

Self-assessment checklist on the implementation of the United Nations Convention against Corruption

Assessment Name: USA
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Country: USA
Assessor:
Comments:
United States of America

Deadline for submission of the checklist: 15 August 2007
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II. Preventive measures (chapter II)

A. Article 5 Preventive anti-corruption policies and practices

1. Paragraph 1 of article 5 (Policies preventive of corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 1 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 1 of USA Annex

B. Article 6 Preventive anti-corruption body or bodies

2. Paragraph 1 of article 6 (Anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 2 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 2 of USA Annex

3. Paragraph 2 of article 6 (Independent status, resources and trained staff for anti-corruption body or bodies)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 2 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 2 of USA Annex

C. Article 9 Public procurement and management of public finances

4. Subparagraph 1 (a) of article 9 (Systems of procurement designed to prevent corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

5. Subparagraph 1 (b) of article 9 (Establishment of conditions for participation in public procurement)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

6. Subparagraph 1 (c) of article 9 (Criteria for public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

7. Subparagraph 1 (d) of article 9 (System of domestic review of public procurement decisions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

8. Subparagraph 1 (e) of article 9 (Measures regarding public procurement personnel)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

9. Subparagraph 2 (a) of article 9 (Transparency and accountability in public finances)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

10. Subparagraph 2 (b) of article 9 (Timely reporting on revenue and expenditures)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

11. Subparagraph 2 (c) of article 9 (Accounting and auditing standards)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

12. Subparagraph 2 (d) of article 9 (Systems of risk management and internal control)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

13. Subparagraph 2 (e) of article 9 (Corrective action upon failure to comply)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

14. Paragraph 3 of article 9 (Prevention of falsification of public expenditure records)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

See Part 3 of USA Annex

Please provide examples of the successful use or implementation of this article:

See Part 3 of USA Annex

III. Criminalization and law enforcement (chapter III)

A. Article 15 Bribery of national public officials

15. Subparagraph (a) of article 15 (Active bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The principal United States statutes prohibiting bribery of a national public official (such as a Member of Congress), consistent with Article 15(a), are Title 18, United States Code, section 201(b)(1) and (c)(1)(A) ("Bribery of Public Officials and Witnesses"). U.S. federal law enforcement authorities may, however, depending on the facts and circumstances of a given case, use many other federal criminal laws to punish the conduct described in Article 15(a). Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offense against the United States), 599 (promise of appointment by candidate), 210 (offer to procure appointive public office), 1961-63 (racketeer influenced and corrupt organizations, or RICO), 1341 (mail fraud), 1343 (wire fraud), and 1346 (scheme or artifice to defraud another of the intangible right to honest services), among many others. Finally, and consistent with the U.S. federalist system of government, the various states also have enacted their own laws prohibiting the conduct described in Article 15(a). The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link:

<http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>). When searching by section, simply enter the applicable title and section number. For example, to access Title 18, section 201(b)(1), enter Title 18, Section 201 (which will link to the entire text of section 201, including 201(b)(1)). This is the quickest and most efficient way to access the sections of the United States Code cited throughout this checklist. When browsing by title, note that each title of the United States Code is broken down into parts, which are further broken down into chapters and then into the cited sections. Accordingly, finding a particular section while browsing by title will require a few extra clicks of the computer mouse.

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex

16. Subparagraph (b) of article 15 (Passive bribery of a national public official)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The principal United States federal statutes prohibiting passive bribery of a national public official (such as a Member of Congress), consistent with Article 15(b), are Title 18, United States Code, section 201(b)(2) and (c)(1)(B) ("Bribery of Public Officials and Witnesses"). Additionally, U.S. federal law enforcement authorities may, depending upon the facts and circumstances of a given case, use many other federal criminal laws to punish the conduct described in Article 15(b). Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offense against the United States), 211 (acceptance or solicitation to obtain appointive public office), 1961-63 (racketeer influenced and corrupt organizations, or RICO), 1341 (mail fraud), 1343 (wire fraud), 1346 (scheme or artifice to defraud another of the intangible right to honest services), and 1951 (extortion under color of official right), among many others. Finally, and consistent with the U.S. federalist system of government, the various states also have enacted their own laws prohibiting the conduct described in Article 15(b). The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or

to browse the United States Code by title (using the following link:
<http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex.

B. Article 16 Bribery of foreign public officials and officials of public international organizations

17. Paragraph 1 of article 16 (Active bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The U.S. Foreign Corrupt Practices Act (FCPA), Title 15, United States Code, section 78m et seq., establishes as a criminal offense the conduct described in Article 16(1). The full text of the FCPA can be found at <http://www.usdoj.gov/criminal/fraud/docs/statue.html>. Additionally, U.S. federal law enforcement authorities may, depending upon the facts and circumstances of a given case, use many other federal criminal laws to punish the conduct described in Article 16(1). Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offense against the United States), 1341 (mail fraud), 1343 (wire fraud), 1961-63 (racketeer influenced and corrupt organizations, or RICO), and 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), among many others. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link:

<http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 5 of USA Annex.

18. Paragraph 2 of article 16 (Passive bribery of a foreign public official or an official of a public international organization)

Has your country adopted the measures described above? (Check one answer)

(P) Yes, in part

Please cite the applicable law(s) or other measure(s):

Although Article 16(2) is non-mandatory, United States federal law enforcement authorities, depending upon the facts and circumstances of a given case, could potentially punish the conduct described in Article 16(2) under various theories of United States federal criminal law, including but not limited to the honest services, wire, and mail fraud statutes (Title 18, United States Code, sections 1341, 1343 and 1346) as well as the conspiracy statute (Title 18, United States Code, section 371). The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Which of the following forms of technical assistance, if available, would assist your country with adopting the measures described above? (Check all the answers that apply)

(i) No assistance would be required

Are any of the forms of technical assistance previously mentioned already provided?

(Check one answer)

(N) No

C. Article 17 Embezzlement, misappropriation or other diversion of property by a public official

19. Embezzlement, misappropriation or other diversion of property by a public official (article 17)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has several federal laws that criminalize the conduct described in Article 17. The primary anti-embezzlement statute applicable to officials of the United States federal government is Title 18, United States Code, section 654 (officer or employee of United States converting property of another). Other anti-embezzlement laws include Title 18, United States Code, sections 641 (embezzlement of public money, property or records by any person); section 645 (embezzlement by federal court officers); and section 666 (theft or bribery concerning programs receiving federal funds). In addition to those laws, the United States has several other criminal laws that could potentially be used to punish the conduct described in Article 17. Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offense against the United States), 1341 (mail fraud), 1343 (wire fraud), and 1346 (scheme or artifice to defraud another of the intangible right to honest services), among many others, depending upon the facts and circumstances of a given case. Finally, consistent with the United States federalist system of government, individual states also have laws prohibiting the conduct described in Article 17. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex.

