

MODEL

LAW ON

CORRUPTION

The Regulatory Institute



Model Law on Corruption

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Chapter A: Generalities							
1. Purpose	A section on purpose is customary in some jurisdictions only.						
This Act aims to reduce and mitigate corruption.							
2. Scope OR Application	<p>Two fundamental decisions must be made by law-makers:</p> <ul style="list-style-type: none"> - To what extent should corruption in a purely private context be covered? - To what extent should corruption targeting foreign natural or legal persons or committed abroad be covered? <p>On one hand, corruption in a purely private context is also an evil that causes important damages. On the other hand, the enforcement capacities of many states might be overstretched if private corruption was to be covered. Covering also private corruption without making available the necessary enforcement capacities creates an uneven playing field namely for economic actors. An intermediate solution consists of prohibiting private corruption, but leaving the policing to competitors and other private actors who may activate civil or penal courts.</p> <p>Similar considerations apply to the second question, the extra-territorial application of domestic anti-corruption legislation. Regarding the extra-territorial application, see as references the law of Singapore (Section 37) and this law of South Africa for more detailed provisions. See also § 78dd-2 and -3 of this law of the United States. It contains dedicated provisions on corruption actions towards foreigners.</p> <p>When considering the two questions together, we suppose that the right scope for quite many jurisdictions could be:</p> <table border="1" data-bbox="807 1850 1382 1980"> <tr> <td></td> <td>Domestic</td> <td>Abroad</td> </tr> <tr> <td>Public</td> <td>yes</td> <td>yes</td> </tr> </table>		Domestic	Abroad	Public	yes	yes
	Domestic	Abroad					
Public	yes	yes					

	<table border="1" data-bbox="805 210 1385 271"> <tr> <td data-bbox="805 210 999 271">Private</td> <td data-bbox="999 210 1189 271">yes</td> <td data-bbox="1189 210 1385 271">no</td> </tr> </table> <p data-bbox="805 309 1385 712">As laudable as it seems, we fear that prohibiting corruption towards private entities abroad amounts to banning doing business in certain countries. Moreover, enforcement of such a prohibition is naturally very weak wherefore the domestic economic actors playing by the rules without (strong) enforcement have an unfair disadvantage not only towards foreign competitors not subject to such a prohibition, but also towards domestic competitors.</p>	Private	yes	no
Private	yes	no		
<p data-bbox="204 741 783 943">I. This Act sets out obligations for the State, its public entities, and private natural or legal persons that reduce the frequency and the impact of corruption. It also creates empowerments for further action reducing the frequency and impact of corruption.</p> <p data-bbox="204 943 783 1144">II. This Act applies to:</p> <ul style="list-style-type: none"> <li data-bbox="252 976 512 1010">a. natural persons, <li data-bbox="252 1010 639 1043">b. private legal persons, and <li data-bbox="252 1043 488 1077">c. public entities, <p data-bbox="204 1077 783 1144">with either residency or place of business or activity on the national territory.</p> <p data-bbox="204 1144 783 1211">III. Regarding offences, this Act applies to acts:</p> <ul style="list-style-type: none"> <li data-bbox="252 1211 783 1413">a. committed with regard to or by domestic public servants [or agents of domestic private natural or legal persons], regardless of whether they were committed on the national territory or elsewhere; <li data-bbox="252 1413 783 1514">b. negatively affecting domestic public entities [and domestic private natural or legal persons]; <li data-bbox="252 1514 783 1816">c. negatively affecting foreign public entities where either the agents or their principals: <ul style="list-style-type: none"> <li data-bbox="347 1615 783 1715">- reside in or have as place of business the national territory, or <li data-bbox="347 1715 783 1816">- have national citizenship or are legal persons or public entities under national law. <p data-bbox="204 1850 783 2018">IV. Regarding rights provided in Sections 36 to 39, this Act applies to all situations that are covered by Subsections II. and III. [or that have another [close] link to the domestic legal sphere].</p>	<p data-bbox="805 741 1326 808">Consider moving the first Subsection to Section 1.</p> <p data-bbox="805 943 1385 1111">The precise determination of the application depends largely on what you wish to achieve., See the considerations above. The text here can, at best, serve as a basis for reflection or discussion.</p> <p data-bbox="805 1144 1385 1514">Regarding the offences namely in Chapter B, we suggest a slightly different scope so as to cover acts committed by foreign natural or legal persons that have effect on the national territory. It would not be justified (and enforceable) to submit foreign companies to the obligations of Section 9 for example, but it is justified to expect them not to bribe domestic public servants and to sanction them and their agents if they do so.</p> <p data-bbox="805 1850 1385 2018">Please check, when you come to Sections 36 to 39, whether you wish to extend these rights to situations not covered by Subsections II. and III., but still connected to the domestic legal sphere.</p>			

V. Sections 9 and 10 and Chapter E also apply to actions that do not relate to any domestic or foreign public servant or entity, provided that they relate to domestic natural or private legal persons.

This Subsection ensures that the Competent Authority can execute its policy measures with a larger scope than the scope designed by the previous Subsections. E.g. it should be possible for the Competent Authority to launch an anti-corruption campaign abroad to protect domestic companies against rampant bribery.

3. Definitions and interpretations

I. The following definitions and interpretations apply:

- a. advantage means
 - any gift, loan, fee, reward or commission consisting of money, any valuable security or share or other property or interest in property of any description;
 - any in-kind contributions, investment opportunities, informal shareholding, positions in joint ventures, economic options, favourable contracts, subcontracts and business opportunities;
 - any office, employment or service contract;
 - any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
 - any other service, or favour [other than entertainment], including protection from any penalty or disability incurred or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
 - the exercise or forbearance from the exercise of any right or power or duty; and
 - any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding indents, but does not include ... (e.g. free meals or presents up to a value of ...);
- b. agent means any natural person acting for a principal;

Either exclude entertainment and insert / keep a definition thereof ...

... or (preferably) establish an exemption for minimal in-kind advantages as suggested in the last indent of letter a.

- c. banker's books means
- any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever;
 - any cheque, voucher, record card, report, letter or other document whatsoever; and
 - any copy of anything referred to in paragraph (a) or (b), used in the ordinary business of a bank;
- d. child includes a child who is illegitimate or adopted, a foster child and a step-child;
- e. Competent Authority means the authority in charge of fighting against corruption as determined by the Government **OR** Minister in charge;
- f. company books means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company;
- g. court includes a single judge or magistrate leading proceedings;
- h. document includes any register, book, record, tape-recording, any form of computer input or output, and any other material (whether produced mechanically, electrically, or manually or by any other means whatsoever);
- i. [entertainment means the provision of food or drink, for consumption, on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions;]
- j. entity means a private legal person or a public entity as defined below;
- k. investigating officer means any person authorised by the Competent Authority to exercise the powers of an investigating officer under this Act;
- l. measures of status guarantee means measures taken by the Competent Authority necessary to revoke disadvantageous measures taken by another [public] entity against a [whistleblower or other]

Throughout this Act, you might wish to replace "Minister in charge" by "Minister of the Interior", "Minister of Justice" or alike, subject to your domestic attribution of tasks.

Only needed if you opt for the entertainment option in letter a.

Below in Section 37, we limit "measures of status guarantee" to the public remit, in line with the considerations set out in Section 2.

informer because s/he provided information;

m. official emoluments includes a pension or gratuity payable under the applicable pensions scheme;

n. parents includes parents-in-law and step-parents;

o. prescribed officer means an officer of the following categories: ... (e.g. nominated by the Government or otherwise having an eminent position);

p. principal includes

- an employer,
- a beneficiary under a trust,
- a trust estate as though it were a person,
- any person beneficially interested in the estate of a deceased person,
- the estate of a deceased person as though it were a person,
- In the case of an agent of a private legal body, the private legal body, and
- in the case of an agent of a public entity, the public entity.

q. public entity means

- the Government ministries **OR** departments;
- the Government's agencies, foundations and other legal persons established by public law;
- the Parliament;
- the national geographic entities, their government or administration, parliament, agencies and their foundations or other legal persons established by public law; or
- local or thematic self-administrative units established by public law; whilst any board, commission, or committee established by any of the above belongs to the respective public entity;

r. public servant [or public agent] [or agent of a public entity] means any agent of a public entity who has the status of:

- any official who is part of a public entity by virtue of an election or administrative act;
- any staff or employee of a public entity under national public or labour law;

Please check whether you need this term which was used in a reference law.

Terms vary among jurisdictions.

In many countries, there are administrations authorised to act under public and private law which are not legal persons. Hence we suggest establishing a term that is broader than "public legal person".

We do not find it helpful to regard boards, commissions or committees as public entities on their own.

We find that the first part of the definition cannot suffice, because otherwise an attorney representing a public entity would be a public servant.

<ul style="list-style-type: none"> - any member or office holder of a public entity [other than an honorary office holder]; or - any member of any council, board, committee or other body of the public entity which is vested with any responsibility for the conduct or management of the affairs of the public entity [by virtue of laws, ordinances, decrees or statutes]; s. spouse includes a concubine. <p>II. For the purposes of this Act:</p> <ul style="list-style-type: none"> a. a person offers an advantage if s/he, or any other person acting on her/his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person; b. a person solicits an advantage if s/he, or any other person acting on her/his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for itself or for any other person; and c. a person accepts an advantage if s/he, or any other person acting on her/his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for itself or for any other person. <p>III. The Government may, by ... (e.g. ordinance), exclude from the definition of public servant certain subtypes of persons referred to in Subsection I.(r) [for whom the application of this Act would be disproportionate]. It may, under the same conditions and for the same purpose, exclude from the definition of public entity certain subtypes of public bodies referred to in Subsection I.(q).</p>	<p>Please check whether you wish to exclude members of an informal advisory committee established without a legal base.</p>
<p>4. Auditing entities</p>	
<p>I. The Government OR Minister in charge may by ... (e.g. ordinance, decree) set out detailed provisions on the tasks, accreditation, supervision and withdrawal of accreditation of dedicated anti-corruption</p>	

<p>auditing entities, to be selected among the following:</p> <ul style="list-style-type: none"> a. anti-corruption NGOs, b. auditing companies [specialised in the fight against corruption] OR [with a dedicated anti-corruption department], or c. insurers or professional organisations[, both with a dedicated anti-corruption department]. <p>II. The Government OR Minister in charge OR Competent Authority may create a label testifying participation to a voluntary anti-corruption auditing program and set out the detailed conditions for the use of the label.</p>	<p>Auditing companies are, in principle, able to audit against any benchmark. Still, it might be preferable to request some specialisation. An intermediate solution could be to request some specialisation or the existence of a department for “compliance”, “compliance” being broader than “corruption”, but encompassing it.</p> <p>Here and for any further empowerments, the model law can of course not preempt choices very much dependent on the respective governance setting.</p>
<p>5. Responsibilities of public entities</p>	
<p>I. Public entities must do their best to prevent corruption and mitigate its consequences. They must follow best practices developed on the national territory or elsewhere.</p> <p>II. Public entities must try to identify risks of corruption, assess their procedures in view of the identified risks and keep their knowledge on the fight against corruption up to date.</p> <p>III. Public entities must reduce the risks identified to the extent reasonable by:</p> <ul style="list-style-type: none"> a. establishing internal confidential reporting channels for corruption; b. protecting and rewarding to the extent possible informers and cooperators [in accordance with Sections 36 to 39]; c. establishing transparency in government procedures and operations [related to individual cases or small groups of persons concerned]; d. providing public access to information related to procedures and operations [related to individual cases or small groups of persons concerned], including on individual decisions and the documents on which these individual decisions are based; e. publishing key documents, including general conditions, specific 	<p>This generic wording can serve as a fall-back obligation in case the following specific obligations contain loopholes.</p> <p>The aim of the addition is to exempt from the transparency obligation very generic procedures or operations, like the preparation of legislation.</p> <p>Despite a semantic overlap of the two terms, we use “procedures and operations” to catch all types of administrative processes, not just the ones formalised by procedural rules. “Operations” alone might not be understood as encompassing processes covered by procedural rules.</p> <p>Adding Letter e. does not make Letter c. redundant e., because Letter c. covers</p>

