Chapter 5

INTERNATIONAL PERSPECTIVE ON CORRUPTION

“To fight a corruption is like to fight a war”

Timothy Enietan Mathews

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Corruption is universal. It exists in all countries, both developed and developing. In the public and private sectors as well as in non-profit and charitable organizations corruptions is a major obstacle in the process of economic development and have a serious adverse impact on development of country.
Just like Terrorism, corruption is also universally recognized as an international crime. Our international law has not provided any mechanism for the effective eradication of corruption for which globalization is very much required. For this purpose, International code of conduct is required to enact. Boffors scam has proved that, there is a nexus of corruption between the countries which roots are deeply rotted all over the world. At the international level scope and problem of corruption become a question mark for each and every country. As earth routed corruption spread in all over the world. Nowadays, due to sophisticated modus operandi adopted during international transaction, each and every country become helpless to eradicate corrupt practices only with a reason that, there is no effective law even at international level.

International trade increase the pressure in which we found that there is a lack of transparency having a smell of criminal misconduct. Money laundering, Hawala are the best example of this criminal activities whose networking was deeply rotted at global level. Independent mechanism on the same footing of inter poll which is constituted for investigation of crime at international level.

We found that, in the international trade cost of corruption is at pick level. In which international norms are not observed. At international level corruption has its own positive or negative impact. Since there is no universal recognize norms or standard, corruptions become a common phenomenon. Nowadays people need rules for everything and Problem of corruption become problem of every country. United Nations convention against corruption 2003 indicates that “Corruption is no longer a local matter but international phenomena that affect all society and economies, making international cooperation to prevent and control it essential.”

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At global level to fight a corruption international mechanism is required. In 21st century problem of corruption become is a global phenomenon which seriously threat each and every country as like Terrorism. For which necessary preventive measure are required to be taken. To condemned the corruption at global level “International Prevention of Corruption Act be enacted with its own independent legal mechanism.” As per my research study, at global level ‘Norway’ is a country having very low corruption and at national level Kerala State is having low corruption whereas state of Bihar is as pike level.

5.1 **ROLE OF UNITED NATION ORGANIZATION**

One of the biggest problems faced by people all over the world is ‘corruption’ in the society, not a single country is untouched by the effects of corruption.

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. The United Nation organization has constituted many committees to control the Corruption and till now passed 5 conventions against corruption which are known as “United Nation Convention against Corruption”. These conventions are the most promising anti-corruption instrument at international level, comprehensive in their coverage and detailed in their measures.

The United Nations Convention against Corruption has divided into 71 Articles and 8 Chapter running as follow:-

a) General Provisions (Chapter I, Art 1-4)

b) Preventive Measures (Chapter II, Art. 5 to 14)

c) Criminalization and law Enforcement (Chapter III, Art 13-44)
5.2 UNITED NATIONS CONVENTION AGAINST CORRUPTION RUNS AS UNDER

5.2.1 PREAMBLE

The stability and security of societies depends on the corruption, it undermine the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law, which concerned also about the links between corruption and other forms of organized crime and economic crime, including money-laundering. Cases of corruption, 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, 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 Organization for Economic Cooperation and Development and the Organization of American States, Taking note with appreciation of multilateral instruments to prevent and combat corruption,
including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,

1. The Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,


3. The Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,


5.2.2 Statement of Purpose:

The purposes of United Nation Convention against corruption 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.

5.2.3 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 endeavor to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavor 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.
5.2.4 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.
5.2.5 Public sector:

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavor 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 is based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

   (b) That includes 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 programs to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programs 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, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Corruption across various states of India -

As per Transparency International India, “India corruption study, 2005” Kerala is the less corrupt state in India. On the other hand Bihar is the most corrupt state and Jammu and Kashmir rank next to Bihar in all services.

Politicians and bureaucrats and private sector are always involved in cycle of corruption. On ever soil roots of corruption rooted up to micro level therefore eradication of corruption is very big task.
5.2.6 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 endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable 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 endeavor, 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 8th article.

5.2.7 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.

5.2.8 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) Simplify 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.

5.2.9 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 are 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.

5.2.10 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 are 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, honorable 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 licenses 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.
5.2.11 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 curriculum.

   (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 order 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.

5.2.12 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 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 does 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 endeavor to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement
and financial regulatory authorities in order to combat money-laundering.

5.2.13 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.

5.2.14 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.

5.2.15 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.

5.2.16 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.

5.2.17 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. 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.

5.2.18 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 endeavor 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 defense, 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. 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 defenses 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.

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

5.2.19 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 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.
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 above 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 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.

5.2.20 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.

5.2.21 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.

5.2.22 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.

5.2.23 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 under 52nd 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 article 52, 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 this article, which is 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.

5.2.24 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.

5.2.25 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 article 55 of this Convention, shall be, in accordance with 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 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 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.