D. Article 23 Laundering of proceeds of crime

20. Subparagraph 1 (a) (Criminalization of conversion or transfer of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has several federal laws criminalizing the conduct described in Article 23(1)(a). Those laws include Title 18, United States Code, sections 1956 (laundering of monetary instruments) and 1957 (engaging in monetary transactions in property derived from specified unlawful activity). In addition to those laws, the United States has several other criminal laws that could potentially be used to punish the conduct described in Article 23(1)(a). Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offense against the United States), 1341 (mail fraud), 1343 (wire fraud), 1346 (scheme or artifice to defraud another of the intangible right to honest services), 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), 1960 (unlicensed money transmission business), 1961-63 (racketeer influenced and corrupt organizations), and 2314 and 2315 (interstate transport or receipt of stolen goods and money), among others, depending upon the facts and circumstances of a given case. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 6 of USA Annex.

21. Subparagraph 1 (b) of article 23 (Criminalization of acquisition, possession or use of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has several federal laws criminalizing the conduct described in Article 23(1)(b). Those laws include Title 18, United States Code, sections 1956 (laundering of monetary instruments) and 1957 (engaging in monetary transactions in property derived from specified unlawful activity). In addition to those laws, the United States has several other criminal laws that could potentially be used to punish the conduct described in Article 23(1)(b). Those laws include, but are not limited to, Title 18, United States Code, sections 2 (aiding and abetting), 371 (conspiracy to commit an offense against the United States), 1341 (mail fraud), 1343 (wire fraud), 1346 (scheme or artifice to defraud another of the intangible right to honest services), 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), 1961-63 (racketeer influenced and corrupt organizations), and 2314 and 2315 (interstate transport or receipt of stolen goods and money), among others, depending upon the facts and circumstances of a given case. Additionally, under the United States federalist system of government, the crime of knowingly receiving stolen property or the proceeds of crime is typically criminalized by state laws. Accordingly, the various states within the United States have laws criminalizing the knowing receipt of stolen property. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 6 of USA Annex.

22. Subparagraphs 2 (a), (b), (c) and (e) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

As described above, the United States has several federal laws that criminalize the conduct described in Article 23(2)(a)-(c). Those laws include Title 18, United States Code, sections 1956 (laundering of monetary instruments) and 1957 (engaging in monetary transactions in property derived from specified unlawful activity). Generally, those laws can be applied to a broad range of "specified unlawful activity," which is listed in section 1956(c)(7). That "specified unlawful activity" includes all of the Convention's mandatory criminalization offenses, as well as certain offenses against foreign nations if the transaction at issue occurred in whole or in part within the United States (including bribery of foreign public officials and embezzlement). Additionally, other United States laws such the conspiracy statute (Title 18, United States Code, section 371); the prohibition on interstate transport or receipt of stolen goods and money (Title 18, United States Code, sections 2314 and 2315); and the Travel Act (Title 18, section 1952) may be used by United States law enforcement authorities to punish the offenses described in Article 23(1). Title 18 United States Code, sections 1956 and 1957 may also be applied to the person who committed the predicate offense. Accordingly, the offenses described in Article 23(1) can and have been used by United States law enforcement authorities to punish a broad spectrum of criminal conduct, including the criminal offenses established in accordance with the Convention. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>). Additionally, United States laws such the conspiracy statute (Title 18, United States Code, section 371, which law enforcement officials also may use to punish the offenses described in Article 23(1)) are applicable to any offense against the United States. Accordingly, the offenses described in Article 23(1) can and have been used by United States law enforcement authorities to punish a broad spectrum of criminal conduct, including the criminal offenses established in accordance with the Convention. The relevant sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search

the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casocode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 6 of USA Annex.

23. Subparagraph 2 (d) of article 23 (Predicate offence in the laundering of proceeds of crime)

Has your country furnished copies of its laws that give effect to article 23 and of any subsequent changes to such laws or a description thereof to the Secretary-General, as described above? (Check one answer)

(Y) Yes

Please submit such copies with the present checklist to the United Nations Office on Drugs and Crime or provide a description of such laws below.

The laws that give effect to Article 23 are described herein and are also available at <http://www.findlaw.com/casocode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casocode/uscodes/toc.html>).

E. Article 25 Obstruction of justice

24. Subparagraph (a) of article 25 (Criminalization of use of inducement, threats or force to interfere with witnesses or officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a battery of federal laws criminalizing obstruction of justice, including laws that punish the conduct described in Article 25(a). Those laws include Title 18, United States Code, sections 201(b)(3) (bribery to influence testimony of a witness); 1512 (tampering with a witness, victim or an informant, including by force, threats or intimidation); 1503 (influencing or injuring a court officer or juror in a federal judicial proceeding); 1505 (obstruction of proceedings before departments, agencies and committees); 1511 (obstruction of state or local law enforcement); 1510 (obstruction of criminal proceedings, including bribery); and 1519 (destruction, alteration, or falsification of records in federal investigations and bankruptcy).

Consistent with the United States federal system of government, individual states also have laws criminalizing the conduct described in Article 25(a). The relevant sections of the United States Code are available at <http://www.findlaw.com/casocode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link:

<http://caselaw.lp.findlaw.com/casocode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex.

