer' includes 'counter-guarantor' and 'confirmer';
- (c) 'Counter-guarantee' means an undertaking given to the guarantor/issuer of another undertaking by its instructing party and providing for payment upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment under that other undertaking has been demanded from, or made by, the person issuing that other undertaking;
- (d) 'Counter-guarantor' means the person issuing a counter-guarantee;
- (e) 'Confirmation' of an undertaking means an undertaking added to that of the guarantor/issuer, and authorized by the guarantor/issuer, providing the beneficiary with the option of demanding payment from the confirmer instead of from the guarantor/issuer, upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the confirmed undertaking, without prejudice to the beneficiary's right to demand payment from the guarantor/issuer;

- (f) 'Confirmer' means the person adding a confirmation to an undertaking;
- (g) 'Document' means a communication made in a form that provides a complete record thereof.

## CHAPTER III

### FORM AND CONTENT OF UNDERTAKING

#### **Article 7 Issuance, form and irrevocability of undertaking**

- (1) Issuance of an undertaking occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer concerned.
- (2) An undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the guarantor/issuer and the beneficiary.
- (3) From the time of issuance of an undertaking, a demand for payment may be made in accordance with the terms and conditions of the undertaking, unless the undertaking stipulates a different time.
- (4) An undertaking is irrevocable upon issuance, unless it stipulates that it is revocable.

#### **Article 8 Amendment**

- (1) An undertaking may not be amended except in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph (2) of article 7.
- (2) Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, an undertaking is amended upon issuance of the amendment if the amendment has previously been authorized by the beneficiary.
- (3) Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, where any amendment has not previously been authorized by the beneficiary, the undertaking is amended only when the guarantor/issuer receives a notice of acceptance of the amendment by the beneficiary in a form referred to in paragraph (2) of article 7.
- (4) An amendment of an undertaking has no effect on the rights and obligations of the principal/applicant (or an instructing party) or of a confirmer of the undertaking unless such person consents to the amendment.

#### **Article 9 Transfer of beneficiary's right to demand payment**

- (1) The beneficiary's right to demand payment may be transferred only if authorized in the undertaking, and only to the extent and in the manner authorized in the undertaking.
- (2) If an undertaking is designated as transferable without specifying whether or not the consent of the guarantor/issuer or another authorized person is required for the actual transfer, neither the guarantor/issuer nor any other authorized person is obliged to effect the transfer except to the extent and in the manner expressly consented to by it.

#### **Article 10 Assignment of proceeds**

- (1) Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the beneficiary may assign to another person any proceeds to which it may be, or may become, entitled under the undertaking.
- (2) If the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, in a form referred to in paragraph (2) of article 7, of the beneficiary's irrevocable assignment, payment to the assignee discharges the obligor, to the extent of its payment, from its liability under the undertaking.

**Article 11 Cessation of right to demand payment**

(1) The right of the beneficiary to demand payment under the undertaking ceases when –

- (a) the guarantor/issuer has received a statement by the beneficiary of release from liability in a form referred to in paragraph (2) of article 7;
- (b) the beneficiary and the guarantor/issuer have agreed on the termination of the undertaking in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph (2) of article 7;
- (c) the amount available under the undertaking has been paid, unless the undertaking provides for the automatic renewal or for an automatic increase of the amount available or otherwise provides for continuation of the undertaking;
- (d) the validity period of the undertaking expires in accordance with the provisions of article 12.

(2) The undertaking may stipulate, or the guarantor/issuer and the beneficiary may agree elsewhere, that return of the document embodying the undertaking to the guarantor/issuer, or a procedure functionally equivalent to the return of the document in the case of the issuance of the undertaking in non-paper form, is required for the cessation of the right to demand payment, either alone or in conjunction with one of the events referred to in subparagraphs (a) and (b) of paragraph (1) of this article. However, in no case shall retention of any such document by the beneficiary after the right to demand payment ceases in accordance with subparagraph (c) or (d) of paragraph (1) of this article preserve any rights of the beneficiary under the undertaking.

**Article 12 Expiry**

The validity period of the undertaking expires –

- (a) at the expiry date, which may be a specified calendar date or the last day of a fixed period of time stipulated in the undertaking, provided that, if the expiry date is not a business day at the place of business of the guarantor/issuer at which the undertaking is issued, or of another person or at another place stipulated in the undertaking for presentation of the demand for payment, expiry occurs on the first business day which follows;
- (b) if expiry depends according to the undertaking on the occurrence of an act or event not within the guarantor/issuer's sphere of operations, when the guarantor/issuer is advised that the act or event has occurred by presentation of the document specified for that purpose in the undertaking or, if no such document is specified, of a certification by the beneficiary of the occurrence of the act or event;
- (c) if the undertaking does not state an expiry date, or if the act or event on which expiry is stated to depend has not yet been established by presentation of the required document and an expiry date has not been stated in addition, when six years have elapsed from the date of issuance of the undertaking.

**CHAPTER IV****RIGHTS, OBLIGATIONS AND DEFENCES****Article 13 Determination of rights and obligations**

(1) The rights and obligations of the guarantor/issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions or usages specifically referred to therein, and by the provisions of this Convention.

(2) In interpreting terms and conditions of the undertaking and in settling questions that are not addressed by the terms and conditions of the undertaking or by the provisions of this Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

#### **Article 14 Standard of conduct and liability of guarantor/issuer**

(1) In discharging its obligations under the undertaking and this Convention, the guarantor/issuer shall act in good faith and exercise reasonable care having due regard to generally accepted standards of international practice of independent guarantees or stand-by letters of credit.

(2) A guarantor/issuer may not be exempted from liability for its failure to act in good faith or for any grossly negligent conduct.

#### **Article 15 Demand**

(1) Any demand for payment under the undertaking shall be made in a form referred to in paragraph (2) of article 7 and in conformity with the terms and conditions of the undertaking.

(2) Unless otherwise stipulated in the undertaking, the demand and any certification or other document required by the undertaking shall be presented, within the time that a demand for payment may be made, to the guarantor/issuer at the place where the undertaking was issued.

(3) The beneficiary, when demanding payment, is deemed to certify that the demand is not in bad faith and that none of the elements referred to in subparagraphs (a), (b) and (c) of paragraph (1) of article 19 are present.

#### **Article 16 Examination of demand and accompanying documents**

(1) The guarantor/issuer shall examine the demand and any accompanying documents in accordance with the standard of conduct referred to in paragraph (1) of article 14. In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit practice.

(2) Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer shall have reasonable time, but not more than seven business days following the day of receipt of the demand and any accompanying documents, in which to –

- (a) examine the demand and any accompanying documents;
- (b) decide whether or not to pay;
- (c) if the decision is not to pay, issue notice thereof to the beneficiary.

The notice referred to in subparagraph (c) above shall, unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, be made by teletransmission or, if that is not possible, by other expeditious means and indicate the reason for the decision not to pay.

#### **Article 17 Payment**

(1) Subject to article 19, the guarantor/issuer shall pay against a demand made in accordance with the provisions of article 15. Following a determination that a demand for payment so conforms, payment shall be made promptly, unless the undertaking stipulates payment on a deferred basis, in which case payment shall be made at the stipulated time.

(2) Any payment against a demand that is not in accordance with the provisions of article 15 does not prejudice the rights of the principal/applicant.

**Article 18 Set-off**

Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer may discharge the payment obligation under the undertaking by availing itself of a right of set-off, except with any claim assigned to it by the principal/applicant or the instructing party.

**Article 19 Exception to payment obligation**

(1) If it is manifest and clear that –

- (a) any document is not genuine or has been falsified;
- (b) no payment is due on the basis asserted in the demand and the supporting documents; or
- (c) judging by the type and purpose of the undertaking, the demand has no conceivable basis, the guarantor/issuer, acting in good faith, has a right, as against the beneficiary, to withhold payment.