5.3 Comparative Study of The Prevention of Corruption Act of various countries.4

5.3.1 Anti-Corruption Laws in China

Chinese anti-corruption provisions are largely contained in the Anti-Unfair Competition Law of the PRC. The China has long tradition of gift giving, known as ‘Guan Xi’, in all types of business transactions. The country has embarked on an aggressive anti-corruption campaign, and strong enforcement is likely to continue in the coming years. The Anti-Unfair Competition Law prohibits commercial bribery punishable by economic and administrative sanctions. Prohibited acts of commercial bribery include giving bribes for the purpose of selling or purchasing goods, and receiving bribes in the course of selling or purchasing.5

China - China has established a 24 hour whistle blowing hotline number at which people may register their complaint against corruption. For proper use of public money, China has introduced an Audit Law only to supervise the public fund.6

5.3.2 Russian Federal Anti-Corruption Law

Russia’s Federal Anti-Corruption Law No. 273, Article 13.3 requires companies operating in the country to implement anti-corruption compliance programmers containing specific anti-corruption measures. Failure to comply carries the risk of heavy fines, the extent of which depends on a company’s
willingness to cooperate with authorities. Russian law does not provide an ‘adequate procedures’ legal defense against corruption offences.\(^7\)

### 5.3.3 Anti-Corruption Laws in Brazil

Brazil’s Anti-Corruption Law was enacted on March 18, 2015, putting an end to over a year old regulation which, now creates specific rules for compliance programs and establishes fines and other procedures.\(^8\)

The Brazilian anti-corruption law, imposes civil and administrative penalties and is commonly referred as the “Clean Company Act,” which supplemented by the regulations, the government also announced the “anti-corruption package,” including potential new criminal penalties and powers to confiscate property.

These proposals are still taking shape and do not have the force of law however, they signal an attempt by the government to develop anti-corruption legislation and compliance obligations and are a response to recent domestic and international pressures. The new Brazilian regulations still leave many questions unanswered. While the new regulations provide clarification to authorities on the enforcement of the law, the scope of future compliance obligations will undoubtedly evolve as the regulations are applied and precedents and accepted practices emerge. Continued monitoring of how the new regulations are interpreted and applied by Brazil’s regulatory authorities will best inform how to shape compliance programs in Brazil.\(^9\)
5.3.4 Anti-Corruption Laws in Japan

Article 197 of Japan’s Penal Code, prohibits a public official, defined as “a national or local government official, a member of an assembly or committee, or other employees engaged in the performance of public duties in accordance with laws and regulations”, according to said code, accepting, soliciting or promising to accept a bribe in connection with his or her duties is an offence, to give, offer or promise to give a bribe to a public official or a person is also crime.

A Legal persons i.e., firms and organizations are not liable for bribery under the Penal Code. Non-Japanese nationals are liable for bribery under the Penal Code only if the crime is committed within Japan. And accordingly, Japanese public officials are also liable for accepting bribes outside Japan.

The punishment for acceptance of a bribe by a public official (or a person to be appointed a public official) is imprisonment with work for not more than 5 years, 20 plus confiscation of the bribe monetary value.\(^\text{10}\)

5.3.5 Anti-Corruption Laws in France

France has ratified several important international anti-corruption conventions such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption. In generally, investors do not consider corruption a problem for doing business in France, and companies operating in France generally have a good reputation of corporate social responsibility.

The French National Assembly has proved two bills for combating tax evasion. However, in recent years there are several corruption scandals
involving high-ranking public officials, and public works and the defense industry are considered the most affected by corruption.

5.3.6 German Anti-Bribery And Anti-Corruption Law

The bribery scandals of international magnitude involving German multinational companies like Siemens as well as the local scandals among public officials and politicians, Germany’s enforcement of anti-bribery and corruption law has increased steadily and resulted in significant number of prosecutions and sanctions imposed in domestic as well as in foreign anti-bribery and corruption cases. Today, Germany is the third largest enforcer of out bound bribery.

In 2011, the number of bribery offenses in private sector recorded in Germany increased by more less than 29 percent. Recently, the German Parliament passed a bill raising fines for the companies in connection with bribes from €1 million to €10 million. Thus, the compliance with German anti-bribery and corruption law has increasingly become one of the important building blocks of the corporate compliance for the local as well as for the international companies.11

5.3.7 Anti-Corruption Laws in Italy

Italy has adopted a new Anti-Corruption Law on 6 November 2012, which was published in the Italian Official Gazette on 13 November 2012. Bribery and corruption costs the Italian economy an estimated €60 billion per year. The new Law is set to combat that figure and bring the Italian anticorruption legislation in line with that of other EU countries. The
provisions of the new Law have its Owen impact on both the public and the private sector.

5.3.8 Anti-Corruption Laws in South Korea

South Korea’s legislature on recently approved a new anti-corruption law designed to better tackle graft among government officials in a country where scandals over paid-for favors make frequent headline news. Most significantly, the bill eliminates the need to prove a direct link between a gift and a favor that followed to secure a conviction. The need for proof has led to the collapse of many prosecutions, according to supporters of the bill. The legislation sets a maximum penalty of up to three years in prison as well as 30 million as fines for bribery where public officials are involved.  