<p>conditions for certain procedures and operations, assessment criteria, minutes of decision making fora in corruption-prone domains like taxation, customs, grants, public tenders, mining and other public licences;</p> <p>f. rotating staff in those corruption-prone domains;</p> <p>g. designating observers from other public entities to observe procedures and operations in those corruption-prone domains and giving them access to the head of the public entity for reporting;</p> <p>h. requesting an external auditing company [or anti-corruption NGO] to investigate complex cases of corruption and possible systematic corruption;</p> <p>i. establishing accountability mechanisms for public servants and entities under their control;</p> <p>j. publishing the anti-corruption measures they take internally [and externally]; and</p> <p>k. raising consciousness of employees and of citizens to reduce corruption, inviting them in particular to use the alert portal established pursuant to Section 35.</p> <p>IV. The Government OR Minister in charge may set out by ... (e.g. ordinance, decree) provisions on the periodic corruption auditing of public entities [in corruption-prone domains] by specialised public or private auditors or anti-corruption NGOs.</p>	<p>processes not governed by documents yet.</p> <p>Consider establishing a definition for “corruption-prone domains” if you intend to use this term in more than one Section.</p> <p>The risk of collusion is reduced by rotation: incoming staff constitutes a risk for the detection of corruption, and outgoing staff might find it easier to report.</p> <p>Alternatively, you might refer to the auditing entities of Section 4.</p> <p>Alternatively, you might refer to the auditing entities of Section 4.</p>
<p>6. Code of conduct for public servants</p>	
<p>I. Public entities must apply an appropriate code of conduct. The code of conduct may not fall behind the prototype code of conduct referred to in the following Subsection, but must be adapted to the particular tasks and environment of the respective public entity.</p> <p>II. The prototype code of conduct must be provided by ... (e.g. Minister of the</p>	<p>Codes of conduct can be useful in terms of steering behaviour. They should not be so lengthy that readers are deterred from reading them. But they should be specific enough so that readers know concretely what to do.</p> <p>To strike a balance between these goals, we suggest here a two-step approach:</p> <ul style="list-style-type: none"> - the establishment of a generic

Interior), and must cover at least the following matters:

- a. the prohibition and limitation of any public servant's receiving of entertainment, food, services, money, or goods from any person;
- b. prohibition and limitation of any public servant's intervening in personnel affairs, influence peddling, doing good offices, or soliciting another person for her/his good offices, taking advantage of her/his position;
- c. transparency measures indirectly reducing the risk of corruption;
- d. creation of a sound, open working climate regarding the processing of personal interests possibly coming into play; and
- e. the point listed in Section ... Subsection III.

III. Violations of the code of conduct must be assessed and processed as infringements of the public servant's duties. The Minister in charge may adopt detailed provisions on disciplinary actions to be taken in case of violation of the code of conduct.

prototype code of conduct (that may contain specific modules for certain types of procedures or operations);

- the adaptation of this generic code of conduct to the specific public entity (e.g. by keeping certain modules and deleting others, adaptation of certain provisions).

To put into practice Subsection III, it might be necessary to adapt statutes or other provisions applicable to public servants.

7. Public servants

I. Public entities must, to the extent possible, guarantee the livelihood of public servants in such a way that the public servants can devote themselves to the civil service.

II. Public servants may not be involved in commercial activities or hold parts of enterprises [that are in connection with their functions].

III. Public servants must declare to their public entity their family relationships, other close personal relationships, economic activities, income and assets.

IV. Public servants may not employ or favour employing persons with whom there is a family or other close personal relationship.

V. Public servants must sign off and follow the code of conduct applicable to their respective public entity.

<p>VI. Public servants, must, in case of doubt on the applicability and interpretation of provisions of the code of conduct or other rules on ethics, ask for the view of their superiors in writing and record the written reaction thereto.</p> <p>VII. Public servants [as from Grade ...] OR prescribed officers may be impeached from service for violations of obligations set out in this Section or for offences listed in Chapter B.</p>	<p>This Subsection is one of the places for which it might be useful to have defined a certain category of public servants under a specific term, such as “prescribed officers” in the law of Hong Kong.</p>
<p>8. Responsibilities of Political Parties and their Members</p>	
<p>I. A political party that is registered in accordance with ... (e.g. the Political Parties Act) and the members affiliated therewith must endeavour to create a clean and transparent internal culture of politics.</p> <p>II. A political party and the members affiliated therewith must ensure that the right election culture is proliferated and must operate the party and raise and spend political funds in a transparent manner. [Political parties and their members may not link policy decisions or the nomination as candidates to past or future funding from the potential candidate or from other persons.]</p> <p>III. The following obligations applicable to public entities also apply to political parties: ... (select appropriate obligations from Section 5 Subsections I. to III.).</p>	<p>Political parties have a public function, but must also have more freedom than classic public entities, so as to be able to express political will. A medium severe regime seems to be appropriate.</p> <p>The funding of political parties is a very delicate topic. Some jurisdictions have established state funding to make parties independent from any influence of donors, but most do not. The solution suggested here tries to limit the distorting effect of private funding.</p> <p>We recommend referring to Section 5 Subsections I., II., and III. Letters a. and b.</p>
<p>9. Duties of private persons</p>	
<p>I. Private natural or legal persons, or partnerships thereof, with more than ... (e.g. 500) staff, partners or members or a turnover of more than ... [other than non-profit associations] must establish and apply a mandatory compliance program encompassing at least the following elements:</p> <ul style="list-style-type: none"> a. corruption prevention plan; b. code of conduct; c. nomination of a person responsible for [regulatory compliance and] the prevention of corruption; 	<p>This Section is inspired by the French law (“Loi Sapin II”) and the law of Portugal.</p> <p>The wording encompasses e.g. consulting partnerships and large business associations.</p>

<p>d. internal reporting channel for suspicious facts or behaviours;</p> <p>e. corruption risk mapping by geographic area and business activity type and product or service sector;</p> <p>f. assessment of corruption risk prior to starting negotiations and concluding contracts;</p> <p>g. third party integrity assessment covering customers, suppliers and intermediaries, to be provided to the accounting control company;</p> <p>h. accounting control company to report on corruption and the risk of corruption;</p> <p>i. staff training program;</p> <p>j. disciplinary action regime both for active and passive corruption; and</p> <p>k. bi-annual control and evaluation of the measures above.</p> <p>II. Economically active private persons other than those covered by Subsection I must [establish a sound trade order as well as business ethics and] take necessary measures to prevent any corruption. To that end, they must at least implement ... (e.g. 5) elements listed in Subsection I, among them elements</p>	
<p>10. Duties of citizens and residents</p>	
<p>Every citizen and all residents must fully cooperate with public entities when it comes to preventing, investigating, mitigating, remedying or sanctioning corruption.</p>	
<p>Chapter B: Corruption Offences</p>	<p>We follow in this Chapter the law of Hong Kong which, like many jurisdictions, enumerates and defines a range of offences. Alternative to this enumeration, law-makers might consider the even more detailed offences of the law in South Africa or, going into the opposite direction, the comprehensive definition of the term “corruption” in the South Korean law which aims to catch all flies in one strike:</p> <p>“The term “act of corruption” means any of the following acts:</p> <p>(a) The act of any public servant’s abusing his/her position or authority or</p>

	<p>violating statutes in connection with his/her duties to seek gains for himself/herself or any third party;</p> <p>(b) The act of inflicting damages on the property of any public institution in violation of statutes, in the process of executing the budget of the relevant public institution, acquiring, managing, or disposing of the property of the relevant public institution, or entering into and executing a contract to which the relevant public institution is a party;</p> <p>(c) The act of coercing, urging, proposing and inducing any act referred to in items (a) and (b) or the act of covering it up;”</p> <p>The advantage of the South Korean approach is simplicity and shortness, but it is less precise. Letter (b) covers also cases of damage to the public good which are not motivated by personal gain.</p>
<p>11. Soliciting or accepting an advantage</p>	
<p>Any [current, previous or future] public servant who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage shall be guilty of an offence.</p>	<p>This offence is very important for the many cases where there is no proof of an action covered by Sections 13 and 14.</p>
<p>12. Offering of advantages to public servants</p>	
<p>Any person who, without lawful authorisation or reasonable excuse, while having dealings of any kind with a public entity, offers any advantage to any public servant employed in that public entity[, or to a person likely to be employed in that public entity as a public servant,] shall be guilty of an offence.</p>	<p>This is the counterpart offence for the offence in Section 11. Again, this provision constitutes a fall-back.</p> <p>Sections 11 and 12 could also be merged. In the following Sections, the offence of the public servant and the offence of the bribing person are defined in different Subsections of the same Section. Merging the passive and the active offence or keeping them separate have both advantages and disadvantages. Merging leads to more conciseness, but reduces visibility and readability for lay-persons in particular.</p>

13. Bribery for giving assistance in regard to contracts

I. Any person who, without lawful authorisation or reasonable excuse, offers an advantage to a [current, previous or future] public servant as an inducement to or reward for or otherwise on account of such public servant's giving of assistance or using influence in, or having given assistance or used influence in:

- a. the promotion, execution, or procuring of:
 - (i) any contract with a public entity for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or
 - (ii) any subcontract to perform any work, provide any service, do any thing or supplying any article, material or substance required to be performed, provided, done or supplied under any contract with a public entity; or
- b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

II. Any [current, previous or future] public servant who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in:

- a. the promotion, execution or procuring of, or
- b. the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in Subsection I. shall be guilty of an offence.

This is the first offence where there is a link between the offer and an action taken or omitted by a public servant. Proof of such an offence is more demanding than proof of the previous offences.

Please check whether you need Section 13 or whether the generic Section 14 suffices. The necessity for a distinct section might also arise if you wish to attribute different sanctions.

14. Bribery for other actions

I. Any person who, without lawful authorisation or reasonable excuse, offers any advantage to a [current, previous or future] public servant as an inducement to or reward for or otherwise on account of that public servant's:

- a. performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- b. expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- c. assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public entity,

shall be guilty of an offence.

II. Any person who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of her/his:

- a. performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- b. expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- c. assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public entity,

shall be guilty of an offence.

Please check whether you deem certain for the covered cases to be particularly classified as grave or less grave so that you wish to attribute different sanctions; in which case you might consider establishing distinct offences for these cases.