(2) For the purposes of subparagraph (c) of paragraph (1) of this article, the following are types of situations in which a demand has no conceivable basis –

- (a) the contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;
- (b) the underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking indicates that such contingency falls within the risk to be covered by the undertaking;
- (c) the underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;
- (d) fulfilment of the underlying obligation has clearly been prevented by wilful misconduct of the beneficiary;
- (e) in the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter-guarantee relates.

(3) In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph (1) of this article, the principal/applicant is entitled to provisional court measures in accordance with article 20.

## CHAPTER V

### PROVISIONAL COURT MEASURES

**Article 20 Provisional court measures**

(1) Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred to in subparagraphs (a), (b) and (c) of paragraph (1) of article 19 is present, the court, on the basis of immediately available strong evidence, may –

- (a) issue a provisional order to the effect that the beneficiary does not receive payment, including an order that the guarantor/issuer hold the amount of the undertaking; or
- (b) issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked, taking into account whether in the absence of such an order the principal/applicant would be likely to suffer serious harm.

(2) The court, when issuing a provisional order referred to in paragraph (1) of this article, may require the person applying therefor to furnish such form of security as the court deems appropriate.

(3) The court may not issue a provisional order of the kind referred to in paragraph (1) of this article based on any objection to payment other than those referred to in subparagraphs (a), (b) and (c) of paragraph (1) of article 19, or use of the undertaking for a criminal purpose.

## CHAPTER VI

### CONFLICT OF LAWS

#### Article 21 Choice of applicable law

The undertaking is governed by the law the choice of which is –

- (a) stipulated in the undertaking or demonstrated by the terms and conditions of the undertaking; or
- (b) agreed elsewhere by the guarantor/issuer and the beneficiary.

#### Article 22 Determination of applicable law

Failing a choice of law in accordance with article 21, the undertaking is governed by the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued.

## CHAPTER VII

### FINAL CLAUSES

Articles 23–29 [Omitted].

## CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR, MONTREAL, 1999

See Schedule 1B to the Carriage by Air Act 1961.

## UNIFORM RULES CONCERNING THE CONTRACT OF INTERNATIONAL CARRIAGE OF GOODS BY RAIL (CIM) 1999

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### TITLE I

#### GENERAL PROVISIONS

##### Article 1 Scope

§1 These Uniform Rules shall apply to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are situated in two different Member States, irrespective of the place of business and the nationality of the parties to the contract of carriage.

§2 These Uniform Rules shall apply also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different States, of which at least one is a Member State and the parties to the contract agree that the contract is subject to these Uniform Rules.

§3 When international carriage being the subject of a single contract includes carriage by road or inland waterway in internal traffic of a Member State as a supplement to transfrontier carriage by rail, these Uniform Rules shall apply.

§4 When international carriage being the subject of a single contract of carriage includes carriage by sea or transfrontier carriage by inland waterway as a supplement to carriage by rail, these Uniform Rules shall apply if the carriage by sea or inland waterway is performed on services included in the list of services provided for in Article 24 §1 of the Convention.

§5 These Uniform Rules shall not apply to carriage performed between stations situated on the territory of neighbouring States, when the infrastructure of these stations is managed by one or more infrastructure managers subject to only one of those States.

§6 Any State which is a party to a convention concerning international through carriage of goods by rail comparable with these Uniform Rules may, when it makes an application for accession to the Convention, declare that it will apply these Uniform Rules only to carriage performed on part of the railway infrastructure situated on its territory. This part of the railway infrastructure must be precisely defined and connected to the railway infrastructure of a Member State. When a State has made the above-mentioned declaration, these Uniform Rules shall apply only on the condition –

- (a) that the place of taking over of the goods or the place designated for delivery as well as the route designated in the contract of carriage, is situated on the specified infrastructure; or
- (b) that the specified infrastructure connects the infrastructure of two Member States and that it has been designated in the contract of carriage as a route for transit carriage.

§7 A State which has made a reservation in accordance with § 6 may withdraw it at any time by notification to the Depository. This withdrawal shall take effect one month after the day on which the Depository notifies it to the Member States. The declaration shall cease to have effect when the Convention referred to in § 6, first sentence, ceases to be in force for that State.

## Article 2 Prescriptions of public law

Carriage to which these Uniform Rules apply shall remain subject to the prescriptions of public law, in particular the prescriptions relating to the carriage of dangerous goods as well as the prescriptions of customs law and those relating to the protection of animals.

## Article 3 Definitions

For purposes of these Uniform Rules the term –

- (a) ‘carrier’ means the contractual carrier with whom the consignor has concluded the contract of carriage pursuant to these Uniform Rules, or a subsequent carrier who is liable on the basis of this contract;
- (b) ‘substitute carrier’ means a carrier, who has not concluded the contract of carriage with the consignor, but to whom the carrier referred to in letter (a) has entrusted, in whole or in part, the performance of the carriage by rail;
- (c) ‘General Conditions of Carriage’ means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;
- (d) ‘intermodal transport unit’ means a container, swap body, semi-trailer or other comparable loading unit used in intermodal transport.



**Article 4 Derogations**

§1 Member States may conclude agreements which provide for derogations from these Uniform Rules for carriage performed exclusively between two stations on either side of the frontier, when there is no other station between them.

§2 For carriage performed between two Member States, passing through a State which is not a Member State, the States concerned may conclude agreements which derogate from these Uniform Rules.

§3 Agreements referred to in §§ 1 and 2 as well as their coming into force shall be notified to the Intergovernmental Organisation for International Carriage by Rail. The Secretary General of the Organisation shall inform the Member States and interested undertakings of these notifications.

**Article 5 Mandatory law**

Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract of carriage. Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules.

**TITLE II****CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE****Article 6 Contract of carriage**

§1 By the contract of carriage, the carrier shall undertake to carry the goods for reward to the place of destination and to deliver them there to the consignee.

§2 The contract of carriage must be confirmed by a consignment note which accords with a uniform model. However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.

§3 The consignment note shall be signed by the consignor and the carrier. The signature can be replaced by a stamp, by an accounting machine entry or in any other appropriate manner.

§4 The carrier must certify the taking over of the goods on the duplicate of the consignment note in an appropriate manner and return the duplicate to the consignor.

§5 The consignment note shall not have effect as a bill of lading.

§6 A consignment note must be made out for each consignment. In the absence of a contrary agreement between the consignor and the carrier, a consignment note may not relate to more than one wagon load.

§7 In the case of carriage which enters the customs territory of the European Community or the territory on which the common transit procedure is applied, each consignment must be accompanied by a consignment note satisfying the requirements of Article 7.

§8 The international associations of carriers shall establish uniform model consignment notes in agreement with the customers' international associations and the bodies having competence for customs matters in the Member States as well as any intergovernmental regional economic integration organisation having competence to adopt its own customs legislation.

§9 The consignment note and its duplicate may be established in the form of electronic data registration which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view,

particularly so far as concerns the evidential value of the consignment note represented by those data.

### Article 7 Wording of the consignment note

§1 The consignment note must contain the following particulars:

- (a) the place at which and the day on which it is made out;
- (b) the name and address of the consignor;
- (c) the name and address of the carrier who has concluded the contract of carriage;
- (d) the name and address of the person to whom the goods have effectively been handed over if he is not the carrier referred to in letter (c);
- (e) the place and the day of taking over of the goods;
- (f) the place of delivery;
- (g) the name and address of the consignee;
- (h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, the description provided for in the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID);
- (i) the number of packages and the special marks and numbers necessary for the identification of consignments in less than full wagon loads;
- (j) the number of the wagon in the case of carriage of full wagon loads;
- (k) the number of the railway vehicle running on its own wheels, if it is handed over for carriage as goods;
- (l) in addition, in the case of intermodal transport units, the category, the number or other characteristics necessary for their identification;
- (m) the gross mass or the quantity of the goods expressed in other ways;
- (n) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;
- (o) the costs relating to carriage (the carriage charge, incidental costs, customs duties and other costs incurred from the conclusion of the contract until delivery) in so far as they must be paid by the consignee or any other statement that the costs are payable by the consignee;
- (p) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules.