5.3.9 Anti-Corruption Law in South Africa

Corruption in South Africa has reached incredible proportions. Daily newspapers are widespread with reports of corruption in both the public and private sectors. The arms deals scandal, coupled with prison sentences for the former Commissioner of Police Jackie Selebi and the recent termination of his replacement Bheki Cele who was embroiled in a R1.8 billion overspend on police accommodation, has done little to bolster confidence in public sector integrity. These and many other instances of grand corruption, often exposed by the Office of the Public Protector, have seen South Africa slide down the Transparency International Corruption Index by more than 20 positions in the last five years. South Africa currently occupies 64th position out of the 189
countries that participated in the Transparency International Corruption Index.¹³

5.3.10 Anti-corruption Law in Australia

Corruption can take many forms and enter a system in many ways. The corruption incident may be isolated and small in scale - examples include a government official awarding a contract to a friend, granting a license in exchange for a bribe, disclosing confidential information, falsifying a record, or turning a blind eye to a criminal breach. Corruption can occur on a grand scale which is continuing and that causes great economic and social damage. For examples, police protection to drug importation or illegal gambling, or persistent bribery of local government planning officials to approve land rezoning and building construction.¹⁴

Australia’s Approach to Control Corruption which is based on:—

a) Australia’s Anti-corruption System including combating existing problems in international anti-corruption.

b) The legal framework for asset recovery extradition and denial of safe haven.

Australia’s approach to fighting with White Collar Crime based on four key elements.

i) Constitutional Safeguards

ii) Accountability and Transparency

iii) Criminalization of Corruption, and

iv) International corruption and technical assistance.
5.3.11 Anti-Corruption Law in New Zealand

The Crimes Act 1961 makes it an offence to corruptly accept or obtain a bribe for something done (or not done) in an official capacity. Bribes may involve money, valuable consideration, employment or any other benefit. It is an offence to bribe judges, government ministers, members of Parliament, police officers and other public officials including foreign public officials. It is also an offence to corruptly use official information. Penalties for bribery include imprisonment for up to 14 years. As per Anti-corruption law of New Zealand bribes an official in another country, is an offence and that person may be prosecuted in New Zealand. Bribery of foreign public officials in such cases carries a penalty of imprisonment for up to seven years.

In New Zealand, Secret Commissions Act 1910 covers bribery offences in the private sector. New Zealand law contains many other offences having style of corruption crimes. These include money laundering, and fraud under the Serious Fraud Office Act 1990, as well as civil sanctions under the Securities Market Act 1978 relating to insider trading and market manipulation.15

5.3.12 Anti-Corruption Act in America

The “American Anti-Corruption Act” (AACA) is proposed legislation originally crafted in 2011 "by former Federal Election Commission chairman in consultation with, democracy reform leaders and constitutional attorneys. All the provisions of the act are based on existing law.
The AACA is "conservatives, progressives and meet the standards of the American Anti-Corruption Act". The AACA has three goals: Stop bribery, end secret money, and empower voters.

**Plea bargaining:**

Recent Announcement by serious fraud office director Richard Alderman, coupled with two consultation papers issued by the Attorney General and the Financial services Authority all points towards the project that England and Wales is set to have a more formal plea bargaining system while some may herald this as a positive move in the fight against financial crime and fraud, to others it is part of worrying that the UK authorities may be looking to adopt aspects of the US criminal justice system.

**The US System**

In the US over 90% of all cases are disposed of by entering a plea agreement. This can be broken down offence category. In 2003 there were agreements on 95.2% of pleas in fraud cases; 98.4% in embezzlement; 98.3% in forgery and counterfeiting; 96.4% in bribery, 91.8% in tax, 88.4% in money laundering and 89% in racketeering/extortion.

From the time a person becomes aware that they are the target of a grand jury investigation, or from the return of an indictment, or filing of a criminal complaint, the prosecution and defense can reach a plea agreement. The actual process of a defendant entering a guilty plea is governed by Rule 11 of the Federal Rules of Criminal Procedure; Rule 11 prohibits the court from participating in plea discussions. It provides that before a guilty plea is
accepted, the defendant must go before a judge, who must ensure that the
defendant understands certain consequences of entering a plea, including.

* The government’s right in a prosecution for perjury of false statement
to use against the defendant any statement that they give under oath;

* The right to plead not guilty;

* The right to a jury trial;

* The right to be represented by counsel;

* That the rights the defendants would have at trial are waived; and

* The nature of each charge to which the defendant is pleading.

The system in the US has developed against a sentencing framework
that provides a high degree of certainty about the actual sentence that will be
imposed. This enable a prosecutor to ensure a defendant of a lower sentence
than there would be after trial. The US sentencing guidelines determine an
individual’s sentence based on two factors.

1) The seriousness of the offence; and

2) The defendant’s criminal history.

These two factors are juxtaposed on the axes of a grid known as the
sentencing table, which provides for different sentencing ranges based on
every different combination of offence level and criminal history. 16 (America)

5.3.13 Anti-Corruption Act in Kenya

These two legislations became operational on 2 May 2003. The Anti-
Corruption and Economic Crimes Act established the Kenya Anti-Corruption
Commission (KACC) as a body corporate, prescribing its composition and
conferring powers and functions to it. The Act also established the Kenya
Anti-Corruption Advisory Board, an unincorporated body comprising persons nominated by a cross-section of stakeholders. The Advisory Board made recommendations for appointment of a Director and Assistant Directors. It also advised the Commission generally on the exercise of its powers and performance of its functions under the Act.\textsuperscript{17}

5.3.14 Anti-Corruption Law in Turkey

Turkey, has an emerging economy, and has been responsive to the increasing anti-corruption efforts which they have made throughout the world, recent studies published by the OECD and Transparency International’s Corruption Perception Index (CPI) showed that, Turkey’s ranking dropped during 2014. In the CPI results Turkey was at 50 points in 2013 and 45 in the 2014 and moved from the 53rd least corrupt country to the 64th.