15. Trading in influence

I. Any [current, previous or future] public servant who offers or accepts to offer his

<p>good services in view of another public servant's decision in return for any kind of advantage shall be guilty of an offence.</p> <p>II. Any person soliciting such good services of a [current, previous or future] public servant and offering any kind of advantage to that public servant shall be guilty of an offence.</p> <p>[III. Subsections I and II do not apply ... (e.g. one year, two years) after the person soliciting or accepting or being offered the advantage has lost her/his status as public servant.]</p>	<p>We suggest a clearance period coinciding with the period during which a former public servant is not authorised to lobby her/his former employer.</p>
<p>16. Possession of unexplained property</p>	
<p>I. Any person who, being or having been [a public servant] OR [a public servant of grade ... or higher] OR [a prescribed officer]:</p> <ul style="list-style-type: none"> a. maintains a standard of living above that which is commensurate with his present or past official emoluments; or b. is in control of pecuniary resources or property disproportionate to his present or past official emoluments, <p>shall, unless s/he gives a satisfactory explanation as to how s/he was able to maintain such a standard of living or how such pecuniary resources or property/ies came under his control, be guilty of an offence.</p> <p>II. In any proceedings for an offence under Subsection I.(b) the court must take into account assets that s/he declared to the head of the public entity or, in case of heads of public entities, to the Minister in charge prior to or during executing office. The head of the public entity or, respectively, the Minister in charge must disclose to a court information about assets declared to him pursuant to the previous sentence if the disclosure is required by an order made by the court for the purposes of this Section.</p> <p>[III. Where a court, in proceedings for an offence under Subsection I.(b), has reason to believe that any natural or legal person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such</p>	<p>Making public servants responsible for explaining their property is a sharp and efficient measure. But it also has downsides. It might deter qualified persons from becoming public servants.</p> <p>Please check whether such presumption is lawful in your jurisdiction. See also Section 25 Subsection II. The "reason to believe" could be replaced by "first evidence".</p>

<p>resources or property must, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.]</p>	
<p>17. Use of confidential information</p>	
<p>Any person who, being or having been a public servant, uses any confidential information learned while conducting her/his duties to obtain, or to have a third party obtain, goods or property gains shall be guilty of an offence.</p>	
<p>18. Corrupt transactions with agents</p>	
<p>I. Any agent who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of her/his:</p> <ul style="list-style-type: none"> a. doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or b. showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, <p>shall be guilty of an offence.</p> <p>II. Any person who, without lawful authorisation or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's:</p> <ul style="list-style-type: none"> a. doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or b. showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, <p>shall be guilty of an offence.</p> <p>III. Any agent who, with intent to deceive his principal, uses any receipt, account or other document:</p> <ul style="list-style-type: none"> a. in respect of which the principal is interested; 	<p>This is the first offence that can, subject to your choice, also apply where there is no involvement of a public servant. We refer to Section 2 where we highlighted the fundamental choice regarding the coverage of private bribery.</p> <p>However, parts of this Section can also apply to agents who are public servants, unless you change the wording by adding "other than public servants" after "agent".</p>

<p>b. which contains any statement which is false or erroneous or defective in any material particular; and</p> <p>c. which to his knowledge is intended to mislead the principal,</p> <p>shall be guilty of an offence.</p> <p>IV. If an agent solicits or accepts an advantage with the permission of his principal, s/he shall not be guilty of an offence under this Section if the permission:</p> <p>a. is given in writing,</p> <p>b. either is given before the advantage is offered, solicited or accepted; or is solicited and given as soon as reasonably possible after such offer or acceptance, whilst the permission could not be solicited in advance.</p> <p>[The principal must, before giving such permission, have regard to the circumstances in which it is sought.]</p> <p>V. Subsection IV also applies to the person who offered the advantage provided that s/he knew of the permission. Where that person did not know of the permission, s/he shall be guilty of an attempt of an offence in accordance with Section 21 Subsection II.</p>	<p>For Sections 11 to 15, a similar excuse mechanism has been established in Section 24 Subsections VI and VII. It is possible to merge the excuse mechanism here into Section 24 Subsections VI and VII. But such a merger makes the wording there quite heavy.</p>
<p>19. Bribery for procuring withdrawal of tenders</p>	
<p>I. Any person who, without lawful authorisation or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract [with a public entity] for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.</p> <p>II. Any person who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in Subsection I., shall be guilty of an offence.</p>	<p>In more and more jurisdictions, public tenders are also used by private entities, wherefore we suggest deleting “with a public entity”.</p>

<p>20. Bribery in relation to auctions</p>	
<p>I. Any person who, without lawful authorisation or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction [conducted by or on behalf of any public entity], shall be guilty of an offence.</p> <p>II. Any person who, without lawful authorisation or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction [conducted by or on behalf of any public entity], shall be guilty of an offence.</p>	<p>Sections 19 and 20 could be merged.</p> <p>Again, it is to be decided whether you wish to cover purely private business.</p>
<p>21. Conspiracy, attempt, coercing, urging, proposing, inducing or furthering</p>	
<p>I. Any person convicted of conspiracy to commit an offence under this Chapter must be dealt with and punished in like manner as if convicted of such offence and any rules of evidence which apply with respect to the proof of any such offence must apply in like manner to the proof of conspiracy to commit such offence. [However, the sentence must be reduced by a factor of]</p> <p>II. Whoever attempts to commit an offence punishable under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence[, but reduced by a factor of ...].</p> <p>III. The act of coercing, urging, proposing and inducing any act referred to in this Chapter or the act of covering it up must be dealt with and punished in the same way as the act referred to.</p> <p>IV. Any act of furtherance to an act referred to in this Chapter must be dealt with and punished in the same way as the act referred to. [However, the sentence must be reduced by a factor of]</p>	<p>The terms partly overlap. They anyhow need to be adapted to the usual wording of the respective jurisdiction, wherefore we keep them all despite the overlaps.</p> <p>Quite some jurisdictions reduce the penalties in case of conspiracy, attempt, coercing, urging, proposing, inducing or furthering.</p> <p>In Subsections III. and IV., we use a slightly more modern wording so as to provide users a choice, whilst recommending consistency for all four subsections.</p>

22. Supporting offences

- I. Anybody **OR** Any public servant who negligently finances [or otherwise supports] an act that constitutes an offence under this Chapter shall be guilty of an offence.
- II. Anybody **OR** Any public servant who knows about offences under this Chapter happening in her/his sphere of responsibility shall be guilty of an offence. 'Knowing' includes any form of conscious disregard and willful blindness.
- III. Anybody who knowingly circumvents or knowingly fails to implement a system of internal accounting controls aiming also at the detection of offences in the meaning of this Chapter shall be guilty of an offence. Any such system must be presumed to serve also at the detection of offences in the meaning of this Chapter.
- IV. Anybody **OR** Any public servant who knowingly falsifies any book, record, or account relevant for an offence under this Chapter shall be guilty of an offence.
- V. Anybody **OR** Any public servant who destroys documents, data or other means of proof relevant for an offence under this Chapter shall be guilty of an offence.

It is again to be decided whether private action should be covered as well.

23. Penalty for offences

- I. Any person guilty of an offence under this Chapter shall be liable:
 - a. on conviction on indictment:
 - (i) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;
 - (ii) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;
 - (iii) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;
 - (iv) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;
 - b. on summary conviction:
 - (i) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;

Where a distinction between conviction on indictment and summary conviction is not needed, please delete the lines a. and b. and let (i) become a., let (ii) become b. etc.

Fines and imprisonment sentences can either be defined by ranges or just by an upper or lower limit. Traditions vary in this regard.

<p>(ii) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;</p> <p>(iii) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years;</p> <p>(iv) for an offence under Sections ... a fine of ... to ... and to imprisonment for up to ... years.</p> <p>II. In addition to any penalty imposed under Subsection I, the court may order a person convicted of an offence to pay to the Government:</p> <ul style="list-style-type: none"> a. a sum not exceeding the amount of the pecuniary resources; or b. a sum not exceeding the value of the property, <p>the acquisition of which by it was not explained to the satisfaction of the court.</p> <p>III. An order under Subsection II may be enforced in the same manner as a judgement of the court.</p>	
<p>Chapter C: Evidence</p>	<p>You might prefer to merge this Chapter with Chapter B, maybe with the exception of Section 27 which could be shifted into Chapter D.</p>
<p>24. Defences</p>	
<p>I. In any proceedings for an offence under Chapter B, it shall not be a defence:</p> <ul style="list-style-type: none"> a. to show that any such advantage as is mentioned in this Act is customary in any profession, trade, vocation or calling; b. that the accused did not have the power, right or opportunity to perform or not to perform the act in relation to which the gratification was given, accepted or offered; c. that the accused accepted or agreed or offered to accept, or gave or agreed or offered to give the gratification without intending to perform or not to perform the act in relation to which the gratification was given, accepted or offered; or d. that the accused failed to perform or not to perform the act in relation to 	<p>You might prefer moving this Section into Chapter B, e.g. between the current Section 22 and Section 23. We placed it here because parts of this Section deal also with issues of evidence.</p>

which the gratification was accepted, given or offered;

e. that the accused was instructed to act as s/he acted, except where s/he was instructed by the head of the respective public or private entity or where s/he used all appropriate means within the respective entity to challenge the instruction of the superior;

f. that accused received an advantage in return for a service provided and therefore not in the context of an offence, unless the accused demonstrates that s/he effectively provided that service and that the service is not overpaid.

II. In any proceedings for an offence under Chapter B, it shall be a defence that:

a. the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

b. the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to:

- the promotion, demonstration, or explanation of products or services; or
- the execution or performance of a contract with a foreign government or agency thereof.

III. If, in any proceedings for an offence under Chapter B, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that:

a. s/he did not actually have the power, right or opportunity so to do or forbear;

Corruption with current, former or future public servants often takes the form of payment in the context of a service contract, e.g. a consultancy contract or a contract on giving a speech or providing training in return for payment.

Please check first whether these acts are covered by the scope of your Act. Subsequently, please decide for each letter whether you wish to accept the respective defence. The ones that you don't accept can be shifted into Subsection I.

b. s/he accepted the advantage without intending so to do or forbear; or

c. s/he did not in fact so do or forbear.

[However, the Court may reduce the sentence or fine by up to] **OR** [The accused shall be guilty of an attempt of an offence in accordance with Section 21 Subsection II.]

IV. If, in any proceedings for an offence under Chapter B, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity. [However, the Court may reduce the sentence or fine by up to] **OR** [The accused shall be guilty of an attempt of an offence in accordance with Section 21 Subsection II.]

V. In any proceedings for an offence under Chapter B, it shall be a defence that the accused acted to achieve one of following:

a. liberation of a person from illegal arrestation by a foreign state **OR** power [or domestic non-state power];

b. improvement of inhuman conditions of imprisonment by a foreign state **OR** power [or domestic non-state power];

c. liberation of assets illegally confiscated by a foreign state **OR** power [or domestic non-state power]; or

d. prevention or cessation of torture or inhuman treatment.

VI. In proceedings according to Chapter B Sections 11 to 15, it shall be a defence that the public servant solicited or accepted an advantage with the permission of the public entity of which s/he is a part if the permission:

a. was either given before the advantage was offered, solicited or accepted; or was solicited and given as soon as reasonably possible after such offer or acceptance, whilst the

Some will prefer to discard both suggestions, assuming that the bad intention is the justification for the sanction, not the actual risk of damage.

The same consideration might apply here.

In quite some jurisdictions, there are mafia-like powers or parts of the territory controlled by non-state actors.

At the end of Section 18, we have set out similar provisions with a slightly different wording covering better the more generic scope of Section 18 (both private and public entities).

<p>permission could not be solicited in advance; and</p> <p>b. was given in writing by the head of the public entity or, in cases where the head of the public entity is involved, the Minister in charge or, in cases where a minister is involved, the ... (title of the head of the government).</p> <p>VII. Subsection VI also applies to the person who offered the advantage provided that s/he knew of the permission. Where that person did not know of the permission, s/he shall be guilty of an attempt of an offence in accordance with Section 21 Subsection II.</p>	
<p>25. Evidence of pecuniary resources or property</p>	
<p>I. In any proceedings against a person for an offence under Chapter B, the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, is in possession, for which s/he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that s/he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which s/he cannot satisfactorily account, may be proved and may be taken by the court:</p> <p>a. as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and</p> <p>b. as showing that such advantage was accepted or solicited as an inducement or reward.</p> <p>II. For the purposes of Subsection I, a person accused of an offence under Chapter B must be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other</p>	<p>This Subsection is similar to Section 16 Subsection III; and likewise we doubt that such presumption is lawful in all jurisdictions; it goes against the old Latin law principle "<i>in dubio pro reo</i>" which has left traces across the globe.</p>

<p>circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.</p>	
<p>26. Burden of proof</p>	
<p>In any proceedings against a person for an offence under this Act, the burden of proving a defence of lawful authorisation or reasonable excuse shall lie upon the accused.</p>	
<p>27. Power to secure evidence of parties to offences</p>	<p>This Section might also be placed into Chapter D as it relates both to evidence and investigative powers.</p>
<p>In or for the purpose of any proceedings for an offence under Chapter B, the court may, at the request in writing of the Minister/Secretary for Justice, inform any person accused or suspected of such offence or of any other offence under Chapter B that, if s/he gives full and true evidence in such proceedings, s/he will not be prosecuted for any offence disclosed by his evidence; and upon such person giving evidence in any such proceedings, no prosecution against her/him for any offence disclosed by her/his evidence therein must be instituted or carried on unless the court before which s/he gives evidence considers that s/he has wilfully withheld evidence or given false testimony and so certifies to the Minister OR Secretary for Justice in writing.</p>	
<p>Chapter D: Empowerments and investigation procedure</p>	
<p>28. Powers of Investigation and Enforcement</p>	
<p>1. The [Competent Authority in charge of corruption, the] police and the judiciary have their usual investigative powers. These powers may be used also with</p>	<p>The purpose of the first Subsection is to clarify that the usual institutional powers may be used and to determine to which accounts, books or documents they may</p>

regard to any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of or relating to any person likely to be relevant for the purposes of an investigation of such offence, including in particular family members, lawyers and agents of suspects.