25. Subparagraph (b) of article 25 (Criminalization of interference with actions of judicial or law enforcement officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a battery of federal laws criminalizing obstruction of justice, including laws that punish the conduct described in Article 25(b). Those laws include Title 18, United States Code, sections 1503 (influencing or injuring a court officer or juror in a federal judicial proceeding, including by use of force, threats or intimidation); 1505 (obstruction of proceedings before departments, agencies and committees); 1511 (obstruction of state or local law enforcement); and 1510 (obstruction of criminal proceedings, including bribery). Consistent with the United States federal system of government, individual states also have laws criminalizing the conduct described in Article 25(b). The relevant sections of the United States Code are available at

<http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex

IV. International cooperation (chapter IV)

A. Article 44 Extradition

26. Subparagraph 6 (a) (Taking the Convention against Corruption as the legal basis for cooperation on extradition)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

B. Article 46 Mutual legal assistance

27. Paragraph 13 of article 46 (Designation of a central authority to receive requests for mutual legal assistance)

Has your country notified the Secretary General, as described above? (Check one answer)

(Y) Yes

V. Asset recovery (chapter V)

A. Article 52 Prevention and detection of transfers of proceeds of crime

28. Paragraph 1 of article 52 (Verification of identity and enhanced scrutiny of customers of financial institutions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a robust system of laws and regulations designed to prevent and detect the transfer of proceeds of crime. These laws include Title 31, United States Code, section 5318(i)(3), which contains requirements for the identification of the beneficial owner of funds deposited into private banking accounts and for conducting enhanced scrutiny of such accounts of senior foreign political figures. An overview of the anti-money laundering strategy of the United States, including the various programs, agencies and authorities that the United States brings to bear to combat money laundering, is available at

<http://www.ustreas.gov/press/releases/docs/nmls.pdf>. In particular, the United States Department of the Treasury – the principal regulatory body within the United States with responsibility for implementing preventative anti-money laundering laws – through its bureau, the Financial Crimes Enforcement Network (FinCEN), has promulgated numerous rules and regulations, pursuant to United States federal laws, setting forth substantial anti-money laundering, due diligence, and record-keeping procedures applicable to a wide range of United States financial institutions. Those regulations, which are contained within Title 31, Part 103, of the United States Code of Federal Regulations (CFR), can be found at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6e498efac761fe8c33b993c50400c46c&rgn=div5&view=text&node=31:1.2.1.1.6&idno=31>. Among other things, the regulations set forth requirements to identify and verify the identity of customers (31 CFR sections 103.121-103.123) and to establish anti-money laundering compliance programs, including special due diligence requirements related to correspondent accounts and private banking accounts (Subpart I). In particular, 31 CFR 103.178 requires

determination of beneficial owners of private banking (i.e., "high value") accounts and enhanced scrutiny of such accounts maintained for current or former senior foreign political figures, their family members and associates, and monitoring the accounts in order to detect suspicious transactions. Although this regulation does not apply to accounts held by United States public officials, in accordance and consistent with United States domestic law, accounts held by those officials are subject to the same rigorous risk-based anti-money laundering and due diligence requirements as other accounts within the United States.

Please provide examples of the successful use or implementation of this article:

See FinCEN's website at <http://www.fincen.gov/> and the 2007 National Money Laundering Strategy at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>.

29. Subparagraph 2 (a) of article 52 (Issuance of advisories to financial institutions)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States government issues advisories from time to time both to the public and to financial institutions regarding the laws and regulations designed to prevent and detect the transfer of proceeds of crime. For example, the United States Treasury Department's Financial Crimes Enforcement Network, or FinCEN, has a public website that provides a wealth of information regarding FinCEN's work and applicable United States anti-money laundering laws and regulations, including matters relating to the regulations regarding the types of customers and accounts that are subject to enhanced scrutiny, and related recordkeeping requirements. FinCEN's website can be found at: <http://www.fincen.gov/index.html>. Additionally, the United States Federal Financial Institutions Examination Council, an inter-agency United States government entity, periodically publishes the Bank Secrecy Act/Anti-Money Laundering Examination Manual for financial institutions, which sets forth in substantial detail the requirements contained in the various anti-money laundering laws and regulations of the United States. That manual can be found at

http://www.ffiec.gov/pdf/bsa_aml_examination_manual2006.pdf. The relevant sections of the United States Code of Federal Regulations (CFR), can be found at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=3b0a24b11745317eda06befe8eaea219&c=ecfr&tpl=/ecfrbrowse/Title31/31tab_02.tpl.

Please provide examples of the successful use or implementation of this article:

See FinCEN's website at <http://www.fincen.gov> and the National Money Laundering Strategy at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>.

30. Subparagraph 2 (b) of article 52 (Notifying financial institutions of identity of account holder for enhanced scrutiny)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Please provide examples of the successful use or implementation of this article:

31. Paragraph 3 of article 52 (Implementation of measures to require financial institutions to maintain adequate records)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a robust system of laws and regulations designed to prevent and detect the transfer of proceeds of crime. Among other things, the regulations set forth requirements regarding records to be maintained (Subpart C, Part 103 of Title 31 of the United States Code of Federal Regulations). In general, financial institutions are required to maintain records pertaining to customers and accounts referred to in the above discussion of Article 52(1), containing

information relating to identity of customers and beneficial ownership of accounts (as well as all other records) for at least five years. Additionally, financial institutions are examined regularly to ascertain compliance with these requirements. The relevant sections of the United States Code of Federal Regulations (CFR), can be found at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=322da2439cd6d8e26c761950312d83d1&rgn=div5&view=text&node=31:1.2.1.1.6&idno=31#31:1.2.1.1.6.3>.

The United States has a robust system laws and regulations designed to increase transparency, including a system of required financial disclosures by appropriate public officials that includes appropriate sanctions for non-compliance. The principal laws governing financial disclosures by senior United States government officials are located at Title 5, United States Code Appendix, sections 101-11. These laws require all senior officials of the federal government – including the President of the United States, the Vice President of the United States, and approximately 20,000 other senior government officials – to file a personal financial disclosure report. Copies of those reports are available upon request to anyone in the world, including foreign countries. Failure to file, or filing a false financial disclosure report, is subject to applicable administrative, civil and or criminal penalties. Additionally, United States law requires financial disclosure on a confidential basis for public officials in the executive branch who do not hold senior positions but who do hold positions with a higher risk of conflict of interest. (Title 5 United States Code Appendix, section 107 and Title 5, United States Code of Federal Regulations, Part 2634, Subpart I.) Although those reports are not available to the public due to United States privacy laws, under certain circumstances they can be made available to federal law enforcement authorities and could, in theory, be provided to a foreign country on a case-by-case basis pursuant to a mutual legal assistance request. Title 5 of the United States Code of Federal Regulations is available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=b02cffc533406b29e3d9c951473de880&c=ecfr&tpl=/ecfrbrowse/Title05/5tab_02.tpl. A complete compilation of United States government ethics laws, including Title 5, United States Code Appendix, is available at http://www.usoge.gov/pages/laws_regs_fedreg_stats/comp_fed_ethics_laws.pdf.

Please provide examples of the successful use or implementation of this article:

See FinCEN's website at <http://www.fincen.gov> and the 2007 National Money Laundering Strategy at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>.