On the global front, the OECD’s Foreign Bribery Report published recently in December 2014 shows no evidence of Turkey having enforced the foreign anti-bribery legislation and concluded a foreign bribery case.

5.3.15 Anti-Corruption Laws in Indonesia’s

Under the Anti-Corruption Laws in Indonesia, corruption is defined and dealt with by Indonesia's legal and regulatory framework and what penalties and sanctions may be imposed when corrupt acts are dealt with by the courts. Over the past ten years, the focus on and criticism of the corruption, collusion and nepotism, in Indonesia's economy has brought out and open many of the previous administration's misdeeds which went unpunished. However, On the contrary, it is true to say that there has been an
ample framework for the punishment of corrupt acts for a long time. However, and as is commonly known, it was of course the absence of effective enforcement of violations of the laws in place, the overwhelming and all-encompassing power of the violators, and the in-built prevalence of corruption throughout the framework of the state's economy, which has led to today's problems in and intense focus on this area.18

5.3.16 Anti-Corruption Laws in Belgium

Belgium’s Anticorruption Laws In order to meet its international obligations resulting from Belgium’s accession to the OECD Convention. The Protocol to the Convention on the Protection of the European Communities' Financial Interests, and the Convention against Corruption Involving Officials, Belgium adopted the Law on 10 February 1999 and amended by that on Law on 11 May 2007, to change the anti-bribery provisions of the Belgian Criminal Code by –

(i) updating the definitions with respect to corruption, taking into account the definitions used in international conventions;
(ii) eliminating several “loopholes” (such as the requirement of a “bribery pact” between the payer and the recipient of the bribe);
(iii) increasing penalties; and
(iv) expanding the jurisdiction of the Belgian criminal courts for bribery committed abroad. .
5.3.17 Anticorruption Laws in Mexico

Mexico’s president, Enrique Pena Nieto, signed an anti-corruption law, which creates a national anti-corruption system and seeks to strengthen the auditing of public finances. The law, which forces public officials to release information on the use of public resources, was approved following two and half years of legislative negotiations. The main points of the new anti-corruption legislation include the creation of the National Anti-Corruption System, which has the power to investigate and punish corrupt officials across the three levels of government.

However, members from various social organizations have called into question the effectiveness of the bill, which does not lift immunity from prosecution for elected officials accused of corruption. Additionally, failure to comply with the details of the law will only incur fines of up to US$6,609. “Corruption is the main problem in Mexico largely because corruption has evolved hands to hand with impunity. Therefore the recent actions carried out by the government are not trusted. The primary challenge now is putting into practice the new law,” executive director of the non-government organization, Citizen Control for Accountability told Sin Embargo. Director of the Mexican think tank, (How are we going?) Viridiana Rios Contreras issued similar sentiments in an interview with Sin Embargo, describing the law “as a legal victory” but adding “it won’t necessarily translate into a direct fight against corruption.” “It is a legal framework but now we must put it into practice,” Rios told Sin Embargo.
5.3.18 Anti-Corruption Laws on Irish

*The recent overhaul of the UK anti-bribery legislation and the continuing tightening up of the Irish legislation has put the spotlight on corporate anti-corruption procedures and practices.*

Given the stringent penalties for non-compliance and recent developments in the Irish regime, it is an area that is increasingly becoming a focus of concern; particularly so in multi-jurisdictional business arrangements where there are likely to be gaps between the differing cross-border, anti-corruption requirements.

We outline the practical measures that Irish businesses should take to ensure compliance with anti-corruption requirements, set within the context of a brief overview of the Irish legislative framework, the impact of the UK Bribery Act 2010 on Irish businesses and other the recent developments in this area.

**Practical Measures to Ensure Anti-Corruption Compliance**

Specific ways in which Irish businesses should work towards complying with anti-corruption requirements include:

- **Know the laws that apply to you.** Understand the laws that apply to your business, particularly if your business is part of a larger group or companies or has multi-jurisdictional business interests.

- **Anti-Corruption Policies and Procedures.** Put clear and unambiguous written anti-corruption policies and procedures in place, implemented by top-level management and communicated fully throughout the organization (ideally by way of appropriate induction...
and training for directors, managers, and employees to ensure they understand the full extent of the anti-corruption program and the sanctions for violation). Communicate anti-corruption policies and requirements externally to legal entities with which the organization does business. The approach in developing and putting in place such policies and procedures should be risk based and proportionate to the level of risk associated with the type, nature and size of the business. The emphasis should be on continued monitoring and review to ensure that policies and procedures are adaptable to changing levels of risk.

- **Employment Policies and Handbooks.** You should have effective internal mechanisms in place to investigate whistle blowing complaints (see below, Recent Developments). Employment contracts should expressly state penalties relating to corruption, and should require employees to be familiar with the relevant bribery and corruption laws, their roles in the business, their responsibilities and the appropriate response to any suspicion of corrupt activity. Employment contracts and handbooks should detail the appropriate channels for whistle blowing in a safe and confidential manner.