II. The Competent Authority in charge of corruption, the police and the judiciary have in particular the power:

- a. to investigate and inspect accounts, books or documents or other articles referred to in Subsection I;
- b. to require from any person the production of such accounts, books, documents, and to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article or to confiscate such an article;
- c. to make photos and copies of any item referred to in a. and b.;
- d. to request the conversion of data related to a. and b., namely when encoded, into information readable to humans;
- e. requesting information related to the activities covered by this Act, and even where the informant is a third party or located in a third country or both;
- f. communicating warnings and recommendations on how to deal with corruption to the population;
- g. requesting persons dealing with corruption in their entities, their supporting persons, and media to communicate warnings and recommendations;
- h. blocking or removing content from internet websites recommending or facilitating acts prohibited under this Act, and obliging service internet providers to cooperate to this end;
- i. intercepting, interrupting or fully controlling telephone, media and internet services from continuously infringing persons or ordering

use; this determination can be an extension or just a clarification, subject to the respective jurisdiction. In some jurisdictions, there is no need for such a first Subsection.

As usual in our Model Laws, we suggest a rather extended list of empowerments. An extended list of empowerments helps to ensure compliance in virtually all situations, whilst limited empowerments are more likely to cover all situations.

In some jurisdictions, the empowerment of certain letters are to be reserved to the judiciary. See Sections 31 and 32 as examples for dedicated provisions for judiciary empowerments.

respective service providers to do so;

- j. requesting to take certain steps in order to stop an infringement or to reduce the likelihood of further infringements, including, as a last resort, the winding up of an undertaking;
- k. recovering from infringing persons costs triggered by the investigation and enforcement of this Act;
- l. imposing administrative sanctions on infringing persons and supporting persons who do not respect the obligations and other provisions set out in this law, with an upper limit of ... (e.g. three) times the annual turn-over or budget;
- m. imposing administrative sanctions on natural and legal persons who contributed to an infringement;
- n. enforcing financial obligations and financial sanctions or penalties via confiscation of property and assets;
- o. warning contractual partners of the infringing persons against the consequences of a continued cooperation;
- p. obliging contractual partners of infringing persons to stop, limit or modify their cooperation;
- q. obliging to display legal information on their website;
- r. obliging persons responsible for an infringement to inform contractual partners of the infringement and of the rights triggered by the infringement;
- s. compelling the attendance of witnesses, including third parties, to provide evidence under subpoena, when there are reasons to believe that there is evidence of infringement;
- t. creating financial or other incentives for persons to provide or confirm information;
- u. after taking reasonable steps to contact the occupier, entering areas, facilities, buildings, premises, other spaces and vehicles, vessels or planes where goods obtained by offences in the meaning of this Act **OR** Chapter B are or were kept,

without a warrant or written consent from the occupier;

- v. inspecting, without notice, offices, other non-private areas, facilities, buildings, premises, other spaces and vehicles, vessels or planes[, and, with authorisation of a judge/magistrate, also private ones,] from where activities covered by this Act are conducted or where objects or data can be found that relate to those activities;
- w. taking copies of and analysing data and software used for the activities covered by this Act;
- x. confiscating documents, data and software in offices, other non-private spaces and, with authorisation of a judge/magistrate, also in private spaces;
- y. confiscating property and assets of infringing persons and their supporting persons where they have [presumably] been acquainted via non-conforming activities;
- z. requesting securities [as guarantee for the fulfilment of non-financial obligations];
- aa. publishing a blacklist of natural and legal persons who committed or contributed to infringements;
- bb. disseminating information on infringements to authorities of other jurisdictions;
- cc. disseminating information on infringements to media, with or without data concerning natural or legal persons;
- dd. referring to individual cases of infringements in information campaigns for the general public or specific target groups;
- ee. publishing evaluations of own compliance statistics, compliance reporting by regional authorities and third parties with data concerning natural or legal persons (“naming and shaming”);
- ff. publishing individual infringements with data concerning natural or legal persons (“naming and shaming”);
- gg. obliging regional or local authorities to publish stated infringements of operators (“naming and shaming”);

<ul style="list-style-type: none"> hh. creating a label for those operators who, over a longer period, have not been reported to infringe the law; ii. creating a label for those actors who undergo a voluntary compliance verification program managed by the chambers of commerce or similar semi-public organisations or by conformity assessment bodies engaged by them (entrusted certification); jj. obliging actors to display information related to their compliance in publicity material and on the internet in a well-visible way; kk. informing the clients of non-compliant actors of their private law rights; ll. informing the clients of non-compliant actors of the applicable legal requirements and inviting them to verify compliance and to report; mm. excluding non-compliant actors from public tenders and grants; nn. extending the measures a to mm above to agents of the infringing person; oo. extending the measures a to nn to mother and sister companies of the infringing legal person and their agents; pp. extending the measures a to nn to commercial partners of the infringing person where these have contributed to the infringement; and qq. delegating these empowerments to other OR local authorities and requesting these authorities to use these empowerments in a certain way for specific matters. 	
<p>29. Obligation to cooperate [and to keep secrecy] and sanctions for non-cooperation</p>	
<p>I. Any person who, having been lawfully requested under the previous Section to cooperate must comply with such request. Any such person who fails or neglects, without reasonable excuse, to do so, and any person who obstructs any such request</p>	<p>The empowerment for an authority to act does not necessarily mean that the person addressed must cooperate. Hence, an obligation to cooperate might be meaningful. As a next step, you might consider sanctioning non-cooperative</p>

or use of empowerments under the previous Section, shall be guilty of an offence and shall be liable to a fine of ... or to imprisonment for ... months to ... years.

II. Any person who publishes or circulates information being the subject of an action or request under the previous Section or information on an ongoing investigation shall be guilty of an offence and is liable to a fine of ... or to imprisonment for ... months to ... years.

III. Subsection II does not apply as regards disclosure of the fact that:

- a. a warrant has been issued for the arrest of the subject person;
- b. the subject person has been arrested whether with or without warrant;
- c. the subject person has been required to furnish a statutory declaration or a statement in writing;
- d. a restraining order has been served on any person under Section 14C(3);
- e. the residence of the subject person has been searched under a warrant; or
- f. the subject person has been required to surrender to the Competent Authority or the police any travel document in his possession by a notice served on him under Section 31.

IV. [Without affecting the generality of the expression reasonable excuse in Subsection III.] A person has a reasonable excuse as regards disclosure of facts covered by Subsection II if, but only to the extent that, the disclosure reveals:

- a. any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Competent Authority, the police or a court; or
- b. a serious threat to public order or to the security of the state or to the health or safety of persons.

persons.

The obligation to keep the confidentiality of investigations and other measures helps the authorities to execute their tasks.

However, such an obligation is not needed or would go too far in certain cases. Please check your views with regard to the letters of Subsection III.

Moreover, there might be good reasons for the disclosure of certain facts.

30. Enforcement of foreign authority or public law court decisions

Enforcement on the territory of another jurisdiction is often only possible where there is reciprocity of support, which requires that domestic enforcement empowerments may also be used in favour of a foreign jurisdiction.

I. The Competent Authority may use the empowerments listed in Section 28 to enforce foreign public law administrative decisions, court rulings and interim measures, provided that the state requesting assistance is listed in Annex S and also provides enforcement assistance to the Competent Authority and to domestic public law courts.

There can be mutual assistance between the two jurisdictions based on formal agreements under international public law or based on practical arrangements between administrations. The latter are more flexible and easier to negotiate, but are not legally binding. Nonetheless, they can be very useful if both sides voluntarily apply them as if they were binding. To do so, they must have, on both sides, the necessary (unilateral) empowerments. The technique consists in establishing unilateral empowerments to act for the other jurisdiction whilst de facto requesting mutuality. However, there is a risk in case of power discrepancy between two jurisdictions. Where there are other jurisdictions potentially so powerful to be able to oblige the domestic jurisdiction to act on their behalf without ensuring reciprocity, it might, subject to the case, be wise not to install empowerments for action on behalf of other jurisdictions. Otherwise, unilateral empowerment serves only the other jurisdiction which has power supremacy.

We recommend setting up two conditions:

- a certain level of respect of rule of law and of human rights, which is reflected by the listing in Annex S, and
- reciprocity.

II. A magistrate/court may use the empowerments listed in Sections 31 and 32 to enforce foreign public law administrative decisions, court rulings and interim measures, provided that the state requesting assistance is listed in Annex S and also provides enforcement assistance to the Competent Authority and to domestic public law courts.

This is an extension of the first Subsection to the realm domestically governed by magistrates or courts. Please note that a magistrate or court might be responsible on the national territory to enforce a decision taken by a foreign administration, and a domestic administration might be responsible for enforcing a decision taken by a foreign magistrate or court as the delimitation of responsibilities between magistrates/courts on one hand and administrations on the other do rarely coincide to 100 percent..

31. Surrender of travel document

I. A magistrate/court may[, on request of the Competent Authority or of the police], by written notice, require a person who is the

This is the first empowerment for which we assume that many jurisdictions attribute to magistrates/courts exclusively. Similar

subject of an investigation in respect of an offence reasonably suspected to have been committed by him under this Act to surrender to the Competent Authority or of the police any travel document in his/her possession.

II. A notice under Subsection . must be served personally on the person to whom it is addressed.

III. If a person on whom a notice under Subsection I has been served fails to comply with the notice forthwith, s/he may be fined or arrested and taken before a magistrate by a police officer or by a person appointed by the Competent Authority or the magistrate/court.

IV. Where a person is taken before a magistrate/court under Subsection III, the magistrate/court must, unless such person thereupon complies with the notice under Subsection I or satisfies the magistrate/court that s/he does not possess a travel document, by warrant commit him to prison there to be safely kept:

- a. until the expiry of the period of ... days from the date of his committal to prison as aforesaid; or
- b. until such person complies with the notice under Subsection I.

V. A travel document surrendered in compliance with a notice under Subsection I may be detained for as long as the investigation has not been concluded, unless special circumstances or the deposit of property titles or assets indicate that there is only a very low risk of permanent escape from the national territory. It may be liberated for a precise, limited travel purpose.

VI. The person concerned may at any time request the review of the authority's decisions in accordance with this Section and pursue the review at court in case of rejection.

provisions could be created for those empowerments listed in Section 28 Subsection II which require the involvement of the judiciary in the jurisdiction for which you are drafting the act.