32. Paragraph 4 of article 52 (Prevention of establishment of banks having no physical presence or affiliation to a registered financial group)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a robust system of laws and regulations designed to prevent and detect the transfer of proceeds of crime. Those laws include 313(a) of the USA PATRIOT Act, which added a new subsection (j) to Title 31, United States Code, section 5318, prohibiting “covered financial institutions” (defined in Title 31, United States Code of Federal Regulations, section 103.175(f)(2) as any one of a number of specific U.S. financial institutions, including all types of depository institutions and securities broker-dealers) from providing correspondent accounts in the United States to foreign banks that do not have a physical presence in any country (otherwise known as foreign “shell banks”). Section 313(a) also requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. These statutory requirements are implemented in Title 31 CFR section 103.177. In addition, the establishment of shell banks is not permitted in the U.S., either at the federal or state level, and the banking regulators continuously monitor for, and issue public advisories regarding, any entity engaged in unauthorized banking activity (including shell banks). Taken together, these requirements fully comply with Article 52(1)-(4). The relevant sections of the United States Code of Federal Regulations (CFR), can be found at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6e498efac761fe8c33b993c50400c46c&tpl=/ecfrbrowse/Title31/31cfr103_main_0

[2.tpl](#).

Please provide examples of the successful use or implementation of this article:

See FinCEN's website at <http://www.fincen.gov> and the 2007 National Money Laundering Strategy at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>.

33. Paragraph 5 of article 52 (Establishment of financial disclosure systems for public officials)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States has a robust system of laws and regulations designed to increase transparency, including a system of required financial disclosures by appropriate public officials that includes appropriate sanctions for non-compliance. The principal laws governing financial disclosure by senior United States government officials are located at Title 5, United States Code Appendix, sections 101-11. These laws require all senior officials of the federal government – including the President of the United States, Vice President of the United States, and approximately 20,000 other senior government officials – to file a personal disclosure report. Copies of those reports are available upon request to anyone in the world, including foreign governments. Failure to file, or filing a false financial disclosure report, is subject to applicable administrative, civil or criminal penalties. Additionally, United States law requires financial disclosure on a confidential basis for public officials in the executive branch who do not hold senior positions but who do hold positions with a higher risk of conflict of interest. (Title 5 United States Code Appendix, section 107 and Title 5, United States Code of Federal Regulations, Part 2634, Subpart I.) Although those reports are not available to the public due to United States privacy laws, under certain circumstances they can be made available to federal law enforcement authorities and could, in theory, be provided to a foreign country on a case-by-case basis pursuant to a mutual legal assistance request. Title 5 of the United States Code of Federal Regulations is available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=b02cffc533406b29e3d9c951473de880&c=ecfr&tpl=/ecfrbrowse/Title05/5tab_02.tpl. A complete compilation of United States government ethics laws, including Title 5, United States Code Appendix, is available at http://www.usoge.gov/pages/laws_regs_fedreg_stats/comp_fed_ethics_laws.pdf.

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex.

34. Paragraph 6 of article 52 (Requiring public officials to report foreign financial accounts)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Pursuant to Title 31, United States Code of Federal Regulations, Part 103, Subpart C, sections 103.24 and 103.32, persons subject to U.S. jurisdiction having a financial interest or control over a foreign account are required to report that relationship to the Commissioner of Internal Revenue and to maintain records related to such accounts for five years. In addition, the United States has a robust system laws and regulations designed to increase transparency, including a system of required financial disclosures by appropriate public officials. The principal laws governing financial disclosures by senior United States government officials are located at Title 5, United States Code Appendix, sections 101-11. These laws require all senior officials of the federal government – including the President of the United States, the Vice President of the United States, and approximately 20,000 other senior government officials – to file a personal financial disclosure report. Among other things, senior government officials are required to provide a description of, and the value of interests in, property held by the official (and specified family members) for investment or the production of income above certain minimal thresholds. This

includes beneficial interests in trusts and estates (over \$1,000); deposits in banks or other financial institutions (over \$5,000); and accounts or other funds receivable (over \$1,000). The law makes no distinction between assets held inside or outside the United States, and thus includes foreign financial accounts consistent with Article 52(6). The filer must also report the source and amount of investment and non-investment income in excess of \$200, regardless of whether the source of that income is within or outside of the United States. Financial disclosure reports of this nature are required upon entry into a senior position, annually and at the termination of service in the position. Copies of those reports are available upon request to anyone in the world, including foreign countries. Failure to file, or filing a false financial disclosure report, is subject to applicable administrative, civil and or criminal penalties. A complete compilation of United States government ethics laws, including Title 5, United States Code Appendix, is available at

http://www.usoge.gov/pages/laws_regs_fedreg_stats/comp_fed_ethics_laws.pdf.

Please provide examples of the successful use or implementation of this article:

See Part 4 of USA Annex.

B. Article 53 Measures for direct recovery of property

35. Subparagraph (a) of article 53 (Institution by a State party of measures to permit another State party to initiate civil action in its courts)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law (whether constitutional, statutory or otherwise) does not necessarily preclude or prohibit foreign governments from initiating, as parties to a United States civil action, civil lawsuits in United States courts to establish title to or ownership of property acquired through the commission of an offense established in accordance with the Convention, consistent with United States constitutional principles of due process and other principles and practices of United States law.

Please provide examples of the successful use or implementation of this article:

36. Subparagraph (b) of article 53 (Institution by a State party of measures to permit its courts to order payment of compensation or damages)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law (whether constitutional, statutory or otherwise) does not preclude or prohibit United States courts from ordering persons who have been convicted of offenses established in accordance with the Convention from paying restitution as part of a criminal sentence, including to another State Party, consistent with United States constitutional principles of due process.

Please provide examples of the successful use or implementation of this article:

37. Subparagraph (c) of article 53 (Institution by a State party of measures to permit its courts or competent authorities to recognize another State party's claim of legitimate ownership of property proceeds of crime)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law (whether constitutional, statutory or otherwise) does not preclude or prohibit another State Party from submitting and litigating claims to be the legitimate owner of property that is the subject of United States confiscation proceedings related to the commission of an offense established in accordance with the Convention. Provisions of U.S. law governing procedures for such claims include, among others, Title 18, United States Code, sections 983 and 982 (via reference to Title 21 United States Code, section 853), and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (particularly, but not limited to

Supplemental Rule G).