- **Contractual Provisions.** Your contractual arrangements should contain full and accurate anti-corruption provisions, to ensure compliance with the differing requirements of the applicable anti-corruption regimes. This is particularly so in corporate transactions, where there is an increasing focus on having appropriate anti-corruption disclosures and related warranties.
Due Diligence. Irish businesses that contract with non-Irish third parties should conduct due diligence to ensure that such third parties are compliant with the highest standards of anti-corruption requirements; otherwise the Irish business could be exposed to liability for the shortfall in their trading partner’s anti-corruption policies.

5.3.19 Anti-Corruption Laws in Portugal

The Portuguese Parliament recently enacted Law 30/2015, of 22 April, aiming to comply with the recommendations addressed to Portugal on corruption by GRECO, UN and OECD, making amendments to the Criminal Code, the law on crimes of responsibility of political offices and high public offices (Law 34/87), the law relating to corruption in international trade and in the private sector (Law 20/2008), the law relating to corruption in the sports activity (Law 50/2007) and the law related to ensuring whistleblowers in corruption related matters (Law 19/2008).

Law 30/2015, of 22 April resulted from the combination of two proposals from the two major political parties in Portugal (PSD and PS). Such projects aimed, in turn, to give satisfaction to recommendations made by GRECO (under the II cycle of mutual evaluations on the implementation of Criminal Law Convention of the Council of Europe on corruption, 1999), the United Nations (in the context of implementing the Convention against Corruption 2003, known as Merida Convention) and the OECD (under the Convention application against Corruption of Foreign Public Officials in International Business Transactions, 1997).
This law is an additional contribution to the prosecution of corruption and related crimes introducing changes to the Criminal Code, the Law on the crimes of responsibility of political offices holders and senior public offices (Law 34/87 of 16 July), the law relating to corruption in international trade and in the private sector (Law 20/2008 of 21 April), the law relating to corruption in the sports activity (Law 50/2007, 31 August) and the law related to ensuring whistle-blowers in corruption related matters (Law 19/2008 of 21 April).

All of the amendments are recommended changes for some years now by international organizations as a result of evaluations that were conducted within the framework of conventions to which Portugal is part, and were now made law, in a year of significant events related to suspicion of corruption, bribery and influence peddling in Portugal by important individuals in the political and financial area. This change demonstrates that the topic is part of the public debate and no political force wants to stay behind in demonstrating its commitment to combat these crimes.

5.3.20 Anti-Corruption Laws in Norway

Norway ranks among the least corrupt countries in the world, and business is conducted with a high level of transparency. Corruption does not represent a significant constraint to trade or investment, and, although isolated incidents of corruption occasionally occur, administrative corruption and petty bribery are almost non-existent. The Norwegian Penal Code criminalizes active and passive bribery, trading in influence, fraud, extortion, breach of trust and money laundering. It applies to anyone who is registered in Norway,
and it carries penalties of up to 10 years’ imprisonment, even if the act is committed abroad. A company can be held criminally liable for corruption offences committed by individuals acting on its behalf. Facilitation payments are prohibited, and gifts and hospitality can be considered illegal depending on their value, the intent and the benefit obtained. Law enforcement activities and the legal framework for combating corruption are considered very strong. Norway’s economic crime-fighting unit has proven itself effective in investigating and prosecuting corruption in Norway and abroad.

5.3.21 Anti-Corruption Laws in Netherland

Bribery of public officials is regulated by the Dutch Criminal Code. Articles 177 and 177a penalize active bribery (i.e., the bribing of public officials) whilst Articles 362 and 363 penalize passive bribery (i.e., the public officials who are bribed).

This crime can be committed both by public officials and by companies/private individuals who (try to) bribe a public official.

Under the Dutch Criminal Code, bribery is defined very broadly: Public bribe may refer to any pecuniary or non-pecuniary gift, promise (even if not realized), or service to a former, current or future public official, either direct or indirect/through an intermediary, in order to induce him or her to commit any act, or refrain from acting, in the performance of his or her public duties, whether contrary or in accordance with his or her official duties.

Please note that it is also punishable to offer a gift, benefit or promise after the public servant has already acted contrary to his or her duties. Also, the Dutch anti-corruption provisions do not require that the public official
personally gains from the bribe. Moreover, causality between a specific gratuity and a specific performance or non-performance is not required.

As indicated above, not only direct bribery, but also indirect bribery is illegal. If local agents, representatives or consultants are used to bribe a public official, this can lead to criminal liability of the legal entity using the intermediary. Legal entities are therefore expected to have a critical attitude towards the nature and scope of the activities to be performed by such third parties and are expected to perform a due diligence/risk analysis on their third parties.

5.3.22 Anti-Corruption Laws in Philippines

Presently, the Philippines have no law that specifically penalizes active or passive bribery in the private sector. Instead, private entities are encouraged by the Philippine Government to formulate their own anti-corruption programs and procedures. Any private sector person involved in public sector bribery is punished in the same way as public officers and employees either as co-conspirators or for the separate felony of Corruption of Public Officials (RPC, section 212; ACPA, sections 3 and 9).