32. Confiscation of assets

I. Where a person is convicted [on indictment] of an offence, the court may, in addition to any penalty imposed under Chapter B, order the confiscation of any pecuniary resources or property:

<p>a. found at the trial to be in his control; and</p> <p>b. of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by her/him was not explained to the satisfaction of the court.</p> <p>II. Any application for an order under Subsection I must be made by the ... (e.g. state prosecutor, Minister/Secretary for Justice) within ... days after the date of the conviction.</p> <p>III. An order under Subsection I may not be made in respect of assets or property held by a person on behalf of the convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.</p> <p>IV. An order under Subsection I may not be made in respect of assets or property held by a person on behalf of the convicted if that other person satisfies the court in any proceedings to show cause under Subsection III that s/he had:</p> <p>a. acted in good faith as regards the circumstances in which the assets or property came to be held by it; and</p> <p>b. so acted in relation to the assets or property that an order in the circumstances would be unjust.</p> <p>V. Nothing in Subsection IV. may be construed as limiting the court's discretion to decline to make an order under Subsection I on grounds other than those specified in Subsection IV.</p> <p>VI. An order under Subsection I may make provision for taking possession of assets or property to which the order applies and for the disposal of such resources or property by or on behalf of the Government.</p>	
<p>33. Frivolous, false or groundless statements</p>	
<p>I. At the conclusion of proceedings for an offence under this Act, the Competent Authority or the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the</p>	

<p>accused, made a false, frivolous or groundless allegation against him/her, so certify in writing and transmit the certificate and the record of the proceedings to the Minister/Secretary for Justice OR state prosecutor.</p> <p>II. Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Act, knowingly makes or causes to be made a false report of an offence under this Act to any investigating officer or magistrate/court entrusted in accordance with this Act shall be guilty of an offence and shall be liable to a fine of ... or to imprisonment for ... months to ... years.</p>	
<p>34. Alert portal, right and duty to report</p>	
<p>I. The Competent Authority must provide an electronic interface for, if so desired, the anonymous deposit of information and documentation on infringements of this Act. It must evaluate this information and documentation. The interface must also permit an anonymous follow-up conversation with the alerting person.</p> <p>II. Anyone who has reasons to believe that this Act has been infringed has the right to report its observations and to transmit documents or other means of proof to the Competent Authority or the police, regardless of any confidentiality or loyalty obligations under private or public law when acting in good faith; private law acts aiming at limiting this right are void. Good faith is to be assumed where the disclosing person assumes with [very] high likelihood the disclosed information to be correct whilst indicating an infringement of this Act. Good faith is also to be assumed where the disclosing person gives a realistic assessment of the likelihood of the disclosed information to be correct, even though the likelihood of correctness and thus of an infringement not being [very] high. [Good faith presupposes that the disclosing person discloses to his/her best knowledge also all elements possibly counter-indicating an infringement of this Act.]</p>	<p>Please consider limiting this Section to offences within the meaning of this Act.</p> <p>Bilateral communication with anonymous alerting persons becomes state of the art.</p> <p>Please consider limiting this Section to offences within the meaning of this Act because the Competent Authority might otherwise be overwhelmed with information-</p> <p>1st case of good faith: (very) high likelihood of information being correct.</p> <p>2nd case of good faith: likelihood of information being correct not (very) high, but the disclosing person gives a realistic assessment. Rationale: the realistic assessment of a medium likelihood/risk is also very useful for authorities.</p> <p>Please decide whether you wish to deny good faith where the disclosing person does not also disclose elements possibly discharging the potential offender.</p> <p>An obligation to report increases the</p>

<p>III. Public servants are obliged to report any strong evidence of an infringement of this Act OR offences set out in this Act OR offences set out in Chapter B to the Competent Authority. They may do so anonymously, but must keep records of their submission. Administrations must inform their staff on this obligation directly after recruitment and once per year.</p> <p>IV. The Competent Authority must encourage citizens to report any likely infringement of this Act OR offences set out in this Act OR offences set out in Chapter B.</p> <p>V. The Competent Authority must record, verify and investigate and take appropriate remedial action where necessary on each report pursuant to this Section.</p>	<p>likelihood of offences being pursued. The obligation can relate to all infringements of the act, to all offences in this Act or just to the offences in Chapter B.</p>
<p>35. Infringement rating</p>	
<p>I. Any confirmed information on infringements must, regardless of its origin, be listed in a public infringement portal. That portal may contain a non-public section for confidential information and the authority's own investigation.</p> <p>II. The Minister in charge or the Competent Authority may establish a rating of administrations, public and private legal entities reflecting the entities' relative frequency and the gravity of infringements. It may publish the ratings on the alert portal and by other means.</p> <p>III. The Minister in charge is empowered to [adopt regulation to] provide authorities of foreign states access to the non-public section of the portal, provided that these states apply the principle of reciprocity and are listed in Annex S.</p>	<p>Such infringement portal has a double function:</p> <ul style="list-style-type: none"> - alerting the general public; and - sanctioning and thus deterring potential criminals. <p>The rating creates an incentive for good practices.</p> <p>As more and more offences are committed cross-border, intense information exchange in both directions is paramount.</p>
<p>36. Protection of informers, of cooperators and of victims of corruption</p>	
<p>I. Statements of [whistle-blowers or other] informers [who are in danger] must be recorded in the presence of ... (e.g. a judge/magistrate/public prosecutor) and can thereafter be used in all state procedures, including criminal and civil law procedures.</p>	<p>Most provisions of that kind protect "whistleblowers", a term defined with some variety. Regardless of the definition, we find that other types of informers also merit protection, e.g. because they are threatened or targeted by sanctions. If this</p>

Thereafter, informers may be relieved from the obligation to appear at court or other public proceedings.

II. Where informers cannot, due to a risk, be a witness in court proceedings, the court must cause passages in books, documents or other means of proof that contain an entry in which any such informer is named or described or which might lead to his discovery to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery. The first sentence [of this Subsection] does not apply where the informer wilfully made a material statement which s/he knew or believed to be false or did not believe to be true. [The first sentence does not apply either if, in a non-criminal proceeding, a court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer; in this case, the court must balance the risks and may permit inquiry and require full disclosure concerning the informer.]

III. The Competent Authority must keep all information received from [whistleblowers or other] informers confidential, unless the sharing of information is explicitly foreseen in this Act or other acts. If otherwise there would be a risk for the informer, the Competent Authority [must] **OR** [may] keep information obtained from an informer confidential even where there is an obligation to share this information set-up by other acts. The Competent Authority [may] **OR** [may not] share information obtained from [whistleblowers or other] informers with other jurisdictions [unless the informer agrees thereto].

IV. a) No person may inform, disclose, or report to others, personal information on a [whistleblower or other] informer or any facts from which the identity of the informer can be inferred, except where the informer consents thereto. Infringements of the previous sentence may be sanctioned with disciplinary measures and fines up to ... or, in case of deliberate disclosure in awareness of the status as informer, imprisonment up to ... months.

b) The Competent Authority must investigate the disclosure, address its root causes and mitigate the consequences

thought is followed to the end, the term “whistleblower” can even be dropped because “informer” encompasses “whistleblower”.

The non-disclosure of a witness comes at a cost for the presumed offender both in penal and civil proceedings, wherefore it might be deemed necessary to balance the interests of all sides, all sides including the victims.

We recommend establishing a collision rule for cases where other acts call for a disclosure of informers.

Leaks on informers may put them at risk. Hence, it is necessary to sanction those who disclose information on informers.

This generic wording (“mitigate the consequences”) serves as a fall-back for the persons involved in cases where the

<p>thereof for the ongoing or planned proceedings and the persons involved.</p> <p>V. a) The Competent Authority may OR must compensate informers for damage, advise them, and organise the change of identity with the help of the authorities ... (in charge of identity documentation) or take or recommend other best possible measures necessary to protect the informer against retaliation by [whomsoever] OR [the offender or other persons or public or private bodies or employers or other persons acting on behalf of any of those].</p> <p>b) The employer of the informer must take the best possible measures to protect [whistleblowers and other] informers against disadvantages.</p> <p>c) The Competent Authority and the employer must take the informer's view on the effectiveness and appropriateness of possible protection measures into account and must consult him/her to that end, where possible.</p> <p>d) The persons in charge of taking protection measures for the employer or for the Competent Authority who fail to take best possible measures shall be guilty of an offence and shall be liable to disciplinary measures, a fine of ... or to imprisonment for up to ... months. The employer can be sanctioned by a fine of up to ... (e.g. 1/10) of the annual turn-over or budget. The first and the second sentence of Letter d) also apply to natural persons who are employers.</p> <p>VI. The previous Subsection also applies to threatened persons cooperating by other means in proceedings under this Act than by informing authorities.</p> <p>VII. Where the cooperation of [whistleblowers, other] informers or other cooperators leads to the detection of an infringement of the law committed by them, the cooperation or willingness to cooperate must be taken into account in respective penal or disciplinary proceedings.</p> <p>VIII. This Section applies by analogy / <i>mutatis mutandis</i> to victims of corruption who need protection.</p>	<p>following Subsection and the following Section do not suffice.</p> <p>We prefer "whomsoever" because the alternative is lengthy and still might not cover all cases.</p> <p>E.g. persons handing over means of proof against the will of the accused or against the will of the employer can be equally in danger and thus merit protection.</p>
<p>37. Status guarantee of informers or cooperators [or victims of corruption]</p>	<p>Please decide whether you wish to extend the measures of status guarantee to victims, in which case you might wish to change the title and add a Subsection like</p>

	<p>the previous one at the end of Section 37 as well.</p>
<p>I. Where a [whistleblower or other] informer or a cooperator faced or will face disadvantageous measures by reason of his or her information or cooperation, s/he may request the Competent Authority to take measures necessary to revoke the disadvantageous measures (hereinafter referred to as “measures of status guarantee”).</p> <p>II. The informer or cooperator may request measures of status guarantee within ... (e.g. one) year(s) from the date when disadvantageous measures are taken. Where an informer or cooperator could not request measures of status guarantee within that period due to an unavoidable impediment, s/he may request the same within ... days from the date when such a reason ceases to exist.</p> <p>III. Any request must contain information about applications under the following Section and claims raised pursuant to Section 39.</p> <p>IV. Where a request for measures of status guarantee falls under any of the following cases, the Competent Authority may OR must reject such request:</p> <ul style="list-style-type: none"> a. Where a request for measures of status guarantee, etc., is filed after the request period prescribed in Subsection II; b. Where the applicant is not an informer or cooperator; c. Where the applicant makes a repetitive request unless s/he provides new facts or means of proof; d. Where the applicant has already been granted relief according to the procedure for relief prescribed in other acts/statutes; e. Where it is deemed that measures of status guarantee are unnecessary for other reasons or cannot effectively protect the applicant. <p>V. The Competent Authority must give the applicant and, where it is concerned, the employer of the applicant sufficient opportunities for vindication in the course of the investigation. The applicant must be informed on possible measures of status</p>	<p>The core idea of this Section is to empower the Competent Authority to protect informers and cooperators against loss of status in particular but not exclusively with regard to the employer, be it public or private, be it a legal or a natural person. A status loss can also occur with non-employers, e.g. with a public insurance following the sacking of the informer or cooperator.</p> <p>Necessary to reduce the risk of double payment for the same cause.</p> <p>If you choose “may”, this might imply that only under the conditions a. to e. the application may be rejected.</p> <p>The measures may be unnecessary because of a court ruling.</p>

guarantee. The Competent Authority must take his/her view on the effectiveness and appropriateness of possible measures into account. Where another entity is concerned by the possible measures of status guarantee, the Competent Authority must consult it as well.

VI. Where the Competent Authority deems that an applicant for status guarantee has been or is expected to be subjected to disadvantageous measures due to his/her information or cooperation, it must request the employer of the applicant or the other concerned entity to take the following measures of status guarantee within a fixed period not exceeding 30 days:

- a. measures of reinstatement;
- b. payment of differentiated wages paid, wages in arrears, wage compensation payments, benefits etc. (including interest);
- c. cancellation or prohibition of disadvantageous measures;
- d. transfer, shift of job, secondment or other necessary measures.

Alternatively or in addition, the Competent Authority may initiate a reconciliation process [by nominating a mediator] or suggest reconciliation measures.

VII. The employer of the applicant or the other concerned entity must execute the decision of measures of status guarantee unless [there is a justifiable reason] OR [it appeals against the measures of status guarantee].

VIII. Where the Competent Authority makes a decision of measures of status guarantee regarding a public servant, it may require a relevant disciplinary officer to take disciplinary action against the person who has taken disadvantageous measures.

IX. The Competent Authority must make its decision in writing and communicate it to the applicant, to the employer of the applicant and to the other entity concerned, if any. Where the Competent Authority recommends a transfer, shift of job or secondment involving other [public] entities, it must communicate its decision to these entities as well.