§2 Where applicable the consignment note must also contain the following particulars:

- (a) in the case of carriage by successive carriers, the carrier who must deliver the goods when he has consented to this entry in the consignment note;
- (b) the costs which the consignor undertakes to pay;
- (c) the amount of the cash on delivery charge;
- (d) the declaration of the value of the goods and the amount representing the special interest in delivery;
- (e) the agreed transit period;
- (f) the agreed route;
- (g) a list of the documents not mentioned in §1, letter (n) handed over to the carrier;
- (h) the entries made by the consignor concerning the number and description of seals he has affixed to the wagon.

§3 The parties to the contract may enter on the consignment note any other particulars they consider useful.

**Article 8 Responsibility for particulars entered on the consignment note**

§1 The consignor shall be responsible for all costs, loss or damage sustained by the carrier by reason of –

- (a) the entries made by the consignor in the consignment note being irregular, incorrect, incomplete or made elsewhere than in the allotted space; or
- (b) the consignor omitting to make the entries prescribed by RID.

§2 If, at the request of the consignor, the carrier makes entries on the consignment note, he shall be deemed, unless the contrary is proved, to have done so on behalf of the consignor.

§3 If the consignment note does not contain the statement provided for in Article 7 §1, letter (p), the carrier shall be liable for all costs, loss or damage sustained through such omission by the person entitled.

**Article 9 Dangerous goods**

If the consignor has failed to make the entries prescribed by RID, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances may require, without payment of compensation, save when he was aware of their dangerous nature on taking them over.

**Article 10 Payment of costs**

§1 Unless otherwise agreed between the consignor and the carrier, the costs (the carriage charge, incidental costs, customs duties and other costs incurred from the time of the conclusion of the contract to the time of delivery) shall be paid by the consignor.

§2 When by virtue of an agreement between the consignor and the carrier, the costs are payable by the consignee and the consignee has not taken possession of the consignment note nor asserted his rights in accordance with Article 17 §3, nor modified the contract of carriage in accordance with Article 18, the consignor shall remain liable to pay the costs.

**Article 11 Examination**

§1 The carrier shall have the right to examine at any time whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise.

§2 If the consignment does not correspond with the entries in the consignment note or if the provisions relating to the carriage of goods accepted subject to conditions have not been complied with, the result of the examination must be entered in the copy of the consignment note which accompanies the goods, and also in the duplicate of the consignment note, if it is still held by the carrier. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

§3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

**Article 12 Evidential value of the consignment note**

§1 The consignment note shall be *prima facie* evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

§2 If the carrier has loaded the goods, the consignment note shall be *prima facie* evidence of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

§3 If the consignor has loaded the goods, the consignment note shall be *prima facie* evidence of the condition of the goods and of their packaging indicated in the consignment note or, in the absence of such indication, of their apparently good condition and of the accuracy of the statements referred to in § 2 solely in the case where the carrier has examined them and recorded on the consignment note a result of his examination which tallies.

§4 However, the consignment note will not be *prima facie* evidence in a case where it bears a reasoned reservation. A reason for a reservation could be that the carrier does not have the appropriate means to examine whether the consignment corresponds to the entries in the consignment note.

**Article 13 Loading and unloading of the goods**

§1 The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.

§2 The consignor shall be liable for all the consequences of defective loading carried out by him and must in particular compensate the carrier for the loss or damage sustained in consequence by him. The burden of proof of defective loading shall lie on the carrier.

**Article 14 Packing**

The consignor shall be liable to the carrier for any loss or damage and costs due to the absence of, or defects in, the packing of goods, unless the defectiveness was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

**Article 15 Completion of administrative formalities**

§1 With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the consignor must attach the necessary documents to the consignment note or make them available to the carrier and furnish him with all the requisite information.

§2 The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any loss or damage resulting from the absence or insufficiency of, or any irregularity in, such documents and information, save in the case of fault of the carrier.

§3 The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it or deposited with the carrier, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.

§4 The consignor, by so indicating in the consignment note, or the consignee by giving orders as provided for in Article 18 § 3 may ask –

- (a) to be present himself or to be represented by an agent when the customs or other administrative formalities are carried out, for the purpose of furnishing any information or explanation required;
- (b) to complete the customs or other administrative formalities himself or to have them completed by an agent, in so far as the laws and prescriptions of the State in which they are to be carried out so permit;
- (c) to pay customs duties and other charges, when he or his agent is present at or completes the customs or other administrative formalities, in so far as the laws and prescriptions of the State in which they are carried out permit such payment.

In such circumstances neither the consignor, nor the consignee who has the right of disposal, nor the agent of either may take possession of the goods.

§5 If, for the completion of the customs or other administrative formalities, the consignor has designated a place where the prescriptions in force do not permit their completion, or if he has stipulated for the purpose any other procedure which cannot be followed, the carrier shall act in the manner which appears to him to be the most favourable to the interests of the person entitled and shall inform the consignor of the measures taken.

§6 If the consignor has undertaken to pay customs duties, the carrier shall have the choice of completing customs formalities either in transit or at the destination place.

§7 However, the carrier may proceed in accordance with §5 if the consignee has not taken possession of the consignment note within the period fixed by the prescriptions in force at the destination place.

§8 The consignor must comply with the prescriptions of customs or other administrative authorities with respect to the packing and sheeting of the goods. If the consignor has not packed or sheeted the goods in accordance with those prescriptions the carrier shall be entitled to do so; the resulting cost shall be charged against the goods.

## Article 16 Transit periods

§1 The consignor and the carrier shall agree the transit period. In the absence of an agreement, the transit period must not exceed that which would result from the application of §§2 to 4.

§2 Subject to §§3 and 4, the maximum transit periods shall be as follows:

- (a) for wagon-load consignments
  - period for consignment 12 hours,
  - period for carriage, for each 400 km or fraction thereof 24 hours;
- (b) for less than wagon-load consignment
  - period for consignments 24 hours,
  - period for carriage, for each 200 km or fraction thereof 24 hours.

The distances shall relate to the agreed route or, in the absence thereof, to the shortest possible route.

§3 The carrier may fix additional transit periods of specified duration in the following cases:

- (a) consignments to be carried
  - by lines of a different gauge,
  - by sea or inland waterway,
  - by road if there is no rail link;
- (b) exceptional circumstances causing an exceptional increase in traffic or exceptional operating difficulties.

The duration of the additional transit periods must appear in the General Conditions of Carriage.

§4 The transit period shall start to run after the taking over of the goods; it shall be extended by the duration of a stay caused without any fault of the carrier. The transit period shall be suspended on Sundays and statutory holidays.

#### Article 17 Delivery

§1 The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.

§2 It shall be equivalent to delivery to the consignee if, in accordance with the prescriptions in force at the place of destination,

- (a) the goods have been handed over to customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;
- (b) the goods have been deposited for storage with the carrier, with a forwarding agent or in a public warehouse.

§3 After the arrival of the goods at the place of destination, the consignee may ask the carrier to hand over the consignment note and deliver the goods to him. If the loss of the goods is established or if the goods have not arrived on the expiry of the period provided for in Article 29 §1, the consignee may assert, in his own name, his rights against the carrier under the contract of carriage.

§4 The person entitled may refuse to accept the goods, even when he has received the consignment note and paid the charges resulting from the contract of carriage, so long as an examination which he has demanded in order to establish alleged loss or damage has not been carried out.

§5 In other respects, delivery of the goods shall be carried out in accordance with the prescriptions in force at the place of destination.

§6 If the goods have been delivered without prior collection of a cash on delivery charge, the carrier shall be obliged to compensate the consignor up to the amount of the cash on delivery charge without prejudice to his right of recourse against the consignee.

#### Article 18 Right to dispose of the goods

§1 The consignor shall be entitled to dispose of the goods and to modify the contract of carriage by giving subsequent orders. He may in particular ask the carrier –

- (a) to discontinue the carriage of the goods;
- (b) to delay the delivery of the goods;
- (c) to deliver the goods to a consignee different from the one entered on the consignment note;
- (d) to deliver the goods at a place other than the place of destination entered on the consignment note.