There are several Philippine laws that criminalize bribery and corruption in the public sector. These laws have a wide scope because the term “public officer” is defined to include any person occupying a position in the Philippine national and local governments, government-owned and controlled corporations, and all other instrumentalities and agencies of the Republic of the Philippines and their branches (ACPA, section 2(a); cf. COCES, section 3(a)).
The ACPA prohibits corrupt practices of public officers and certain private individuals, including: (a) directly or indirectly requesting or receiving any gift or benefit in connection with any contract or transaction between the Government and any other party; or (b) directly or indirectly requesting or receiving any gift or material benefit from any person for whom the public officer has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given (ACPA, section 3).

The ACPA and the COCES require public officials to submit a Statement of Assets and Liabilities every year, including a statement of the amount and sources of his or her income, the amount of personal and family expenses and the amount of income taxes paid for the next preceding calendar year (ACPA, section 7; cf. COCES, section 8). There is a prima facie presumption that a public officer or employee has unlawfully acquired property if such is manifestly out of proportion to his or her salary and other lawful sources of income (Republic Act No. 1379, section 2). The RPC has extra-territorial application if public officers or employees (who are Filipino nationals) commit an offence in the exercise of their functions outside the Philippines (RPC, section 2(4)). The RPC’s extraterritorial application does not extend to bribery of foreign officials (i.e. the act of giving a bribe) or to the acceptance of bribes by private Filipino citizens as this does not constitute bribery or an offence under Philippine law.19
5.3.23 Anti-Corruption Laws in Spain

In recent years, the fight against corruption in the context of cross-border business activities has brought about a raft of international legislation inspired by several conventions of the UN, the OECD and the Council of Europe and, particularly, by the extensive enforcement of the US Foreign Corrupt Practices Act (FCPA). The UK Bribery Act 2010 was the first and, to date, the most important piece of national anti-corruption legislation to have an FCPA-inspired extraterritorial reach for the prosecution of legal entities. During 2011, China, Russia, Indonesia, and India, to name but a few countries, have enacted or were in the process of passing their own national versions of the FCPA or the Bribery Act. Spain is no exception to this international legislative trend. In December 2010, the Spanish Criminal Code (SCC) was amended to introduce new and improved provisions on public and private corruption and the bribery of foreign public officials. The amendment also legislated for the corporate criminal liability of legal entities for bribery offences for the first time in Spanish legal history. The amendment of the SCC occurred almost in parallel with the enactment of the UK Bribery Act 2010, and, to some extent, both were based on the same international conventions. Thus, the Spanish law enforcement authorities have been provided with a wide range of anti-corruption tools that are similar to those of their British counterparts. However, the Spanish and British anti-corruption laws and their governments’ enforcement policies differ significantly when it comes to the legal effects of corporate compliance procedures. This core inconsistency generates shared concerns and a significant degree of uncertainty for British and Spanish companies that operate in both jurisdictions as to how to
implement anti-corruption programs that are effective in such a challenging international context.

5.3.24 Anti-Corruption Laws in Sri Lanka

Corruption is a problem for businesses in Sri Lanka. The most common forms of corruption include bribes paid to avoid bureaucratic red tape, bribe, solicitation by government officials, nepotism and cronyism. There is a high-level of corruption in the public procurement sector. The main anti-corruption laws are the Penal Code of 1883 and Bribery Act of 1994, which criminalize corruption and attempted corruption in the form of extortion, and active and passive bribery. No clear distinction between bribery and facilitation payments is made, but gifts given with a purpose of corruption are prohibited under the Prevention of Corruption Act. Sri Lanka’s anti-corruption legislation lacks enforcement, and powerful political elites often go unpunished for committing corruption crimes.

5.3.25 Corruption Act in Ukraine

On January 25, 2015, a new anti-corruption law took effect in Ukraine as part of a comprehensive legislative initiative targeting corruption among government employees, public officials and private legal entities, and strengthening the country’s previous anti-corruption regulations. The package of anti-corruption legislation, adopted by the Ukrainian Parliament and approved by President Petro Poroshenko in October 2014, becomes operative in 2015 to allow time to achieve compliance.
This anti-corruption legislation can be traced to the Euromaidan movement last fall. Former President Viktor Yanukovich’s alignment with Russia and failure to integrate with the European Union (EU) led to a groundswell of support for anti-corruption measures. Ukraine’s newly-formed government accomplished two goals with broad action. Ukraine enacted necessary anti-corruption and government transparency legislation as a condition for EU-backed financing and corresponding re-engagement.

The new legislation package contains anti-corruption reform measures targeting both the public and private sectors. In addition, the legislation calls for the formation of two new government agencies intended to enhance the country’s focus on eliminating corruption—the National Agency for Prevention of Corruption and the National Anticorruption Bureau.

Ukraine Establishes a Public Anti-Corruption Law Enforcement Bureau. The Law of Ukraine “On the National Anticorruption Bureau of Ukraine” took effect on January 25th and establishes a state agency specially designated to investigate allegations of corruption by senior government officials at all levels, including the President, members of the Cabinet of Ministers, members of Parliament and local governors. The National Anticorruption Bureau will be composed of a staff of up to 700 personnel who will operate from a central headquarters and several regional offices throughout the country.