X. The applicant, the employer of the applicant and the other concerned entity may appeal against the decision of the Competent Authority according to usual

Regarding “wage compensation payments”, we think in particular of public unemployment insurances. The addressee of such measure of reinstatement would thus be another concerned entity, not the employer.

In particular in cases where a full reinstatement requests a minimum of reestablishment of a good relationship with the employer, mediation with the goal of reconciliation is necessary.

We prefer the second variant because it creates more legal certainty.

To be decided: transfer, shift of job or secondment also for private employees?

Please check whether you wish specific procedural rules, e.g. to protect the applicant, and if not, whether you need this Subsection in the first place - the usual

<p>administrative law procedural rules.</p> <p>XI. The Competent Authority may also take or recommend any of the measures listed in Subsection V as an interim measure for the duration of its own procedure or the appeal procedure.</p> <p>XII. The Competent Authority may OR must impose a charge for compelling compliance of up to ... on an employer or other concerned entity and the natural persons responsible for both of them who fail to take definitive or interim measures of status guarantee by the due date after they receive a decision of measures of status guarantee.</p> <p>[XIII. This Section applies by analogy / <i>mutatis mutandis</i> to victims of corruption who need protection.]</p>	<p>administrative law procedural rules might apply by virtue of other acts already.</p> <p>The variant “recommend” is useful in cases where the Competent Authority is not sure about the appropriateness of the interim measure.</p> <p>See the comment regarding the title of this Section.</p>
<p>38. Awards and rewards</p>	<p>Please check whether one of the two terms is sufficient in your jurisdiction.</p>
<p>I. If any [whistleblower or other] informer or cooperator, by virtue of his/her information or cooperation, has caused property gains of public entities, has prevented damage to such property, or has enhanced the public interest, the Competent Authority may grant the relevant informer or cooperator a monetary award.</p> <p>II. If any [whistleblower or other] informer or cooperator, by virtue of his/her information or cooperation, has contributed directly to the recovery or increase of revenues or cutdown of costs to a public institution, the informer or cooperator may apply to the Competent Authority for payment of monetary rewards therefore.</p> <p>III. If any [whistleblower or other] informer or cooperator, or a relative or cohabitant of any of these, suffers a loss or damage due to a provided information or cooperation, s/he may apply for relief money with the Competent Authority. The damage may include any of the following:</p> <ul style="list-style-type: none"> a. expenses incurred for physical or mental treatment; b. expenses incurred for services that have become necessary; c. expenses incurred in the procedures according to this Act; d. the amount of wages or benefits lost during the period of 	<p>If so, you might wish to merge the first two Subsections.</p>

- disadvantageous measures;
- e. the amount of wages, wage compensation payments or benefits lost during the procedures according to this Act; or
- f. other serious economic losses caused by the offence, be it directly or indirectly.

IV. Any application under this Section must be filed within ... (e.g. two) years from the date when the person became aware of the facts giving rise to the claim. Where an informer or cooperator could not request measures of status guarantee within that period due to an unavoidable impediment, s/he may request the same within ... days from the date when such a reason ceases to exist.

V. Any application must contain information about measures solicited under the previous Section and claims raised pursuant the following Section.

V. The Competent Authority may require the relevant employer or the other concerned entity within the meaning of the previous Section an amount equivalent to the paid monetary awards, rewards or relief money within three months.

VI. The Competent Authority may require the applicant to reimburse the award, reward or relief money in the following cases:

- a. where the monetary rewards or relief money were falsely or fraudulently claimed;
- b. where legal conditions set out in this Section **OR** Act were not fulfilled; or
- c. where the applicant has already received money for exactly the same purpose or reason, whilst the other payment is, pursuant to Subsections VII and VIII not subsidiary to the payment of the Competent Authority.

VII. ... (collision rules with other acts providing payments, such as public social security acts).

VIII. ... (collision rules with regard to private law compensation obtained for the same facts, e.g. by virtue of the following Section).

This seems necessary to reduce the risk of double payment for the same cause.

In particular where the employer or the other concerned entity within the meaning of the previous section fail to fulfil their obligations according to the previous section, the reimbursement of the award, reward or relief money to the Competent Authority is fair.

39. Compensation of damages caused by corruption offences

I. Anybody who has incurred a direct or indirect material [or immaterial] damage has the right to obtain compensation from the person who committed an offence in the meaning of this Act OR Chapter B, hereafter: the offender, [and, in the case of offenders being public servants, from the public entity employing the offender] OR [the employer/principal of the offender]. The damage may include any of the following:

- a. expenses incurred for physical or mental treatment;
- b. expenses incurred for services that have become necessary;
- c. expenses incurred in the procedures according to this Act;
- d. the amount of wages or benefits lost during the period of disadvantageous measures;
- e. the amount of wages, wage compensation payments or benefits lost during the procedures according to this Act; or
- f. other serious economic losses caused by the offence, be it directly or indirectly.

II. Compensation can, at the choice of the claimant, be attributed [by the Competent Authority,] by courts as a side-measure in penal procedures or in civil law procedures. However, the claimant may not request compensation for the same cause in multiple procedures [without disclosing this multiplicity]. The claimant must in particular inform the court of any application pursuant to Sections 37 and 38.

Subject to the respective private law, this Section might not be necessary, except for the last two sentences of Subsection II.

Again, it is to be decided whether the provision should also apply in the private context. If so, it could either be limited to employers or be applicable with regard to all kinds of principles as defined.

40. Presumptions

I. Where any [whistleblower other] informer or cooperator, after having provided information or cooperation, applies for measures of status guarantee to the Competent Authority pursuant to Section 37 or files a lawsuit with the court for reinstating his/her advantages to the original state, s/he must be presumed to have suffered disadvantages

We found this presumption to be useful, but meriting clarification. Shall the presumption apply to the causality between corruption and disadvantage only? Or should it also apply to the existence of a disadvantage? On one hand, it might be difficult to prove a disadvantage e.g. when it comes to discretionary decisions like promotion. On the other hand, a presumption related to the

<p>in connection with the information providing or cooperation [where there is a disadvantage in the first place].</p> <p>II. Where a contract, public tender or grant was attributed to a competitor whilst there is evidence for the existence of a corruption offence OR an offence under Chapter B, it must be presumed [in private law proceedings] that the attribution has occurred due to the corruption.</p>	<p>existence of a disadvantage triggers an automatism favouring the applicant that goes quite far.</p> <p>This presumption is at least necessary in private law proceedings because causality is so difficult to prove, whilst the corruption constitutes a kind of first evidence. But please check whether you deem it also useful in other proceedings.</p>
<p>41. Penal prescription and bars</p>	
<p>I. Offences under this Act are prescribed after ... years.</p> <p>OR</p> <p>Offences under Chapter B are prescribed after ... years. Other offences under this Act are prescribed after ... years.</p> <p>II. Offences under this Act shall be barred where they have been committed outside the national territory or where they relate to another jurisdiction and where they have been sanctioned by that other jurisdiction in a way at least equivalent to the sanctions to be applied in accordance with this Act. However, the provisions of this Act regarding side-measures, namely in Sections 43, 44, and 45 Subsections IV. to VI. remain applicable.</p>	<p>Maybe your jurisdiction has generic rules on prescription so that this Subsection is not needed.</p>
<p>42. Alternative convictions, and amending particulars</p>	
<p>I. If, on the trial of any person for any offence under Chapter B, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Chapter B, the accused may be convicted of such other offence, and be liable to be dealt with accordingly.</p> <p>II. If, on the trial of any person for any offence under Chapter B, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance does not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is <i>prima facie</i> evidence of the commission of that offence.</p>	<p>We found these provisions to be useful, but we assume that in quite many jurisdictions, there are generic rules covering the issues.</p>

<p>and in such a case, the court may make the necessary amendment to the particulars. The court must thereupon read and explain the amendments to the accused. The parties must be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and to call any further witness.</p>	
<p>43. Automatic eviction from public office</p>	
<p>Any person convicted of an offence under Chapter B OR this Act OR Chapter B or Sections ... is, by reason of such conviction, disqualified for a period of ... years from the date of such conviction from being elected as a member of the Government, the head of a governmental department or agency or the head of a public entity. The first sentence also applies in case of Section 41 Subsection II. Each party concerned may request the court to state that the foreign conviction qualifies as conviction falling under Section 41 Subsection II.</p>	<p>We recommend selecting the third variant after having listed the Sections outside Chapter B which contain grave offences that merit being sanctioned with eviction from public office. However, please check whether generic provisions in your jurisdiction render this Section redundant.</p>
<p>44. Prohibition of professional, business and other activities</p>	
<p>I. Where a person has been convicted of an offence under Chapter B OR this Act OR Chapter B or Sections ... , a court may, on the application of the prosecution or on its own motion, where it considers it to be in the public interest so to do, order that the convicted person be prohibited for up to ... years from executing certain professions, business or other regular activity, whether remunerated or not. The first sentence also applies in case of Section 41 Subsection II. Each party concerned may request the court to state that the foreign conviction qualifies as conviction falling under Section 41 Subsection II. [The first sentence does only apply where such activity had been abused by the person for committing the offence or triggers an increased risk of committing the same or another offence covered by this Act.].</p>	<p>We recommend selecting the third variant after having listed the Sections outside Chapter B which contain grave offences that merit being sanctioned by eviction from public office. However, please check whether generic provisions in your jurisdiction render this Section redundant.</p> <p>Your jurisdiction might contain generic</p>

<p>II. A person, in respect of whom an order under Subsection I has been made, may at any time during the continuance in force of the order, apply to the court for the order to be varied or cancelled. The court must consider thereupon all the circumstances including any changes in the applicant's circumstances since the making of the order and whether it would be in the public interest for the order to be varied or cancelled.</p> <p>III. Any person, in respect of whom an order under Subsection I has been made, who contravenes the order commits an offence and is liable to a fine of up to ... and to imprisonment for up to ... months.</p>	<p>review clauses sufficiently covering the possible need for a review.</p>
<p>45. Sanctions and sanctioning side measures OR Other side measures</p>	
<p>I. In case of deliberate infringement of the obligations set out in this Act, the Competent Authority or the Court may apply the following penal sanctions to the natural persons responsible for the infringement, regardless of whether they acted on their own behalf or as staff of the infringing natural or legal person or as contractors or staff of contractors:</p> <ul style="list-style-type: none"> a. for infringements of Sections ... from ... to ... years of imprisonment and/or a fine of up to triple their annual net salary or income. b. for infringements of Sections ... up to ... years of imprisonment or a fine of up to double their annual net salary or income. <p>[In case of repetition of the same type of infringement, the sanction must be doubled.]</p> <p>[Only the Court is responsible for sanctions for deliberate infringement of the Sections]</p> <p>II. In case of unintentional non-compliance with obligations [or where the deliberate character of the infringement cannot be proven], the Competent Authority or the Court may apply the following penal sanctions to the natural persons responsible for the infringement, regardless of whether they are employees or freelancers of the infringing legal person or</p>	<p>There are evidently many ways to design a system of sanctions. Hence, the provisions should only be regarded as inspiration for the development of provisions fitting to the respective domestic penal practice. We recommend distinguishing between deliberate and unintentional infringements.</p> <p>We avoid here the term “negligent” which is often understood as implying the violation of a duty of care and therefore renders sanctioning more difficult. However, in some jurisdictions, it would not be appropriate to sideline this duty of care aspect.</p>

contractors or staff of contractors:

- a. for infringements of Sections ... a fine of up to their annual net salary or income.
- b. for infringements of Sections ... up to ... years of imprisonment or a fine of up to 1/2 their annual net salary or income.

[In case of repetition of the same type of infringement, the sanction must be doubled **OR** increased by factor ... for each additional infringement.]

III. In addition to, or instead of the sanctions listed in Subsections I and II, the Competent Authority or the Court may impose the following collateral sanctions against the legal persons on behalf of which the infringing natural person has acted:

- a. fines of up to three times their annual budget or turn-over;
- b. exclusion from public tenders for up to ... years; and
- c. citation in the public list of law infringing / criminal [economic] actors for up to ... years.