§2 The consignor's right to modify the contract of carriage shall, notwithstanding that he is in possession of the duplicate of the consignment note, be extinguished in cases where the consignee –

- (a) has taken possession of the consignment note;
- (b) has accepted the goods;
- (c) has asserted his rights in accordance with Article 17 §3;
- (d) is entitled, in accordance with §3, to give orders; from that time onwards, the carrier shall comply with the orders and instructions of the consignee.

§3 The consignee shall have the right to modify the contract of carriage from the time when the consignment note is drawn up, unless the consignor indicates to the contrary on the consignment note.

§4 The consignee's right to modify the contract of carriage shall be extinguished in cases where he has –

- (a) taken possession of the consignment note;
- (b) accepted the goods;
- (c) asserted his rights in accordance with Article 17 §3;
- (d) given instructions for delivery of the goods to another person in accordance with §5 and when that person has asserted his rights in accordance with Article 17 §3.

§5 If the consignee has given instructions for delivery of the goods to another person, that person shall not be entitled to modify the contract of carriage.

#### **Article 19 Exercise of the right to dispose of the goods**

§1 If the consignor or, in the case referred to in Article 18 §3, the consignee wishes to modify the contract of carriage by giving subsequent orders, he must produce to the carrier the duplicate of the consignment note on which the modifications have to be entered.

§2 The consignor or, in the case referred to in Article 18 §3, the consignee must compensate the carrier for the costs and the prejudice arising from the carrying out of subsequent modifications.

§3 The carrying out of the subsequent modifications must be possible, lawful and reasonable to require at the time when the orders reach the person who is to carry them out, and must in particular neither interfere with the normal working of the carrier's undertaking nor prejudice the consignors or consignees of other consignments.

§4 The subsequent modifications must not have the effect of splitting the consignment.

§5 When, by reason of the conditions provided for in § 3, the carrier cannot carry out the orders which he receives he shall immediately notify the person from whom the orders emanate.

§6 In the case of fault of the carrier he shall be liable for the consequences of failure to carry out an order or failure to carry it out properly. Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.

§7 If the carrier implements the consignor's subsequent modifications without requiring the production of the duplicate of the consignment note, the carrier shall be liable to the consignee for any loss or damage sustained by him if the duplicate has been passed on to the consignee. Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.

#### **Article 20 Circumstances preventing carriage**

§1 When circumstances prevent the carriage of goods, the carrier shall decide whether it is preferable to carry the goods as a matter of course by modifying the route or whether it is advisable, in the interest of the person entitled, to ask him for instructions while giving him any relevant information available to the carrier.

§2 If it is impossible to continue carrying the goods, the carrier shall ask for instructions from the person who has the right to dispose of the goods. If the carrier is unable to obtain instructions within a reasonable time he must take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods.

#### **Article 21 Circumstances preventing delivery**

§1 When circumstances prevent delivery, the carrier must without delay inform the consignor and ask him for instructions, save where the consignor has requested, by an entry in the

consignment note, that the goods be returned to him as a matter of course in the event of circumstances preventing delivery.

§2 When the circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier the goods shall be delivered to the consignee. The consignor must be notified without delay.

§3 If the consignee refuses the goods, the consignor shall be entitled to give instructions even if he is unable to produce the duplicate of the consignment note.

§4 When the circumstances preventing delivery arise after the consignee has modified the contract of carriage in accordance with Article 18 §§3 to 5 the carrier must notify the consignee.

### **Article 22 Consequences of circumstances preventing carriage and delivery**

§1 The carrier shall be entitled to recover the costs occasioned by –

- (a) his request for instructions,
- (b) the carrying out of instructions received,
- (c) the fact that instructions requested do not reach him or do not reach him in time,
- (d) the fact that he has taken a decision in accordance with Article 20 §1, without having asked for instructions,

unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the transit periods applicable to such route.

§2 In the cases referred to in Article 20 §2 and Article 21 §1 the carrier may immediately unload the goods at the cost of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then be in charge of the goods on behalf of the person entitled. He may, however, entrust them to a third party, and shall then be responsible only for the exercise of reasonable care in the choice of such third party. The charges due under the contract of carriage and all other costs shall remain chargeable against the goods.

§3 The carrier may proceed to the sale of the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would be out of proportion to the value of the goods. In other cases he may also proceed to the sale of the goods if within a reasonable time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out.

§4 If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, must be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the consignor must pay the difference.

§5 The procedure in the case of sale shall be determined by the laws and prescriptions in force at, or by the custom of, the place where the goods are situated.

§6 If the consignor, in the case of circumstances preventing carriage or delivery, fails to give instructions within a reasonable time and if the circumstances preventing carriage or delivery cannot be eliminated in accordance with §§2 and 3, the carrier may return the goods to the consignor or, if it is justified, destroy them, at the cost of the consignor.

## **TITLE III**

### **LIABILITY**

#### **Article 23 Basis of liability**

§1 The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, the goods between the time of taking over of the goods and the time of delivery and



for the loss or damage resulting from the transit period being exceeded, whatever the railway infrastructure used.

§2 The carrier shall be relieved of this liability to the extent that the loss or damage or the exceeding of the transit period was caused by the fault of the person entitled, by an order given by the person entitled other than as a result of the fault of the carrier, by an inherent defect in the goods (decay, wastage etc.) or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

§3 The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:

- (a) carriage in open wagons pursuant to the General Conditions of Carriage or when it has been expressly agreed and entered in the consignment note; subject to damage sustained by the goods because of atmospheric influences, goods carried in inter-modal transport units and in closed road vehicles carried on wagons shall not be considered as being carried in open wagons; if for the carriage of goods in open wagons, the consignor uses sheets, the carrier shall assume the same liability as falls to him for carriage in open wagons without sheeting, even in respect of goods which, according to the General Conditions of Carriage, are not carried in open wagons;
- (b) absence or inadequacy of packaging in the case of goods which by their nature are liable to loss or damage when not packed or when not packed properly;
- (c) loading of the goods by the consignor or unloading by the consignee;
- (d) the nature of certain goods which particularly exposes them to total or partial loss or damage, especially through breakage, rust, interior and spontaneous decay, desiccation or wastage;
- (e) irregular, incorrect or incomplete description or numbering of packages;
- (f) carriage of live animals;
- (g) carriage which, pursuant to applicable provisions or agreements made between the consignor and the carrier and entered on the consignment note, must be accompanied by an attendant, if the loss or damage results from a risk which the attendant was intended to avert.

#### **Article 24 Liability in case of carriage of railway vehicles as goods**

§1 In case of carriage of railway vehicles running on their own wheels and consigned as goods, the carrier shall be liable for the loss or damage resulting from the loss of, or damage to, the vehicle or to its removable parts arising between the time of taking over for carriage and the time of delivery and for loss or damage resulting from exceeding the transit period, unless he proves that the loss or damage was not caused by his fault.

§2 The carrier shall not be liable for loss or damage resulting from the loss of accessories which are not mentioned on both sides of the vehicle or in the inventory which accompanies it.

#### **Article 25 Burden of proof**

§1 The burden of proving that the loss, damage or exceeding of the transit period was due to one of the causes specified in Article 23 §2 shall lie on the carrier.

§2 When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks referred to in Article 23 §3, it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

§3 The presumption according to §2 shall not apply in the case provided for in Article 23 §3, letter (a) if an abnormally large quantity has been lost or if a package has been lost.

**Article 26 Successive carriers**

If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the goods with the consignment note, shall become a party to the contract of carriage in accordance with the terms of that document and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible in respect of carriage over the entire route up to delivery.

**Article 27 Substitute carrier**

§1 Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier, whether or not in pursuance of a right under the contract of carriage to do so, the carrier shall nevertheless remain liable in respect of the entire carriage.

§2 All the provisions of these Uniform Rules governing the liability of the carrier shall also apply to the liability of the substitute carrier for the carriage performed by him. Articles 36 and 41 shall apply if an action is brought against the servants and any other persons whose services the substitute carrier makes use of for the performance of the carriage.