Please provide examples of the successful use or implementation of this article:

C. Article 54 Mechanisms for recovery of property through international cooperation in confiscation

38. Subparagraph 1 (a) of article 54 (Institution by a State party of measures to permit its competent authorities to give effect to orders of confiscation issued by courts of another State party)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States courts and the Attorney General of the United States have authority under United States law to give effect to an order of confiscation issued by a court of another State Party pursuant to Title 28, United States Code, section 2467 (enforcement of foreign judgment). This section of the United States Code is available at <http://www.findlaw.com/casecode/uscodes/>.

Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link:

<http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 7 of USA Annex.

39. Subparagraph 1 (b) of article 54 (Confiscation of property of foreign origin)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law permits United States courts, where they have jurisdiction, to order the confiscation of property, consistent with Article 54(1)(b), in connection with the adjudication of an offense of money laundering and other offenses, as part of a post-conviction sentence or in the absence of a conviction through non-conviction-based confiscation proceedings ("in rem" forfeiture). Pursuant to Title 18, United States Code, section 981, United States courts can order non-conviction-based "in rem" forfeiture in connection with a wide variety of offenses, including but not limited to money laundering (section 981(a)(1)(A)), certain offenses against a foreign nation (section 981(a)(1)(B)), and certain domestic or transnational offenses related to foreign corruption, among others (section 981(a)(1)(C)). Pursuant to Title 18, United States Code, section 982, United States courts can order post-conviction "in personam" forfeiture in connection with a sentence for criminal violation of a wide variety of criminal offenses, including money laundering and certain domestic and transnational crimes related to foreign corruption, among others. These sections of the United States Code are available at

<http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 7 of USA Annex.

40. Subparagraph 1 (c) of article 54 (Confiscation without a criminal conviction of property acquired through corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law permits United States courts, where they have jurisdiction, to order the confiscation of property, consistent with Article 54(1)(c), without a criminal conviction, when that

property is involved in or traceable to certain offenses. Pursuant to Title 18, United States Code, section 981 United States courts can order "in rem" forfeiture in connection with a wide variety of offenses, including but not limited to money laundering (section 981(a)(1)(A)), certain offenses against a foreign nation (section 981(a)(1)(B)), and certain domestic or transnational offenses related to foreign corruption, among others (section 981(a)(1)(C)). "In rem" forfeiture is an action by the United States Government against real or personal property, not against an individual, and thus can be used in cases in which the underlying offender cannot be prosecuted criminally or in other appropriate cases. These sections of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>). **Please provide examples of the successful use or implementation of this article:** See Part 7 of USA Annex.

41. Subparagraph 2 (a) of article 54 (Freezing or seizure of property upon freezing or seizure order)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States courts and the Attorney General of the United States have authority under United States law, consistent with Article 54(2)(a), to give effect to a freezing or seizure order issued by a court of another State Party pursuant to Title 28, United States Code, section 2467(d)(3)(B)(ii) (enforcement of foreign restraining order). This section of the United States Code is available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article: See Part 7 of USA Annex.

42. Subparagraph 2 (b) of article 54 (Freezing or seizure of property upon request providing sufficient grounds)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States courts and the Attorney General of the United States have authority under United States law to freeze or seize property, consistent with Article 54(2)(b), pursuant to Title 28, United States Code, section 2467(d)(3)(B)(i). This section of the United States Code is available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article: See Part 7 of USA Annex.

43. Subparagraph 2 (c) of article 54 (Preserving property for confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The United States courts and the United States Attorney General have authority to preserve property for confiscation, consistent with Article 54(2)(c), pursuant to Title 18, United States Code, section 981(b)(4). This section of the United States Code is available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article: See Part 7 of USA Annex.

D. Article 55 International cooperation for purposes of confiscation

44. Paragraph 1 of article 55 (Submission of request for order of confiscation to competent authorities)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effect its implementation.

Please provide examples of the successful use or implementation of this article:

45. Paragraph 2 of article 55 (Identification, tracing, freezing or seizure of proceeds of crime for eventual confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effect its implementation.

Please provide examples of the successful use or implementation of this article:

46. Paragraph 3 of article 55 (Contents of request for order of confiscation)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The application of Article 55 is subject to, and otherwise subsumed within, the generalized requirement, pursuant to Article 46, to provide States Parties mutual legal assistance in connection with the recovery of assets pursuant to Chapter V of the Convention. Article 46 of the Convention is self-executing, and as such the United States has agreed to abide by and otherwise adopt its terms by becoming a State Party, which includes abiding by the terms of Article 55. Accordingly, Article 55 does not require the United States to undertake any additional legislative measures to effect its implementation.

Please provide examples of the successful use or implementation of this article:

E. Article 57 Return and disposal of assets

47. Paragraph 1 of article 57 (Disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The asset forfeiture laws of the United States permit U.S. authorities substantial flexibility to

dispose of confiscated property pursuant to, and consistent with, paragraphs 1 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to Title 18, United States Code, sections 981(e)(5) and (e)(6) and section 982(b)(1) (via reference to Title 21, United States Code, section 853(i)). U.S. authorities also have the authority to return confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to Title 18, United States Code, section 981(i) and 982(b)(1) (via reference to Title 21, United States Code, sections 853(i)(4) and 881(e)). The relevant section(s) of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 7 of USA Annex.

48. Paragraph 2 of article 57 (Return of confiscated property upon request by another State party)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The asset forfeiture laws of the United States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraphs 2 and 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government), pursuant to Title 18, United States Code, sections 981(e)(5) and (6) and section 982(b)(1) (via reference to Title 21, United States Code, section 853(i)). U.S. authorities also have the authority to return confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to Title 18, United States Code, section 981(i) and 982(b)(1) (via reference to Title 21, United States Code, sections 853(i) and 881(e)). The relevant section(s) of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/casecode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 7 of USA Annex.

49. Paragraph 3 of article 57 (Return of property confiscated in accordance with article 55 of the Convention against Corruption)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

The asset forfeiture laws of the United States permit U.S. authorities substantial flexibility to dispose of confiscated property pursuant to, and consistent with, paragraph 3 of Article 57. U.S. authorities have the authority to return confiscated assets to a victim of an offense giving rise to the forfeiture (which could potentially include a foreign government) pursuant to Title 18, United States Code, sections 981(e)(5) and (6) and section 982(b)(1) (via reference to Title 21, United States Code, sections 853(i)). U.S. authorities have the authority to return confiscated assets to a foreign government that participated, directly or indirectly, in the forfeiture (which, depending on the facts of a given case, likely would include the requesting State Party), pursuant to Title 18, United States Code, section 981(i) and 982(b)(1) (via reference to Title 21, United States Code, sections 853(i) and 881(e)). The relevant section(s) of the United States Code are available at <http://www.findlaw.com/casecode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by

title (using the following link: <http://caselaw.lp.findlaw.com/cascode/uscodes/toc.html>).
Please provide examples of the successful use or implementation of this article:
See Part 7 of USA Annex.