The Bureau will be led by a director to be appointed by the President of Ukraine from a pool of candidates initially selected by the Bureau’s nomination commission, subject to the consent of the Ukrainian Parliament, the Verkhovna Rada. Once appointed, the director may be removed by a vote
of no confidence by not less than one third of the members of Parliament and only on specific grounds, such as conviction of a crime, loss of Ukrainian citizenship, or the assumption of another position of authority in the Ukrainian government.

The Anticorruption Bureau will operate as an independent national law enforcement agency. In accordance with Ukrainian civil and criminal laws, the Bureau will be empowered to: (a) compel the production of documents and information from individuals and legal entities, including other state agencies, local governance bodies and financial institutions; (b) seal off access to property, including offices and assets; (c) seize documents and objects; and (d) collaborate with foreign law enforcement officials. The Bureau will submit semi-annual reports on its activities to the President, Parliament and the Cabinet of Ministers. The reports will then be made publicly available in print media and on the Bureau’s website.

5.3.26 Corruption Laws in Switzerland

The Swiss Criminal Code distinguishes between active bribery, which can be committed by anyone who tries to corrupt a public official Swiss Criminal Code, Article 322ter, and the acceptance of bribes, which can be committed only by said officials, Swiss Criminal Code, Article 322quater. Bribery consists of offering, promising or giving an advantage that is not due to the public official, or offering, promising or giving such an advantage to a third party, in order to cause that public official to carry out or to fail to carry out an act in connection with his official activity, which is contrary to his or
her duty or dependent on his or her discretion. Acceptance of bribes consists of demanding, securing the promise of or accepting an advantage that is not due to the public official for himself or herself or for a third party in order that he or she carries out or fails to carry out an act in connection with his or her official activity that is contrary to his or her duty or dependent on his or her discretion.²⁰

5.3.27 Anti-Corruption Laws in Libya

Libya’s General National Congress (GNC) is debating the newly introduced transparency and anti-corruption bill which they expect to vote on in the next few weeks. The Libyan government, led by Prime Minister Ali Zeidan, is taking practical steps toward fighting corruption and improving transparency in public institutions, following alarming reports of rampant corruption and financial waste in the public sector. These steps are also driven by huge public demand for immediate anti-corruption measures and transparency in post-revolution Libya. On February 7, the government announced the National Identification Numbers (NID) project. By giving each person a unique number, the government will be able make sure that transfers and payments are going to the right people and avoid manipulations to the system. The General National Congress (GNC) is completing a program originally launched under the Qaddafi regime to issue identification numbers for all citizens that will be hosted on a central database and used to both record information and distribute benefits to citizens. The transitional authorities have made the NID program a priority due to reports that the payroll system is flooded with duplicate and imaginary workers who are receiving salaries from
the Libyan government. Thousands of ghost workers have been found since the NID project completed its data capture exercise. One “individual” was even found to be receiving more than 60 pay checks from the government. Without a central database, there is no way to easily check and verify employment records. Government officials have also hinted that abuse of the existing system happens from within. The corruption of the state payroll would explain why the salaries category accounted for the second largest portion of the budget after infrastructure and development projects. In the 2013 budget, salary expenditures surged forward to be the number one item, making up 31 percent of the 66.86 billion LD budget.

Libya’s inflated expenses have caught the attention of the International Monetary Fund (IMF), which is urging the government to contain current expenditures in the 2013 budget and advising further steps to contain salary increases and the number of public employees (as well as streamlining generalized subsidies). The GNC is taking these concerns seriously. It has stipulated that the 2013 budget proposal should mandate that all government transactions to employees be processed through the NID system.

5.3.28 Corruption act in Nigeria

The issue of corruption has led to loss of confidence in Nigeria by its citizens at home and abroad due to the activities of fraudsters, corrupt public officials and mis-governance by our leaders. On the international scene, Nigeria has been blacklisted as a slate in which integrity and transparency are alien and where no transactions occur without greasing palms. Others are over
concentration of resource at the center and a culture of unregulated informal economy, inefficient contract awards, inadequate enforcement of existing law, absence of the rule of law and a culture of preferential treatment in the conduct of government business. The Independent Corrupt Practices Commission (ICPC) and Economic and Financial Corruption Commission (EFCC) were established by the present administration to combat corruption at various levels. It is lamentable to observe that in spite of these strategies in place, little or no success has been achieved in that direction. The main objectives of the study are to identify the causes of corruption and their effects on Nigerian society; to analyze the role of the various Strategic Agencies on Anti-corruption and the impact of their existence. The method adopted for the study is the historical and observational method. Related literatures on corruption and government strategies are also utilized for the study. The findings of the study are that the existing Anti-Corruption Agencies are trying their best to curb corruption in Nigeria but that greediness and political instability are some of the primary causes of corruption. Government's lack of will to indict some past and present public office holders, inadequate and ineffective legislation on corruption are responsible for the high level of corruption in Nigeria today. It is recommended that in fighting corruption, Nigeria requires good and virtuous leaders who are honest with integrity, discipline and trustworthy, creation of employment, upgrading of Nigeria police amongst others.

5.3.29 Corruption Laws in Thailand

Thailand has enacted a new anti-corruption law that extends a maximum penalty of capital punishment to foreigners. Previous legislation
provided various punishments, including a possible death penalty, for Thai officials convicted of bribery, though apparently no one was ever executed for the crime.