§3 Any special agreement under which the carrier assumes obligations not imposed by these Uniform Rules or waives rights conferred by these Uniform Rules shall be of no effect in respect of the substitute carrier who has not accepted it expressly and in writing. Whether or not the substitute carrier has accepted it, the carrier shall nevertheless remain bound by the obligations or waivers resulting from such special agreement.

§4 Where and to the extent that both the carrier and the substitute carrier are liable, their liability shall be joint and several.

§5 The aggregate amount of compensation payable by the carrier, the substitute carrier and their servants and other persons whose services they make use of for the performance of the carriage shall not exceed the limits provided for in these Uniform Rules.

§6 This article shall not prejudice rights of recourse which may exist between the carrier and the substitute carrier.

**Article 28 Presumption of loss or damage in case of reconsignment**

§1 When a consignment consigned in accordance with these Uniform Rules has been reconsigned subject to these same Rules and partial loss or damage has been ascertained after that reconsignment, it shall be presumed that it occurred under the latest contract of carriage if the consignment remained in the charge of the carrier and was reconsigned in the same condition as when it arrived at the place from which it was reconsigned.

§2 This presumption shall also apply when the contract of carriage prior to the reconsignment was not subject to these Uniform Rules, if these Rules would have applied in the case of a through consignment from the first place of consignment to the final place of destination.

§3 This presumption shall also apply when the contract of carriage prior to the reconsignment was subject to a convention concerning international through carriage of goods by rail comparable with these Uniform Rules, and when this convention contains the same presumption of law in favour of consignments consigned in accordance with these Uniform Rules.

**Article 29 Presumption of loss of the goods**

§1 The person entitled may, without being required to furnish further proof, consider the goods as lost when they have not been delivered to the consignee or placed at his disposal within thirty days after the expiry of the transit periods.

§2 The person entitled may, on receipt of the payment of compensation for the goods lost, make a written request to be notified without delay should the goods be recovered within one year after the payment of compensation. The carrier shall acknowledge such request in writing.

§3 Within thirty days after receipt of a notification referred to in §2, the person entitled may require the goods to be delivered to him against payment of the costs resulting from the contract of carriage and against refund of the compensation received, less, where appropriate, costs which may have been included therein. Nevertheless he shall retain his rights to claim compensation for exceeding the transit period provided for in Articles 33 and 35.

§4 In the absence of the request referred to in §2 or of instructions given within the period specified in §3, or if the goods are recovered more than one year after the payment of compensation, the carrier shall dispose of them in accordance with the laws and prescriptions in force at the place where the goods are situated.

### **Article 30 Compensation for loss**

§1 In case of total or partial loss of the goods, the carrier must pay, to the exclusion of all other damages, compensation calculated according to the commodity exchange quotation or, if there is no such quotation, according to the current market price, or if there is neither such quotation nor such price, according to the usual value of goods of the same kind and quality on the day and at the place where the goods were taken over.

§2 Compensation shall not exceed 17 units of account per kilogramme of gross mass short.

§3 In case of loss of a railway vehicle running on its own wheels and consigned as goods, or of an intermodal transport unit, or of their removable parts, the compensation shall be limited, to the exclusion of all other damages, to the usual value of the vehicle or the intermodal transport unit, or their removable parts, on the day and at the place of loss. If it is impossible to ascertain the day or the place of the loss, the compensation shall be limited to the usual value on the day and at the place where the vehicle has been taken over by the carrier.

§4 The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties.

### **Article 31 Liability for wastage in transit**

§1 In respect of goods which, by reason of their nature, are generally subject to wastage in transit by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:

- (a) two per cent of the mass for liquid goods or goods consigned in a moist condition;
- (b) one per cent of the mass for dry goods.

§2 The limitation of liability provided for in §1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.

§3 Where several packages are carried under a single consignment note, the wastage in transit shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.

§4 In case of total loss of goods or in case of loss of a package, no deduction for wastage in transit shall be made in calculating the compensation.

§5 This Article shall not derogate from Articles 23 and 25.

### **Article 32 Compensation for damage**

§1 In case of damage to goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages. The amount shall be calculated by applying to the value of the goods defined in accordance with Article 30 the percentage of loss in value noted at the place of destination.

§2 The compensation shall not exceed:

- (a) if the whole consignment has lost value through damage, the amount which would have been payable in case of total loss;
- (b) if only part of the consignment has lost value through damage, the amount which would have been payable had that part been lost.

§3 In case of damage to a railway vehicle running on its own wheels and consigned as goods, or of an intermodal transport unit, or of their removable parts, the compensation shall be limited, to the exclusion of all other damages, to the cost of repair. The compensation shall not exceed the amount payable in case of loss.

§4 The carrier must also refund the costs provided for in Article 30 §4, in the proportion set out in §1.

### **Article 33 Compensation for exceeding the transit period**

§1 If loss or damage results from the transit period being exceeded, the carrier must pay compensation not exceeding four times the carriage charge.

§2 In case of total loss of the goods, the compensation provided for in §1 shall not be payable in addition to that provided for in Article 30.

§3 In case of partial loss of the goods, the compensation provided for in §1 shall not exceed four times the carriage charge in respect of that part of the consignment which has not been lost.

§4 In case of damage to the goods, not resulting from the transit period being exceeded, the compensation provided for in §1 shall, where appropriate, be payable in addition to that provided for in Article 32.

§5 In no case shall the total of compensation provided for in §1 together with that provided for in Articles 30 and 32 exceed the compensation which would be payable in case of total loss of the goods.

§6 If, in accordance with Article 16 §1, the transit period has been established by agreement, other forms of compensation than those provided for in §1 may be so agreed. If, in this case, the transit periods provided for in Article 16 §§2 to 4 are exceeded, the person entitled may claim either the compensation provided for in the agreement mentioned above or that provided for in §§1 to 5.

### **Article 34 Compensation in case of declaration of value**

The consignor and the carrier may agree that the consignor shall declare in the consignment note a value for the goods exceeding the limit provided for in Article 30 §2. In such a case the amount declared shall be substituted for that limit.

### **Article 35 Compensation in case of interest in delivery**

The consignor and the carrier may agree that the consignor may declare, by entering an amount in figures in the consignment note, a special interest in delivery, in case of loss, damage or exceeding of the transit period. In case of a declaration of interest in delivery further compensation for loss or damage proved may be claimed, in addition to the compensation provided for in Articles 30, 32 and 33, up to the amount declared.

### **Article 36 Loss of right to invoke the limits of liability**

The limits of liability provided for in Article 15 §3, Article 19 §§6 and 7, Article 30 and Articles 32 to 35 shall not apply if it is proved that the loss or damage results from an act or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

**Article 37 Conversion and interest**

§1 Where the calculation of the compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of compensation.

§2 The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 43 or, if no such claim has been made, from the day on which legal proceedings were instituted.

§3 If the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

**Article 38 Liability in respect of rail-sea traffic**

§1 In rail-sea carriage by the services referred to in Article 24 §1 of the Convention any Member State may, by requesting that a suitable note be included in the list of services to which these Uniform Rules apply, add the following grounds for exemption from liability in their entirety to those provided for in Article 23:

- (a) fire, if the carrier proves that it was not caused by his act or default, or that of the master, a mariner, the pilot or the carrier's servants;
- (b) saving or attempting to save life or property at sea;
- (c) loading of goods on the deck of the ship, if they are so loaded with the consent of the consignor given on the consignment note and are not in wagons;
- (d) perils, dangers and accidents of the sea or other navigable waters.

§2 The carrier may only avail himself of the grounds for exemption referred to in §1 if he proves that the loss, damage or exceeding the transit period occurred in the course of the journey by sea between the time when the goods were loaded on board the ship and the time when they were unloaded from the ship.

§3 When the carrier relies on the grounds for exemption referred to in §1, he shall nevertheless remain liable if the person entitled proves that the loss, damage or exceeding the transit period is due to the fault of the carrier, the master, a mariner, the pilot or the carrier's servants.