IV. As a side measure to sanctions imposed under Subsections I, II and III, the Competent Authority or the Court may also:

- a. publish the names and further data permitting the identification of natural or legal persons who have deliberately infringed this law or on behalf of which the infringing natural person has acted;
- b. confiscate or destroy, as sanction and thus regardless of their illegal character, a proportionate amount of property or assets, and this in particular where fines are not paid;
- c. suspend the commercial licences and authorisations of the infringing persons;
- d. ban persons from similar professional or business activities;
- e. confiscate gains obtained from the illicit practice and obliging to compensate savings made due to it;
- f. confiscate capital or other value gains obtained with the help of gains of the illicit action as such (indirect gains);
- g. exclude from grants and public tenders;

A minimum imprisonment sanction seems appropriate only for deliberate infringements of the most important obligations.

Ordinary sanctions often do not sufficiently deter criminals. We recommend establishing a system of collateral sanctions and sanctioning side-measures that really bite.

This evidently duplicates, for natural persons, Section 44 above. Please check whether you need that dedicated section. If yes, reduce the scope of letter d. to legal persons so that there is no duplication anymore.

See Chapter 6 of this law of [South Africa](#) for more detailed provisions.

- h. publish such exclusion in lists or a public database of offenders;
- i. publish offences, their authors and responsible legal persons in public lists or databases;
- j. impose adequate interest rates for all financial sanctions and obligations;
- k. impose adequate securities for all financial sanctions and obligations; and
- l. in case of particular grave or repetitive deliberate infringements:
 - send a permanent inspector into the legal person responsible for the offences,
 - place the legal person under judicial administration **OR** nominate a state administrator for the legal person,
 - close the facilities of the infringing persons, or
 - dissolve the legal person for which or under which the offences were committed.

V. When deciding on sanctions and side measures, the Competent Authority or the Court may **OR** must take into account:

- a. the nature, gravity, scale and duration of the infringement;
- b. any action taken by the infringer to mitigate or remedy the damage caused by the infringement;
- c. any previous infringements by the infringer;
- d. the financial benefits gained or losses avoided by the infringer due to the infringement, insofar as such benefits or losses can be reliably established;
- e. any other aggravating or mitigating factors applicable to the circumstances of the case;
- f. infringer's annual turnover of the preceding financial year.

VI. Sanctions and the side measures set out in this Section may be extended to parent or subsidiary companies or other legal or natural persons and the staff of all these persons if these legal or natural persons controlled the infringing person to such an extent that they were in reality responsible for the infringement.

VII. The Competent Authority or the Court

Some legal persons are in reality controlled by another legal person. Some legal persons create companies as shields or shell companies without assets to pay for sanctions. This provision empowers the authorities to counter this situation.

We have listed in Section 28 a full range of

<p>may oblige any natural or legal person to cooperate for purposes of enforcement of sanctions and collateral measures set out in this Section, including with regard to the disclosure of confidential information, the hand-over of property or assets of all forms, the temporary closure of websites and the suspension of services supporting the economic activity of the infringing persons.</p>	<p>empowerments serving the enforcement of obligations of this law. However, these empowerments do not cover the enforcement of sanctions and their collateral measures. Hence, separate empowerments are needed in order to enforce the sanctions with the help of third persons.</p>
<p>46. Penal or administrative credit for compliance programs</p>	
<p>The Competent Authority and the Court may reduce penal and administrative sanctions where the legal person in question voluntarily took part in compliance programs supervised by accredited:</p> <ol style="list-style-type: none"> a. anti-corruption NGOs, b. auditing companies specialised in the fight against corruption, or c. insurers or professional organisations, both with a dedicated anti-corruption department. 	
<p>47. Obligation to launch criminal procedure</p>	
<p>The Competent Authority is obliged to file a criminal complaint to the responsible court or to launch its own sanctioning procedure when a violation of the following provisions has been committed intentionally; ... (please list particularly grave violations).</p>	
<p>48. Appeals</p>	
<p>I. Penal sanctions and their side-measures adopted [by the Competent Authority] pursuant to this Act can be appealed at the ordinary courts.</p> <p>II. Administrative decisions of the Competent Authority taken in accordance with this Act[, including decisions on administrative sanctions,] may be challenged within ... weeks/months in writing and by [authenticated] electronic email at ... (higher administration, ministry or court).</p>	<p>Such provisions are evidently not necessary where generic law contains sufficient provisions.</p>

<p>III. Administrative decisions of the ... (higher administration, ministry) [including those on remedies referred to in Subsection II] may be challenged within ... weeks/months at ... (one or several courts).</p> <p>IV. The Government may adopt regulations rendering decisions adopted under this Act immediately applicable and executable even if they are appealed.</p> <p>OR</p> <p>The following decisions adopted under this Act are immediately applicable and executable even if they are appealed: ...</p>	<p>To permit specialisation, one single court might be preferable.</p>
<p>Chapter E: Organisational matters</p>	
<p>49. Set up of the Competent Authority</p>	
<p>I. The Competent Authority is steered by its head who [is assisted by] OR [operates under supervision of] a board. Its head is nominated by... (e.g. the Prime Minister). The nomination requires the consent of the board. The board can, by majority of ... (e.g. $\frac{2}{3}$, $\frac{1}{2}$) of its members and ... (e.g. $\frac{3}{4}$, $\frac{2}{3}$) of its members present, request the replacement of the head. In absence of a head, the Competent Authority is steered by the deputy head who is nominated by ... (e.g. the minister in charge).</p> <p>II. The board must be comprised of ... members including two/three vice-chairpersons and one chairperson. The chairperson and vice-chairpersons must be [elected by the board amongst its members] OR [be appointed].</p> <p>III. The [chairperson, the vice-chairpersons, and the ordinary] board members must be appointed by ... for ... (e.g. three) years. They may be reappointed only once. They must be persons acknowledged as capable of investigating and assessing cases of corruption and of giving high-level advice to authorities. They must be appointed or</p>	<p>The law of South Korea established a Commission as the central organ for its implementation. However, a Commission can hardly fulfil the many tasks foreseen here. Moreover, Commissions raise particular governance issues. Hence, we recommend the establishment of a classic authority which can be co-steered by a board, but which has also a classic chief so that the many day-to-day tasks can quickly be decided upon.</p> <p>Please keep the text in square brackets if you wish to see the (vice-)chairpersons to be appointed and not elected.</p> <p>It should be avoided that the board consists</p>

commissioned from among any of the following persons [in a way that optimises the overall knowledge of the board]:

- a. persons who hold or have held an associate professorship or higher academic position, or other position equivalent thereto, for at least ... years at a university or authorised research institution;
- b. persons who serve, or have served, as a judge, prosecutor, or attorney for at least ... years;
- c. persons who serve, or have served, as a public servant of Grade ... or higher, or a public servant who belongs, or has belonged, to the Senior Civil Service, for at least ... years;
- d. persons who serve or have served, as a certified tax accountant, certified public accountant, or attorney with specialisation in accounting and taxes for at least ... years; or
- e. persons who are well respected in society with profound knowledge and experience in public administration and who are recommended by a civic organisation [specialised in matters of corruption].

IV. The following persons cannot be a member of the board:

- a. a person who is not a citizen;
- b. a person holding any of the following offices: ... (list incompatible offices);
- c. a person banned from public offices by virtue of Section 43 or other acts;
- d. a person who is a member of a political party;
- e. a person who is registered as a candidate to run in one of the following elections: ...

Each member must, when falling under any of these cases, resign from office.

V. No member may be dismissed against her/his will except where:

- a. s/he falls under the previous Subsection;
- b. s/he has significant difficulty in performing his/her duties on the grounds of mental or physical sickness.

solely of one or two types of members as boards take profit from diverse members.

However, non-citizens are more likely to be neutral and sometimes have knowledge that is not available within the jurisdiction.

Only the ... (nominating authority) may dismiss a person. Such dismissal requires the agreement of ... (e.g. 1/2, 2/3) of the board members [present or represented at the deciding board meeting].

VI. A member of the board is excluded from deliberation and resolution of the board where:

- a. s/he or her/his current or former spouse is a party, joint right holder, or joint obligor/claimant with respect to the relevant matter;
- b. s/he is or was a relative of a party for the relevant matter;
- c. s/he conducted testimony, appraisal, legal counsel or damage assessment with respect to the relevant matter;
- d. s/he has participated in an inspection, investigation or research with respect to the relevant matter before s/he becomes a member;
- e. s/he is or was involved in the relevant matter as an agent of the party.

VII. The members of the board must fulfil their tasks independently from their duties held in other professional contexts and without accepting instructions from whomsoever.

VIII. Only meetings with the attendance of a majority of registered members can make decisions. Save as provided otherwise above, resolutions request the approval of a majority of the members present or represented. Members can represent only one absent member at the time. However, the following matters request the approval of a majority of registered members **OR** a majority of 2/3 members present or represented:

- ...
- ...

IX. The chairperson must represent the board. When the chairperson is unable to perform his/her duties due to unavoidable reasons, a vice-chairperson designated by the chairperson must act on his/her behalf. If no such designation has happened, the vice-chairpersons must agree among themselves who must act on behalf of the chairperson. If no agreement is found, the Minister in charge must decide.

This wording aims at an automatic exclusion. Consider "must be" instead of "is" where you wish a dedicated exclusion decision to be taken; please specify who is to make this decision.

This clause avoids power concentration.

Evidently, it is also possible to request a 2/3 majority of members which is an extremely high hurdle. The higher the hurdle, the higher the risk of paralysis.

X. The board has at least the following tasks:

- a. supervising the day-to-day activities of the Competent Authority;
- b. giving advice to the Head of the Competent Authority;
- c. deciding on how to deal with potential conflicts of interests of the Head or the Deputy Head of the Competent Authority;
- d. submitting an annual report on the supervision of the Competent Authority to the Government;
- e. receiving and evaluating information from staff of the Competent Authority on corruption and mismanagement within the Competent Authority and recommending counter-measures;
- f. alerting the general public in case something goes fundamentally wrong within the Competent Authority whilst the supervision by the Minister in charge is unlikely to provide remedies;
- g. developing fair and objective evaluation indexes to quantitatively measure the corruption of public entities;
- h. conducting an investigation and evaluation of the corruption of public entities by utilising the evaluation indexes referred to in the previous letter and publishing the results of such investigation and evaluation;
- i. recommending to departments of the government, agencies and public entities certain measures and institutional improvements to prevent corruption and to dialogue with them on these recommendations;
- j. alerting the Government and, as last resort, the general public on an unsuccessful dialogue in the meaning of the previous letter;
- k. ...

The Minister in charge [and the Head of the Competent Authority] may attribute additional tasks to the board.

XI. The following matters are outside the competence of the board:

- a. matters being closely connected to state secrets [as defined in ...];

You might refer to penal provisions on state secrets.

- b. matters concerning the appropriateness of a judicial investigation, trial and execution of sentence including collateral measures;
- c. matters on which an audit and inspection has been launched by the Court of Auditors / Board of Audit and Inspection;
- d. matters brought for an administrative adjudication or litigation, an adjudication of the Constitutional Court, a constitutional petition, an examination request filed with the Court of Auditors / Board of Audit and Inspection, and other procedures for protest and remedy in progress under other Acts;
- e. matters concerning procedures for mediating interests among parties concerned, including reconciliation, good offices, mediation, and arbitration, in progress under statutes;
- f. matters made definite by a judgement, decision, adjudication, reconciliation, mediation, arbitration, etc. or other matters on which the Court of Auditors / Board of Audit and Inspection has resolved in accordance with the ... Act.

XII. The board may use the investigative powers of the Competent Authority for its own purposes. It may, in particular, request State agencies including the Competent Authority itself, local governments, and public entities or related corporations or organisations to dispatch public servants under their control. It may request any public institution to provide explanations, materials, documents, recordings and other means of proof or evidence. It may request any interested person, reference witness, or public servant involved to appear before the board and state his/her opinion; any such person is free to state his/her opinion regardless of the view of their superiors or employers.