The new statutes, which took effect on 9 July and are part of a separate anti-corruption law, extend those punishments to non-Thais working for foreign governments and international organizations. The military government that took power following the ouster of an elected civilian government last year has said countering corruption is one of its major goals. Although such action is touted as part of a reform movement to clean up Thai politics, it is widely seen as targeting former Prime Minister Thaksin Shinawatra, who was toppled by a previous military coup in 2006. Thaksin was accused of corruption, but also built a powerful, populist political machine that challenged the privileges of the country’s traditional elite, associated with the military and the royal palace. Another provision of the new anti-corruption law states a statute of limitations of 20 years no longer applies if the convicted person flees the country. Thaksin was convicted in 2008 of a corruption-related charge but fled abroad. The old statute of limitations would have allowed him to return in 10 years. Several corruption-related charges are also pending against Thaksin’s sister, Yingluck Shinawatra, who was prime minister until shortly before the army ousted her government last year. The secretary-general of the national anti-corruption commission, Sansern Poljieak, has been quoted by Thai media as saying the punishments under the new law are appropriate because graft involving public servants is a severe offence.
5.3.30 Anti-Corruption act in UAE

At present, the United Arab Emirates (the UAE) has no comprehensive anti-corruption legislation. Specific provisions dealing with anti-corruption and bribery (directly or indirectly) are, however, included in a number of federal and local laws including: the UAE Federal Law No. 3 of 1987 (the ‘Penal Code’); the UAE Federal Law No. 21 of 2001 concerning Civil Service; the Dubai Government Human Resources Management Law No. 27 of 2006; and the Abu Dhabi Law No. 1 of 2006 concerning Civil Service in the Emirate of Abu Dhabi (the last three laws are collectively referred to as the “Civil Service Laws”). The definition of bribery can be culled from several articles in UAE legislation, notably the Penal Code. Under the provisions of the Penal Code, bribery would be anything that confers a benefit on a public or private sector employee, as the case may be, with the intent to influence such employee to act in a way that violates the duties assigned to his or her function, or to commit or abstain from doing an act.

5.3.31 Anti-Corruption Laws in Canada

Fraud can include securities-related frauds such as Ponzi schemes, insider trading, and accounting frauds that overstate the value of securities. It also includes mass marketing fraud, mortgage and real estate fraud, and many other deceptive practices. There are always two elements that characterize fraud - deception or some other form of dishonest conduct, and depriving another person of their property or putting their property at risk.
5.3.32 Anti-Corruption Laws in Malaysia:

According to Dr. Yusof Nook (1993) and Joseph Eby Ruin (1996), there are 3 main causes of corruption:

1. Opportunities to commit crime,
2. Situational pressures on the individuals, and
3. Issues pertaining to integrity.

A decision to commit fraud is known to be influenced by the interaction of all these three causes. Opportunities include increasing individual knowledge of a company's operations, advancing to a position of trust, and becoming the only individual who knows a particular procedure (for example, correcting or modifying a computer programme. An organization could also provide opportunities for its staff to commit fraud by having a complex structure, allowing related party transactions; condoning weak internal control systems policies and procedures; or by frequently switching its legal or accounting firms.

Situational pressures refer to the immediate pressures a person experiences within his environment, and the most overwhelming of all Situational pressures are the unusually high personal debts or financial losses. Situational pressures might also be generated by official directives from leaders in the organization to achieve unrealistic performance objectives at any cost, or even by strong peer group influences. There are times when Situational pressures encourage people to perpetrate fraud for their corporation rather than against their corporation such as the threat of losing a business license, delisting from the stock exchange, and loss of employment or a cash shortage.
Personal integrity factors refer to each individual's personal code of ethics. While this element appears to be a straightforward determination of a person's honesty, the issue is actually more complex than it seems. A person ought to acquire a general definition of honest and dishonest behavior, and know which principles to adopt when developing a general trait of honesty. On top of that, a person needs to be consistently reinforced for honest behavior before internalizing a standard of honesty and being intrinsically rewarded for honest conduct.

According to the Global Corruption Barometer 2010, petty corruption is common in India. Citizens do not expect the situation to change in the short term and expressed skepticism with regard to government political will and/or capacity to curb corruption. 74% people felt that corruption has increased in the last three years.

International anti-corruption agencies—Corruption is global phenomenon and problem of every country. Every country adopted their own strategic to combat or eradicate corruption through their anti-corruption agencies. Some of the country proves their success in eradication corruption. For e.g. Hong Kong, Singapore, New South Wales and USA prove their success.

Bangladesh stands at the last of list of 133, yet it has been growing at five percent annually for a decade. Italy, the most corrupt country in Western Europe, has been one of the fastest growing economies. Corruption is often a good predictor of eventual economic crisis, yet when Argentina (92) went bust, the ensuing financial crisis also consumed its neighbours Uruguay which ranks at 33.
5.3.33 Anti-Corruption Laws in Singapore

Singapore Anti-corruption laws prescribe corruption as a substantive offence and apply to employees of public body. Penalties under the Act will be imposed for the contravention of the law and liable for fine and imprisonment for 7 years.
List of references:
2. www.un.org


18. ibid 12

19. ibid 12


22. ibid 12

23. ibid 12