§4 Where a sea route is served by several undertakings included in the list of services in accordance with Article 24 §1 of the Convention, the liability regime applicable to that route must be the same for all those undertakings. In addition, where those undertakings have been included in the list at the request of several Member States, the adoption of this regime must be the subject of prior agreement between those States.

§5 The measures taken in accordance with §§1 and 4 shall be notified to the Secretary General. They shall come into force at the earliest at the expiry of a period of thirty days from the day on which the Secretary General notifies them to the other Member States. Consignments already in transit shall not be affected by such measures.

**Article 39 Liability in case of nuclear incidents**

The carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

**Article 40 Persons for whom the carrier is liable**

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the

scope of their functions. The managers of the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

#### **Article 41 Other actions**

§1 In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.

§2 The same shall apply to any action brought against the servants or other persons for whom the carrier is liable pursuant to Article 40.

### **TITLE IV**

## **ASSERTION OF RIGHTS**

#### **Article 42 Ascertainment of partial loss or damage**

§1 When partial loss or damage is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.

§2 A copy of the report must be supplied free of charge to the person entitled.

§3 Should the person entitled not accept the findings in the report, he may request that the condition and mass of the goods and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

#### **Article 43 Claims**

§1 Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.

§2 A claim may be made by persons who have the right to bring an action against the carrier.

§3 To make the claim the consignor must produce the duplicate of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods.

§4 To make the claim the consignee must produce the consignment note if it has been handed over to him.

§5 The consignment note, the duplicate and any other documents which the person entitled thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

§6 On settlement of the claim the carrier may require the production, in the original form, of the consignment note, the duplicate or the cash on delivery voucher so that they may be endorsed to the effect that settlement has been made.

#### **Article 44 Persons who may bring an action against the carrier**

§1 Subject to §§3 and 4 actions based on the contract of carriage may be brought:

- (a) by the consignor, until such time as the consignee has –
  1. taken possession of the consignment note,
  2. accepted the goods, or
  3. asserted his rights pursuant to Article 17 §3 or Article 18 §3;

(b) by the consignee, from the time when he has –

1. taken possession of the consignment note,
2. accepted the goods, or
3. asserted his rights pursuant to Article 17 §3 or Article 18 §3.

§2 The right of the consignee to bring an action shall be extinguished from the time when the person designated by the consignee in accordance with Article 18 §5 has taken possession of the consignment note, accepted the goods or asserted his rights pursuant to Article 17 §3.

§3 An action for the recovery of a sum paid pursuant to the contract of carriage may only be brought by the person who made the payment.

§4 An action in respect of cash on delivery payments may only be brought by the consignor.

§5 In order to bring an action the consignor must produce the duplicate of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or the loss of the consignment note.

§6 In order to bring an action the consignee must produce the consignment note if it has been handed over to him.

#### **Article 45 Carriers against whom an action may be brought**

§1 Subject to §§3 and 4 actions based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

§2 When, in the case of carriage performed by successive carriers, the carrier who must deliver the goods is entered with his consent on the consignment note, an action may be brought against him in accordance with §1 even if he has received neither the goods nor the consignment note.

§3 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

§4 An action in respect of cash on delivery payments may be brought only against the carrier who has taken over the goods at the place of consignment.

§5 An action may be brought against a carrier other than those specified in §§1 to 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.

§6 To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.

§7 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

#### **Article 46 Forum**

§1 Actions based on these Uniform Rules may be brought before the courts or tribunals of Member States designated by agreement between the parties or before the courts or tribunals of a State on whose territory –

- (a) the defendant has his domicile or habitual residence, his principal place of business or the branch or agency which concluded the contract of carriage; or

- (b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

Other courts or tribunals may not be seised.

§2 Where an action based on these Uniform Rules is pending before a court or tribunal competent pursuant to §1, or where in such litigation a judgment has been delivered by such a court or tribunal, no new action may be brought between the same parties on the same grounds unless the judgment of the court or tribunal before which the first action was brought is not enforceable in the State in which the new action is brought.

#### **Article 47 Extinction of right of action**

§1 Acceptance of the goods by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or exceeding of the transit period.

§2 Nevertheless, the right of action shall not be extinguished:

- (a) in case of partial loss or damage, if –
  1. the loss or damage was ascertained in accordance with Article 42 before the acceptance of the goods by the person entitled;
  2. the ascertainment which should have been carried out in accordance with Article 42 was omitted solely through the fault of the carrier;
- (b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the goods by the person entitled, if he –
  1. asks for ascertainment in accordance with Article 42 immediately after discovery of the loss or damage and not later than seven days after the acceptance of the goods, and
  2. in addition, proves that the loss or damage occurred between the time of taking over and the time of delivery;
- (c) in cases where the transit period has been exceeded, if the person entitled has, within sixty days, asserted his rights against one of the carriers referred to in Article 45 §1;
- (d) if the person entitled proves that the loss or damage results from an act or omission, done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

§3 If the goods have been reconsigned in accordance with Article 28 rights of action in case of partial loss or in case of damage, arising from one of the previous contracts of carriage, shall be extinguished as if there had been only a single contract of carriage.

#### **Article 48 Limitation of actions**

§1 The period of limitation for an action arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action –

- (a) to recover a cash on delivery payment collected by the carrier from the consignee;
- (b) to recover the proceeds of a sale effected by the carrier;
- (c) for loss or damage resulting from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result;
- (d) based on one of the contracts of carriage prior to the reconsignment in the case provided for in Article 28.

§2 The period of limitation shall run for actions –



- (a) for compensation for total loss, from the thirtieth day after expiry of the transit period;
- (b) for compensation for partial loss, damage or exceeding of the transit period, from the day when delivery took place;
- (c) in all other cases, from the day when the right of action may be exercised.

The day indicated for the commencement of the period of limitation shall not be included in the period.

§3 The period of limitation shall be suspended by a claim in writing in accordance with Article 43 until the day that the carrier rejects the claim by notification in writing and returns the documents submitted with it. If part of the claim is admitted, the period of limitation shall start to run again in respect of the part of the claim still in dispute. The burden of proof of receipt of the claim or of the reply and of the return of the documents shall lie on the party who relies on those facts. The period of limitation shall not be suspended by further claims having the same object.

§4 A right of action which has become time-barred may not be exercised further, even by way of counter-claim or relied upon by way of exception.

§5 Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

## TITLE V

### RELATIONS BETWEEN CARRIERS

#### Article 49 Settlement of accounts

§1 Any carrier who has collected or ought to have collected, either at departure or on arrival, charges or other costs arising out of the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed by agreement between the carriers.

§2 Article 12 shall also apply to the relations between successive carriers.

#### Article 50 Right of recourse

§1 A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

- (a) the carrier who has caused the loss or damage shall be solely liable for it;
- (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter (c);
- (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.

§2 In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

#### Article 51 Procedure for recourse

§1 The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 50 may not be disputed by the carrier against whom the right of recourse is exercised,

when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seised of the principal action shall determine what time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

§2 A carrier exercising his right of recourse must make his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing which he shall lose his right of recourse in the case of those against whom he has not taken proceedings.

§3 The court or tribunal must give its decision in one and the same judgment on all recourse claims brought before it.

§4 The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business, or the branch or agency which concluded the contract of carriage.

§5 When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings from among those having competence pursuant to §4.

§6 Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

#### **Article 52 Agreements concerning recourse**

The carriers may conclude agreements which derogate from Articles 49 and 50.

## **COUNCIL OF EUROPE CONVENTION ON CYBERCRIME, BUDAPEST, 2001**

### **CHAPTER I**

#### **USE OF TERMS**

##### **Article 1 Definitions**

For the purposes of this Convention:

- (a) 'computer system' means any device or a group of inter-connected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;
- (b) 'computer data' means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;
- (c) 'service provider' means:
  - (i) any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
  - (ii) any other entity that processes or stores computer data on behalf of such communication service or users of such service.
- (d) 'traffic data' means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service.