50. Paragraph 4 of article 57 (Deduction of expenses incurred in return or disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

Provisions for the payment of expenses of forfeiture include, Title 18, United States Code, section 981(d) (via reference to provisions of the customs laws including Title 19 United States Code, section 1613) and section 982(b)(1) (via reference to Title 21, United States Code, sections 853(i) and 881(e)). Title 18 United States Code, section 981(i) also directs expenses of confiscation proceedings to be borne by the foreign government where assets are transferred in recognition of that government's assistance leading to confiscation pursuant to Title 18 United States Code, section 981. The relevant section(s) of the United States Code are available at <http://www.findlaw.com/cascode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/cascode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

51. Paragraph 5 of article 57 (Conclusion of agreements on final disposal of confiscated property)

Has your country adopted the measures described above? (Check one answer)

(Y) Yes

Please cite the applicable law(s) or other measure(s):

United States law generally permits the United States, on a case-by-case basis and depending upon the facts and circumstance of a given case, to conclude agreements or other mutually acceptable arrangements between governments. In addition, where assets are transferred to a foreign nation in recognition of that nation's assistance leading to the forfeiture, pursuant to Title 18, United States Code, section 981(i) and 982(b)(1) (via reference to Title 21, United States Code, sections 853(i) and 881(e)), such transfers must be authorized pursuant to an international agreement. The relevant section(s) of the United States Code are available at <http://www.findlaw.com/cascode/uscodes/>. Note, this website allows the user to either search the United States Code for a specific title and section, or to browse the United States Code by title (using the following link: <http://caselaw.lp.findlaw.com/cascode/uscodes/toc.html>).

Please provide examples of the successful use or implementation of this article:

See Part 7 of USA Annex.

USA ANNEX

TO USA RESPONSE TO UNCAC CHECKLIST

PART 1:

1. Paragraph 1 of article 5 (Policies preventive of corruption): The United States Constitution establishes the rule of law for the nation. The Constitution regulates government power through separation of powers among the branches of federal government with a system of checks and balances. It also reserves to the individual States significant powers. The Constitution provides for the creation of laws, for equality before the law and for a system of formal justice. At the federal level in the U.S., the laws passed by Congress and subsequent implementing measures that support adherence to the terms and spirit of article 5 of the Convention are extensive. This response cites to some of the most significant and generally applicable of those laws and measures, listed by concept in article 5.

To attach the text of each law, statute, regulation or policy cited in this response would require a very sizeable appendix. However, the texts are available on the Internet: the text of provisions cited in the United States Code (U.S.C.) can be found at <http://straylight.law.cornell.edu/uscode/>; the text of provisions cited in Public Laws (P.L.) can be found at <http://thomas.loc.gov/bss/d110/d110laws.html>; the text of provisions in the Code of Federal Regulations (C.F.R.) can be found at www.gpoaccess.gov/cfr/index.html; and the text of citations to Office of Management and Budget Circulars can be found at www.whitehouse.gov/omb/circulars/index.html. A direct web link address is provided for other documents.

Laws or other measures that promote the participation of society:

- U.S. Constitution, 1st Amendment Right to Petition
- Administrative Procedures Act 5 U.S.C. 551 et. seq. (in part provides the public with notice and the opportunity to comment on substance of proposed rules and regulations)
- Federal Advisory Committee Act 5 U.S.C. app. [5 U.S.C.A. app. 2] (structural and procedural requirements for approximately 1000 Federal advisory committees with substantial numbers of members of the public)

Laws and other measures that reflect proper management of public affairs and--

(1) Public Property:

Real

- Title 40 United States Code (laws dealing with Public Buildings, Property and Works)
- Title 41 United States Code (laws dealing with Public Contracts)
- Title 41 Code of Federal Regulations (regulations concerning Public Contracts and Property Management)
- Title 48 Code of Federal Regulations (regulations concerning Federal

Acquisition)
18 U.S.C. § 641 (criminal code provisions on misuse of public money, property and records)

(2) Financial:

U.S. Constitution, art. I, § 9, cl. 7

Title 31 United States Code (laws dealing with Money and Finance, including such acts as:

Anti Deficiency Act (P.L. 97-258)

Federal Managers Financial Integrity Act (P.L. 97-255)

Chief Financial Officers Act (P.L. 101-576)

OMB Circular A-11 Preparation and Submission of Budget Estimates and Execution of the Budget (guidance to agencies from the Office of Management and Budget)

Title 31 Code of Federal Regulations (regulations concerning management of federal receipts and disbursements)

(3) Integrity:

Ch. 11 of Title 18, United States Code (bribery and criminal and civil conflicts of interest statutes) [18 U.S.C. §§ 201-219]

5 U.S.C. App § 501 et. seq. (outside activity and compensation restrictions)

5 C.F.R. Part 2635, Executive Branch Standards of Ethical Conduct (code of conduct)

(www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html)

5 C.F.R. Part 2638, Subpart G – Executive Agency Ethics Training Programs
Rules of the House of Representatives Numbers 23-26 (code of conduct)

(www.rules.house.gov/ruleprec/110th.pdf)

Senate Code of Official Conduct, Rules 34 to 43 of Rules of the U.S. Senate

(<http://rules.senate.gov/senaterules>)

Code of Conduct for United States Judges

(www.uscourts.gov/guide/vol2/ch1.html)

Code of Conduct for Judicial Employees

(www.uscourts.gov/guide/vol2/ch2a.html)

Code of Conduct for Federal Public Defender Employees

(www.uscourts.gov/guide/vol2/ch2b.html)

The following are some other selected statutes that are applicable to the conduct of public officials and thus integrity:

In the criminal code, Title 18, United States Code:

Sec. 286 - Conspiracy to defraud Government with respect to claims

Sec. 287 - False, fictitious or fraudulent claims

Sec. 371 - Conspiracy to commit offense or to defraud the U.S.