XIII. The Minister in charge may by ... (e.g. ordinance, decree) set out rules on the tasks, the functioning and the work methods of the board.

50. Tasks of the Competent Authority

In addition to the tasks attributed by other provisions in this Act, the Competent Authority has the following tasks:

- a. ensuring the good application of this Act in general, including by cooperation with other public entities;
- b. examining and processing civil petitions for grievances and recommending rectification or expressing opinions related thereto;
- c. making recommendations or expressing opinions when it is deemed necessary to improve an administrative system that may result in a civil petition for grievances and the operation of such system;
- d. investigating and evaluating the results of processing civil petitions for grievances and improvement of administrative systems;
- e. establishing and implementing policies for protection of the rights of people under threat by corruption, remedying of violated rights, and prevention of corruption;
- f. establishing and recommending policy measures to prevent corruption in public [and private] entities and matters concerning institutional improvements, and investigating the actual status of the public [and private] entities for such establishment and recommendation;
- g. investigating the actual status and evaluating the progress of the policy measures taken by public [and private] entities to prevent corruption;
- h. establishing and implementing a plan for education and publicity for the prevention of corruption and remedy of violated rights;
- i. cooperating with and supporting individuals, corporations, or organisations related to the activities of the Competent Authority, including supporting anti-corruption

Please check whether you need particular provisions on civil petitions for grievances.

Please check whether you need both Letter e. and Letter f. or whether you wish to merge the two.

Here we come back to the initial scope question: should corruption in a purely private context be dealt with in your act?

<ul style="list-style-type: none"> activities conducted by nonprofit, non-governmental organisations; j. promoting international cooperation in connection with the activities of the Competent Authority; k. providing information and consultation about, as well as receiving, reports with respect to acts of corruption; l. protecting and rewarding [whistleblowers and other] informers and cooperators; m. examining statutes and other rules or draft rules that could be abused as factors causing corruption; n. collecting, managing, and analysing materials pertaining to prevention of corruption and remedy of violated rights; o. implementing and operating the code of conduct for public servants, receiving and processing reports on violations of it; p. providing information and consultation about civil petitions, ascertaining the actual status of the processing of civil petitions, and providing guidance on such processing; q. operating online civil participant portals and installing and operating government call centres for civil petitions or complaints; r. mediating and coordinating conflicts involving multiple parties, and surveying and processing corporate petitions for grievances in order to redress hardships of enterprises; s. matters under the jurisdiction of the Competent Authority as provided for by other statutes; and t. other matters that the Prime Minister OR Minister in charge submits to the Competent Authority. 	
<p>51. General obligations of the Competent Authority</p>	
<p>l. The Competent Authority must develop a compliance assurance strategy aiming at the most effective use of its budget, its own public servants and of private natural or</p>	<p>We noticed that quite some enforcement authorities operate without a clear compliance strategy, and legislators mostly miss the opportunity to call for a</p>

legal persons that might assist in pursuing the goal of compliance. It must integrate therein measures aiming at better information of the general public and of entities regulated by this Act. When developing the strategy, the Competent Authority must take into account the likelihood of infringements, the gravity of infringements in terms of the goals set out in Section 1, the degree to which state measures will improve the degree of compliance when compared to action taken by private actors and thus, the added value of state versus private measures or no measures at all.

II. The Competent Authority must investigate information regarding potential infringements of this Act.

III. The Competent Authority must make available at least ... full-time equivalences for the application of this Act.

III. The Competent Authority must:

- a. launch information campaigns to inform persons responsible for the application of this Act in public and private entities, and
- b. offer once a year, a training session for each category of entity regulated by this Act.

IV. The Competent Authority must ensure by internal procedures that each staff member is independent and has no conflict of interest with the entities for which s/he is in charge. It must create incentives for the detection of corruption and a system effectively protecting [whistle-blowers, other] informers and cooperators. The Competent Authority must refuse all financial or other support from persons in charge of entities regulated by this Act or from legal persons/entities which are mother, daughter or sister entities of such entities. It must refuse instructions from others except from the Minister in charge. It must develop clear ethics policies and fair compensation for other public entities assisting in the application of this Act.

V. The Competent Authority must create internal and external incentives for effective action of all public entities involved in the application of this Act, including for the use

result-oriented and effective use of resources.

Good information is a precondition for compliance and reduces the need for (state) enforcement.

Here, we suggest a few parameters for the development of a result-oriented, effective compliance strategy.

Such a legal obligation might help the authority defend its interests when it comes to the annual budgeting exercise. In many jurisdictions, mandatory tasks can be defended easier against budget cuts.

A precise indication of minimum staffing for the actual tasks avoids a disproportionate administrative overhead and may protect the financial interests of the Agency. It may also ascertain that a noteworthy part of the resources is dedicated for this Act where the Competent Authority has also other tasks not related to this Act.

of artificial intelligence and other advanced technological means.

VI. The Competent Authority must develop a dedicated action plan for the enforcement of this Act in free-trade or special investment zones and other areas with reduced authority activity.

VII. The Competent Authority must participate in the peer evaluation program of Competent Authorities to be provided by the Minister in charge at least bi-annually.

VIII. Where a person suspected of committing an act of corruption regarding which the Competent Authority or its board has received a report, is any of the following high-ranking public servants and details of his/her suspected act of corruption require an investigation for criminal punishment and an institution of prosecution, the Competent Authority [or the Chair of its board] must file an accusation with the prosecution against him/her:

1. A public servant with the rank of Vice Minister, state secretary or higher;
2. A State Governor, a Head of a self-administering sub-state geographic entity, or a City Mayor of a city with more than ... inhabitants;
3. A police officer with the rank of ... or higher;
4. A judge or a prosecutor;
5. A military officer with the rank of general;
6. A member of the National Assembly;
7.

Such a program might encompass various domestic Competent Authorities in charge of different domestic acts or Competent Authorities of various jurisdictions for the same type of act. Where there is only one Competent Authority for the precise act, an international peer evaluation should be set up.

52. Cooperation of other public entities

I. Other authorities, universities and other public institutes must provide the Minister in charge and the Competent Authority with administrative and scientific support.

II. The Police Authority must provide the assistance needed to enable the Competent Authority to perform official control or enforce decisions under the Act or under regulations adopted pursuant to the Act. Assistance may only be requested if:

- a. it can be feared on account of special circumstances that it will not be possible to perform the measure without resorting to the special

<p>powers of a police officer under ... (Police Act), or</p> <p>b. there are other exceptional reasons justifying the involvement of the police.</p> <p>III. The Military must provide the assistance needed to enable the Competent Authority to perform its tasks in the following situations, provided that their military tasks are not thereby disproportionately neglected:</p> <p>a. there are so many measures to be taken in short time that the Competent Authority [and the police] cannot alone cope with the task;</p> <p>b. staff of the military is involved or suspected to be involved;</p> <p>c. suppliers or service providers of the military are involved or suspected to be involved;</p> <p>d. ...</p>	
<p>53. International cooperation</p>	
<p>I. The Government, the Competent Authority and other public entities may not cooperate internationally where that cooperation would lead to a lower level of stringency in the anti-corruption policy. This Subsection applies OR does not apply to international agreements.</p> <p>II. The Competent Authority may, under control of the Minister in charge, cooperate with its peers in partner jurisdictions and with international organisations. It may share with peers [and international organisations] information, including sensitive information, on public and private entities and their responsible persons, regardless of whether they have residence or place of business on the domestic territory or not.</p> <p>III. The Competent Authority may take the following measures with regard to international organisations and foreign national authorities, under the condition that the same measures of international cooperation are reciprocated:</p> <p>a. permitting international or foreign national officers to take part in operations of the Competent Authority,</p>	<p>A compromise line would be: "... does not apply to international agreements unless these agreements mandate cooperation.</p> <p>Cooperation between states fails easily where there is no empowerment to share information and to operate cross-border. As sensitive information is particularly delicate, we suggest here a separate empowerment complementing the empowerment of Section 30.</p>

<ul style="list-style-type: none"> b. disclosing confidential information not covered by Subsection a, c. establishing joint expert committees and data exchange needed for that purpose, d. investigating or enforcing on the territory of the other jurisdiction, e. empowering foreign national authorities to carry out investigations on the domestic territory provided that human rights, the rule of law and domestic principles of legality will be respected by the foreign national authority, f. requesting foreign national authorities to enforce on their territory obligations under this Regulation, provided that human rights, the rule of law and domestic principles of legality will be respected by the requesting jurisdiction, g. enforcing in accordance with the previous Section or requesting local enforcement authorities to enforce foreign measures provided that human rights, the rule of law and basic principles of fairness have been respected by the requesting jurisdiction, h. permitting foreign national authorities to investigate their cases on the national territory provided that the rule of law and basic principles of fairness have been respected by the other jurisdiction, i. recognising foreign certificates or approvals testifying the professional qualification of actors, and j. making administrative agreements on cooperation with regard to all the above and collateral organisational aspects. 	
<p>Chapter F: Final provisions</p>	
<p>54. Adaptation to technical progress and closing of regulatory loopholes</p>	
<p>I. The Government may adapt this Act to technical progress and may close</p>	<p>The fast evolving topic renders such an empowerment useful. Contrary to the</p>

<p>regulatory loopholes, whilst respecting the principles set out in this Act.</p> <p>II. Adaptations of this Act to technical progress and closing loopholes may be revoked, suspended or limited by decision of a 1/2 OR 2/3 majority of the Parliament.</p>	<p>empowerment for (executing) decrees or other subordinate legislation, below, the level of intervention is the level of the law itself.</p> <p>Nonetheless, Parliamentary control might need to be ascertained. Here, we present the technique: broad empowerment, but ex post control by the Parliament.</p>
<p>55. Government ordinances or decrees</p>	
<p>I. The Government may adopt ordinances or issue decrees setting out details on the execution of the empowerments and on the management of this Act. [Where there is no urgency, it must give the Parliament one month notice prior to adoption and must take account of the reaction of the Parliament.]</p> <p>II. The ordinances or decrees may / may not further restrain data protection law and the protection of confidential information.</p> <p>III. The ordinances or decrees may / may not further limit other rights of legal and natural persons.</p> <p>IV. The Parliament may revoke, suspend or modify the ordinances or decrees adopted by the Government by ordinary majority decision.</p>	<p>Decrees, subordinate legislation like ordinances or similar regulatory tools of the Government can complement the law appropriately. However, given the very sensitive character of the matter, it might also be deemed appropriate to give the Parliament the possibility to informally react to a decree project. This is also helpful where, as suggested below, the Parliament can formally revoke a decree. The informal reaction at an earlier stage can help to avoid a later conflict which would let the Parliament revoke the decree.</p> <p>As stated above, the rights-sensitive character of the matter might be regarded as justifying a tight control of the Government by the Parliament.</p>
<p>56. Prescription of rights and obligation</p>	
<p>All rights and obligations contained in this Act are prescribed within ... (e.g. 3) years after the rights holder took note of the respective circumstances, and at the latest ... (e.g. 10) years after the circumstances occurred.</p>	<p>Prescriptions for offences have been dealt with in Section 41.</p>
<p>57. Monitoring and review</p>	
<p>I. Every third year, the Government must publish a report on the application of this law which must include an external auditing report and a report on international best practices.</p> <p>II. Based on this report, the Government must suggest to the Parliament a revision of this Act.</p>	

58. Entry into force / application dates	
This Act enters into force as of ... It applies in its entirety as from ... However, Sections ... [Subsections ...] apply only as from ...	Split application dates can, e.g., be useful to give certain actors enough lead-time to implement technically complicated solutions necessary to fulfil certain obligations.

Annex S: States respecting human rights and the rule of law

State (official name)	Respect of human rights	Respect of rule of law principles
...	y/n	y/n
	y/n	y/n