## CHAPTER II

### MEASURES TO BE TAKEN AT THE NATIONAL LEVEL

#### SECTION 1 – SUBSTANTIVE CRIMINAL LAW

##### TITLE 1

#### OFFENCES AGAINST THE CONFIDENTIALITY, INTEGRITY AND AVAILABILITY OF COMPUTER DATA AND SYSTEMS

##### Article 2 **Illegal access**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.

##### Article 3 **Illegal interception**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.

##### Article 4 **Data interference**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.
2. A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

##### Article 5 **System interference**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

##### Article 6 **Misuse of devices**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:
  - (a) the production, sale, procurement for use, import, distribution or otherwise making available of:
    - (i) a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with Article 2 through 5;
    - (ii) a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used

for the purpose of committing any of the offences established in Articles 2 through 5; and

- (b) the possession of an item referred to in paragraphs (a)(i) or (ii) above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

2. This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this Article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

3. Each Party may reserve the right not to apply paragraph 1 of this Article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 (a)(ii) of this Article.

## TITLE 2

### COMPUTER-RELATED OFFENCES

#### **Article 7 Computer-related forgery**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.

#### **Article 8 Computer-related fraud**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another by:

- (a) any input, alteration, deletion or suppression of computer data,
- (b) any interference with the functioning of a computer system,

with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another.

## TITLE 3

### CONTENT-RELATED OFFENCES

#### **Article 9 Offences related to child pornography [Omitted].**

## TITLE 4

### OFFENCES RELATED TO INFRINGEMENTS OF COPYRIGHT AND RELATED RIGHTS

#### **Article 10 Offences related to infringements of copyright and related rights**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law

of that Party pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such Conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such Conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

3. A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

## TITLE 5

### ANCILLARY LIABILITY AND SANCTIONS

#### Article 11 Attempt and aiding or abetting

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.

2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, 9(1)a and 9(1)c of this Convention.

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

#### Article 12 Corporate liability

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

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

#### **Article 13 Sanctions and measures**

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.

2. Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

## **SECTION 2 – PROCEDURAL LAW**

### **TITLE 1**

#### **COMMON PROVISIONS**

##### **Article 14 Scope of procedural provisions**

1. Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this Section for the purpose of specific criminal investigations or proceedings.

2. Except as specifically otherwise provided in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 to:

- (a) the criminal offences established in accordance with Articles 2 through 11 of this Convention;
- (b) other criminal offences committed by means of a computer system; and
- (c) the collection of evidence in electronic form of a criminal offence.

3. (a) Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.

b) Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:

- (i) is being operated for the benefit of a closed group of users, and
- (ii) does not employ public communications networks and is not connected with another computer system, whether public or private,

that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21.

##### **Article 15 Conditions and safeguards**

1. Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental

Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.

2. Such conditions and safeguards shall, as appropriate in view of the nature of the power or procedure concerned, *inter alia*, include judicial or other independent supervision, grounds justifying application, and limitation on the scope and the duration of such power or procedure.

3. To the extent that it is consistent with the public interest, in particular the sound administration of justice, a Party shall consider the impact of the powers and procedures in this Section upon the rights, responsibilities and legitimate interests of third parties.

## TITLE 2

### EXPEDITED PRESERVATION OF STORED COMPUTER DATA

#### Article 16 Expedited preservation of stored computer data

1. Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.

2. Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of 90 days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.

3. Each Party shall adopt such legislative or other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.

4. The powers and procedures referred to in this article shall be subject to Articles 14 and 15

#### Article 17 Expedited preservation and partial disclosure of traffic data

1. Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:

- (a) ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and
- (b) ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.

2. The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

## TITLE 3

### PRODUCTION ORDER

#### Article 18 Production order

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

- (a) a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and
  - (b) a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.
2. The powers and procedures referred to in this Article shall be subject to Articles 14 and 15.
3. For the purpose of this article, 'subscriber information' means any information, contained in the form of computer data or any other form, that is held by a service provider, relating to subscribers of its services, other than traffic or content data, by which can be established:
- (a) the type of the communication service used, the technical provisions taken thereto and the period of service;
  - (b) the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;
  - (c) any other information on the site of the installation of communication equipment available on the basis of the service agreement or arrangement.

## TITLE 4

### SEARCH AND SEIZURE OF STORED COMPUTER DATA

#### Article 19 Search and seizure of stored computer data

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:
- (a) a computer system or part of it and computer data stored therein; and
  - (b) a computer-data storage medium in which computer data may be stored in its territory.
2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1(a), and have grounds to believe that the data sought is stored in another computer system or part of it in its territory and such data is lawfully accessible from or available to the initial system, such authorities shall be able to expeditiously extend the search or similar accessing to the other system.
3. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:
- (a) seize or similarly secure a computer system or part of it or a computer-data storage medium;
  - (b) make and retain a copy of those computer data;
  - (c) maintain the integrity of the relevant stored computer data; and
  - (d) render inaccessible or remove those computer data in the accessed computer system.
4. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.
5. The powers and procedures referred to in this article shall be subject to Articles 14 and 15.



## TITLE 5

### REAL-TIME COLLECTION OF COMPUTER DATA

#### Article 20 Real-time collection of traffic data

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:

- (a) collect or record through application of technical means on the territory of that Party; and
- (b) compel a service provider, within its existing technical capability:
  - (i) to collect or record through application of technical means on the territory of that Party, or
  - (ii) to co-operate and assist the competent authorities in the collection or recording of,  
traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.

2. Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1(a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications in its territory through the application of technical means on that territory.

3. Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this Article and any information relating to it.

4. The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

#### Article 21 Interception of content data

1. Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:

- (a) collect or record through application of technical means on the territory of that Party; and
- (b) compel a service provider, within its existing technical capability,
  - (i) to collect or record through application of technical means on the territory of that Party, or
  - (ii) to co-operate and assist the competent authorities in the collection or recording of,  
content data, in real-time, of specified communications in its territory transmitted by means of a computer system.

2. Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1(a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data of specified communications in its territory through application of technical means on that territory.

3. Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of and any information about the execution of any power provided for in this Article.

4. The powers and procedures referred to in this Article shall be subject to Articles 14 and 15.

## SECTION 3 – JURISDICTION

### Article 22 Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:

- (a) in its territory; or
- (b) on board a ship flying the flag of that Party; or
- (c) on board an aircraft registered under the laws of that Party; or
- (d) by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2. Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs (1)b through (1)d of this Article or any part thereof.

3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph (1) of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law.

5. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

## CHAPTER III

### INTERNATIONAL CO-OPERATION

#### SECTION 1 – GENERAL PRINCIPLES

##### TITLE 1

#### GENERAL PRINCIPLES RELATING TO INTERNATIONAL CO-OPERATION

##### Article 23 General principles relating to international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this chapter, and through application of relevant international instruments on international co-operation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.

##### TITLE 2

#### PRINCIPLES RELATING TO EXTRADITION

##### Article 24 Extradition

1. (a) This Article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that

they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.

- (b) Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.

2. The criminal offences described in paragraph 1 of this Article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

3. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this Article.

4. Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.

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

6. If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as in the case of any other offence of a comparable nature under the law of that Party.

7. (a) Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.

- (b) The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

## TITLE 3

### GENERAL PRINCIPLES RELATING TO MUTUAL ASSISTANCE

#### Article 25 General principles relating to mutual assistance

1. The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.

2. Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.

3. Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.

4. Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 to 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5. Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

#### **Article 26 Spontaneous information**

1. A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might to a request for co-operation by that Party under this chapter.

2. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

### **TITLE 4**

## **PROCEDURES PERTAINING TO MUTUAL ASSISTANCE REQUESTS IN THE ABSENCE OF APPLICABLE INTERNATIONAL AGREEMENTS**

#### **Article 27 Procedures pertaining to mutual assistance requests in the absence of applicable international agreements**

1. Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this Article shall not apply where such treaty, arrangement or legislation is available, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.

2. (a) Each Party shall designate a central authority or authorities that shall be responsible for sending and answering requests for mutual assistance, the execution of such requests, or the transmission of them to the authorities competent for their execution.