Sec. 431 - Contracts by Members of Congress

Sec. 432 - Officer or employee contracting with Member of Congress

Sec. 433 - Exemptions with respect to certain contracts

Sec. 641 - Public money, property or records
Sec. 666 - Theft or bribery concerning programs receiving federal funds
Sec. 1001 - False statements
Sec. 1341 - Mail fraud—frauds and swindles
Sec. 1342 - Mail fraud— fictitious name or address
Sec. 1343 - Fraud by wire, radio or television
Sec. 1344 - Bank fraud
Sec. 1345 - Injunctions against fraud
Sec. 1346 - Definition of “scheme or artifice to defraud”
Sec. 1905 - Disclosure of confidential information.

Restrictions regarding the judicial branch and executive branch administrative decision makers:

Judicial discipline, 28 U.S.C. § 372(c)
Practice of law by justices and judges, 28 U.S.C. § 454
Disqualification of a justice, judge, or magistrate, 28 U.S.C. § 455
Ex parte communications with administrative agencies, 5 U.S.C. § 557(d)

Restrictions regarding procurement activities:

Procurement integrity, 41 U.S.C. § 423
Interest of Member of Congress, 41 U.S.C. § 22

Statutes (non-criminal) involving gifts and travel:

Gifts to federal employees, 5 U.S.C. § 7353
Gifts to superiors, 5 U.S.C. § 7351
Foreign Gifts and Decorations Act, 5 U.S.C. § 7342
Mutual Educational and Cultural Exchange Act, 22 U.S.C. § 2458a
Acceptance of travel and related expenses from non-federal sources, 31 U.S.C. § 1353
Acceptance of contributions, awards and other payments, 5 U.S.C. § 4111

Other conflicts (criminal and non-criminal) related to employment, whistle blowing, and political activities:

Criminal:

Expenditure to influence voting, 18 U.S.C. § 597
Coercion by means of relief appropriations, 18 U.S.C. § 598
Promise of appointment by candidate, 18 U.S.C. § 599
Promise of employment or other benefit for political activity, 18 U.S.C. § 600
Deprivation of employment or other benefit for political contribution, 18 U.S.C. § 601
Solicitation of political contributions, 18 U.S.C. § 602
Making political contributions, 18 U.S.C. § 603
Solicitation [for political purposes] from persons on relief, 18 U.S.C. § 604
Disclosure [for political purposes] of names of persons on relief, 18 U.S.C. § 605
Intimidation to secure political contributions, 18 U.S.C. § 606
Place of solicitation [of political contributions], 18 U.S.C. § 607

Absent uniformed services voters and overseas voters, 18 U.S.C. § 608
Use of military authority to influence vote of member of Armed Services, 18 U.S.C. § 609
Coercion of political activity, 18 U.S.C. § 610

Non-criminal:

Anti-nepotism law, 5 U.S.C. § 3110
Relatives of Justice or judge, 28 U.S.C. § 458
Recommendations for employment by Members of Congress, 5 U.S.C. § 3303
Restrictions on dual pay, 5 U.S.C. § 5533
Whistleblower protection, subchapter 11 of chapter 12, Title 5, U.S.C.
Political activities (Hatch Act), subchapter 111 of chapter 73, Title 5, U.S.C.
Tax treatment for sales of property in order to comply with conflict of interest requirements, 26 U.S.C. § 1043

Provisions Governing More than U.S. Public Officials:

Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1

(4) Transparency:

Freedom of Information Act, 5 U.S.C. § 552
Electronic Government Act, ch. 36 of title 44, United States Code
Government in the Sunshine Act 5 U.S.C. § 552b
Federal Records Act 31 U.S.C. § 3101
U.S. Constitution, art. I, §5, published proceedings of Congress
Rules 5, 6 and 11 of the U.S. House of Representatives (notice, open hearings, televised proceedings, press gallery) (www.rules.house.gov/ruleprec/110th.pdf)
Rules 26 and 33 of the U.S. Senate (notice, open meetings, televised proceedings, press gallery) (<http://rules.senate.gov/senaterules>)
Judicial rules of procedure, including the Federal rules of criminal procedure and civil procedure (www.uscourts.gov/rules)

(5) Accountability:

Each of the laws cited above has an accountability feature
Examples of oversight by one branch of government over another:
Congressional oversight over use of appropriations by executive and judicial branches (art. 1, § 9 of the Constitution)
Constitutional power of the Executive to prosecute criminal or civil misconduct by an official of any branch (art. II, § 1 of the Constitution)
Constitutional power of Senate to confirm Presidential appointees to executive branch and to the federal courts (art. II, § 2)
Constitutional power of the Congress to impeach, try and remove the President and any Federal Judge or Justice (art. I, §§ 2 and 3)
Constitutional power of the Federal judiciary to judge the Constitutionality of federal laws and of the manner of their execution (art. III, § 2)

Examples of oversight within branches:

Inspectors General within agencies of the executive branch – Inspector General Act of 1978, 5 U.S.C. app. [5 U.S.C.A. app. 3]

Office of Government Ethics for executive branch agency ethics programs – 5 U.S.C. app. § 401 et. seq.

Peer oversight of Members of Congress (Constitution art. I, § 5) and rules of each house to establish appropriate committees for that purpose

Judicial Conference Committee on Conduct and Disability for federal judges

Examples of oversight by public:

Appeals of agency decisions 5 U.S.C. § 701 et. seq.

Competition in Contracting for procurement 31 U.S.C. §§ 3551-3556

Challenges by disappointed bidders in procurements Part 33 of Title 48, C.F.R. (Qui Tam proceedings) 31 U.S.C. § 3730.

Examples of successful use or implementation:

There are numerous examples of the successful use and implementation of the provisions in article 5. We have chosen to highlight a few examples that correspond to some of the concepts set forth in article 5.

One of the notable ways the Federal government promotes transparency is through a robust system that provides the public with access to government information. The Freedom of Information Act (FOIA) was enacted in 1966 and generally provides that any person has the right to request access to Federal agency records or information. All agencies of the executive branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court, and it is supported at the administrative agency level by the "citizen-centered and results-oriented approach" of a presidential executive order.

A huge amount of government information is available without having to submit a request simply by accessing (www.usa.gov), the Government's official web portal. Launched in 2000 (then under the name FirstGov.gov), the portal is an interagency initiative administered by the General Services Administration's Office of Citizen Services and Communications. USA.gov is a centralized place to find comprehensive information from U.S. local, state, and Federal government agency websites. It utilizes a powerful search engine and an index of web-accessible government information and services so that users can find what they need.