- (b) The central authorities shall communicate directly with each other.
  - (c) Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph.
  - (d) The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities so designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.
3. Mutual assistance requests under this Article shall be executed in accordance with the procedures specified by the requesting Party except where incompatible with the law of the requested Party.
4. The requested Party may, in addition to the grounds for refusal available under Article 25, paragraph (4), refuse assistance if:
- (a) the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
  - (b) it considers that execution of the request is likely to prejudice its sovereignty, security, ordre *public* or other essential interests.
5. The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.
6. Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
7. The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.
8. The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
9. (a) In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
- (b) Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
  - (c) Where a request is made pursuant to subparagraph (a) and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
  - (d) Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
  - (e) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

**Article 28 Confidentiality and limitation on use**

1. When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.

2. The requested Party may make the furnishing of information or material in response to a request dependent on the condition that it is:

- (a) kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or
- (b) not used for investigations or proceedings other than those stated in the request.

3. If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information is nevertheless provided. When the requesting Party accepts the condition, it shall be bound by it.

4. Any Party that furnishes information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.

**SECTION 2 – SPECIFIC PROVISIONS****TITLE 1****MUTUAL ASSISTANCE REGARDING PROVISIONAL MEASURES****Article 29 Expedited preservation of stored computer data**

1. A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, which is located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.

2. A request for preservation made under paragraph 1 shall specify:

- (a) the authority that is seeking the preservation;
- (b) the offence that is the subject of a criminal investigation or proceeding and a brief summary of related facts;
- (c) the stored computer data to be preserved and its relationship to the offence;
- (d) any available information to identify the custodian of the stored computer data or the location of the computer system;
- (e) the necessity of the preservation; and
- (f) that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3. Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

4. A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in

cases where it has reason to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5. In addition, a request for preservation may only be refused if:

- (a) the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
- (b) the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6. Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

7. Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than 60 days in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

#### **Article 30 Expedited disclosure of preserved traffic data**

1. Where, in the course of the execution of a request made under Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data in order to identify that service provider and the path through which the communication was transmitted.

2. Disclosure of traffic data under paragraph 1 may only be withheld if:

- (a) the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
- (b) the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

## **TITLE 2**

### **MUTUAL ASSISTANCE REGARDING INVESTIGATIVE POWERS**

#### **Article 31 Mutual assistance regarding accessing of stored computer data**

1. A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.

2. The requested Party shall respond to the request through application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this Chapter.

3. The request shall be responded to on an expedited basis where:

- (a) there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or
- (b) the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

#### **Article 32 Trans-border access to stored computer data with consent or where publicly available**

A Party may, without obtaining the authorisation of another Party:

- (a) access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- (b) access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

**Article 33 Mutual assistance regarding the real-time collection of traffic data**

1. The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, assistance shall be governed by the conditions and procedures provided for under domestic law.
2. Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

**Article 34 Mutual assistance regarding the interception of content data**

The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

## TITLE 3

### 24/7 NETWORK

**Article 35 24/7 Network**

1. Each Party shall designate a point of contact available on a 24 hour, 7 day per week basis in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:
  - (a) the provision of technical advice;
  - (b) the preservation of data pursuant to Articles 29 and 30; and
  - (c) the collection of evidence, the provision of legal information, and locating of suspects.
2.
  - (a) A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.
  - (b) If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.
3. Each Party shall ensure that trained and equipped personnel are available in order to facilitate the operation of the network.

## CHAPTER IV

### FINAL PROVISIONS

Articles 36–48 [Omitted].



# UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003

## PREAMBLE

*The States Parties to this Convention,*

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

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

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

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

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

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

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

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

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

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

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

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

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

*Taking note with appreciation* of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, 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, 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, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, 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,

*Have agreed as follows:*

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1 Statement of purpose

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

#### Article 2 Use of terms

For the purposes of this Convention:

- (a) 'Public official' shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a 'public official' in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, 'public official' may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;
- (b) 'Foreign public official' shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
- (c) 'Official of a public international organization' shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;
- (d) 'Property' shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;
- (e) 'Proceeds of crime' shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

- (f) 'Freezing' or 'seizure' shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) 'Confiscation', which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) 'Predicate offence' shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;
- (i) 'Controlled delivery' shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

### **Article 3 Scope of application**

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.
2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

### **Article 4 Protection of sovereignty**

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

## **CHAPTER II**

### **PREVENTIVE MEASURES**

#### **Article 5 Preventive anti-corruption policies and practices**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption 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 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 articles 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 judgment 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 judgment 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 anticorruption 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 [Omitted].**

## 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 67–71 [Omitted].

## UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS, 2005

*The States Parties to this Convention,*

*Reaffirming* their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

*Noting* that the increased use of electronic communications improves the efficiency of commercial activities, enhances trade connections and allows new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

*Considering* that problems created by uncertainty as to the legal value of the use of electronic communications in international contracts constitute an obstacle to international trade,

*Convinced* that the adoption of uniform rules to remove obstacles to the use of electronic communications in international contracts, including obstacles that might result from the operation of existing international trade law instruments, would enhance legal certainty and commercial predictability for international contracts and help States gain access to modern trade routes,

*Being of the opinion* that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law,

*Desiring* to provide a common solution to remove legal obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems,

*Have agreed* as follows:

### CHAPTER I

#### SPHERE OF APPLICATION

##### Article 1 Scope of application

1. This Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States.

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between the parties or from information disclosed by the parties at any time before or at the conclusion of the contract.
3. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

#### Article 2 Exclusions

1. This Convention does not apply to electronic communications relating to any of the following:
  - (a) Contracts concluded for personal, family or household purposes;
  - (b) (i) Transactions on a regulated exchange; (ii) foreign exchange transactions; (iii) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments; (iv) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.
2. This Convention does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.

#### Article 3 Party autonomy

The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

## CHAPTER II

### GENERAL PROVISIONS

#### Article 4 Definitions

For the purposes of this Convention:

- (a) 'Communication' means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;
- (b) 'Electronic communication' means any communication that the parties make by means of data messages;
- (c) 'Data message' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;
- (d) 'Originator' of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;
- (e) 'Addressee' of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;
- (f) 'Information system' means a system for generating, sending, receiving, storing or otherwise processing data messages;

- (g) 'Automated message system' means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;
- (h) 'Place of business' means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

#### **Article 5 Interpretation**

1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

#### **Article 6 Location of the parties**

1. For the purposes of this Convention, a party's place of business is presumed to be the location indicated by that party, unless another party demonstrates that the party making the indication does not have a place of business at that location.
2. If a party has not indicated a place of business and has more than one place of business, then the place of business for the purposes of this Convention is that which has the closest relationship to the relevant contract, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.
3. If a natural person does not have a place of business, reference is to be made to the person's habitual residence.
4. A location is not a place of business merely because that is:
  - (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or
  - (b) where the information system may be accessed by other parties.
5. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business is located in that country.

#### **Article 7 Information requirements**

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

### **CHAPTER III**

## **USE OF ELECTRONIC COMMUNICATIONS IN INTERNATIONAL CONTRACTS**

#### **Article 8 Legal recognition of electronic communications**

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.
2. Nothing in this Convention requires a party to use or accept electronic communications, but a party's agreement to do so may be inferred from the party's conduct.

**Article 9 Form requirements**

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.
2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.
3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:
  - (a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and
  - (b) The method used is either:
    - (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
    - (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.
4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:
  - (a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and
  - (b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.
5. For the purposes of paragraph 4 (a):
  - (a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and
  - (b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

**Article 10 Time and place of dispatch and receipt of electronic communications**

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.
2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.
3. An electronic communication is deemed to be dispatched at the place where the originator

has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

#### **Article 11 Invitations to make offers**

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

#### **Article 12 Use of automated message systems for contract formation**

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

#### **Article 13 Availability of contract terms**

Nothing in this Convention affects the application of any rule of law that may require a party that negotiates some or all of the terms of a contract through the exchange of electronic communications to make available to the other party those electronic communications which contain the contractual terms in a particular manner, or relieves a party from the legal consequences of its failure to do so.

#### **Article 14 Error in electronic communications**

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

- (a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and
- (b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1.

## **CHAPTER IV**

### **FINAL PROVISIONS**

**Article 15–25 [Omitted].**