In the Legislative Branch, proceedings of the House of Representatives and the Senate are televised pursuant to rules established by both Houses of Congress. As a result of these rules, in 1979 the cable television industry as a public service created C-Span, a private, non-profit company whose mission is to provide public access to the political process through the live broadcasting of Congressional and other governmental proceedings.

The Federal government has also increasingly utilized the Internet to promote the participation of society in government processes and decisions. For example, Regulations.gov (www.Regulations.gov) is the public face of the Federal government's eRulemaking Initiative. The eRulemaking Initiative facilitates public participation in the Federal regulatory process by improving the public's ability to find, view, and comment on Federal regulatory actions. Regulations.gov was launched in 2003 and serves as a secure, robust electronic rulemaking repository, enabling Federal departments and agencies to post all rulemaking documents for public access and comment. Regulations.gov allows the public to communicate with a broad spectrum of government agencies whose regulations touch countless aspects of their daily lives. More than 35 partner departments and agencies participate in the eRulemaking Initiative, one of the most far-reaching Federal E-Government programs.

In the area of promoting integrity, all three branches of government have issued codes of conduct and provide employees with education and training on these codes. In the Federal executive branch, the Office of Government Ethics (OGE) has promulgated regulations requiring that all executive branch employees, regardless of rank, receive training on the ethics laws and rules as part of their in-processing as new government officials. Additionally, each employee who files a financial disclosure report (senior officials and employees and other in positions with higher risks for potential conflicts of interest) must also receive ethics training annually. As part of its program oversight role, OGE verifies during its ethics program review that all employees required to receive training are indeed trained and that the training was conducted in accordance with requirements set forth in regulations. (See also practices noted in information provided with article 6.)

Examples of successful practices in procurement and proper management of public administration, particularly in the areas of financial management, are found in the information provided with article 9.

PART 2

2. Paragraph (1) of article 6 (Anti-corruption body or bodies)

The prevention of corruption not only involves specifically targeted programs but standardized, transparent, fair and accountable systems of governance. Therefore, the bodies involved at the U.S. federal level are numerous. The following is a list of the primary Departments, agencies, and offices involved with substantially implementing or overseeing the policies referred to in Article 5, noted by policy type. Each body to varying degrees is responsible for increasing and disseminating knowledge about the subjects for which they are responsible. However, offices with educational programs directed specifically at public officials and their conduct generally are: in the executive branch, the Office of Government Ethics and the ethics program office in each executive branch agency; in the legislative branch, the U.S. House of Representatives Committee on Standards of Official Conduct and the Senate Select Committee on Ethics; and in the judicial branch, the Judicial Conference Committee on Codes of Conduct.

Bodies overseeing and coordinating implementation of property management policies:

General Services Administration (www.gsa.gov)

National Archives Administration (www.archives.gov)

Judicial Conference Committee on Space and Facilities

(www.uscourts.gov/judconf_jurisdictions.htm#spaceFacilities)

Administrative Office of the U.S. Courts (www.uscourts.gov/adminoff.html)

Architect of the Capitol (www.aoc.gov)

Office of the Chief Administrative Officer of the House of Representatives

(<http://cao.house.gov>)

Senate Sergeant at Arms

(www.senate.gov/reference/office/sergeant_at_arms.htm)

Financial Management

Office of Management and Budget (www.whitehouse.gov/omb/.gov)

Department of the Treasury (www.treasury.gov)

Department of Justice (www.usdoj.gov)

Government Accountability Office (www.gao.gov)

Offices of Inspectors General (www.ignet.gov)

Senate Oversight Committees (www.senate.gov)

House Oversight Committees (www.house.gov)

Administrative Office of the U.S. Courts (www.uscourts.gov/adminoff.html)

Public Procurement

Office of Federal Procurement Policy (www.whitehouse.gov/omb/procurement)

Civilian Agency Acquisition Council (www.acqnet.gov/comp/caac)

Defense Acquisition Regulation Council (www.acq.osd.mil/dpap/dars)

General Services Administration (www.gsa.gov)

Government Accountability Office (www.gao.gov)

Criminal Conflict of Interest Statutes

U.S. Department of Justice [prosecution] (www.usdoj.gov)

U.S. Office of Government Ethics [advice, guidance, training] (www.usoge.gov)

Civil Ethics Statutes/Financial disclosure

U.S. Department of Justice (www.usdoj.gov)

U.S. Office of Government Ethics (www.usoge.gov)

U.S. House of Representatives Committee on Standards of Official Conduct
(www.house.gov/ethics)

Senate Select Committee on Ethics (<http://ethics.senate.gov>)

Judicial Conference Committee on Codes of Conduct
(www.uscourts.gov/judconf_jurisdictions.htm#Conduct)

Judicial Conference Committee on Financial Disclosure
(www.uscourts.gov/judconf_jurisdictions.htm#Financial)

Codes of Conduct

U.S. Office of Government Ethics [executive branch] (www.usoge.gov)

House Committee on Standards of Official Conduct [legislative branch]
(www.house.gov/ethics)

Senate Select Committee on Ethics [legislative branch] (<http://ethics.senate.gov>)

Judicial Conference Committee on Codes of Conduct [judicial branch]
(www.uscourts.gov/judconf_jurisdictions.htm#Conduct)

Freedom of Information Act

U.S. Department of Justice (www.usdoj.gov/oip/index.html)

Sunshine in Government Act

GSA (www.gsa.gov)

Records Management

United States Archives Administration (www.archives.gov)

Legislative procedures

House Committee on Rules (www.rules.house.gov)

Senate Committee on Rules and Administration (<http://rules.senate.gov>)

Judicial Procedures

U.S. Supreme Court (rules of procedure) (www.supremecourtus.gov)

Budget/Appropriations

Office of Management and Budget (www.whitehouse.gov/omb/.gov)

Congressional Budget Office (www.cbo.gov)

House Budget Committee (<http://budget.house.gov>)

House Appropriations Committee (<http://appropriations.house.gov>)

Senate Budget Committee (<http://budget.senate.gov>)

Senate Appropriations Committee (<http://appropriations.senate.gov>)

Judicial Conference Committee the Budget (www.uscourts.gov/budget.html)

Government Accountability Office (www.gao.gov)

Offices of Inspectors General (www.ignet.gov)

Examples of successful use or implementation:

One of the principal ways in which knowledge about the prevention of corruption in the executive branch is disseminated is through education and training that the Office of Government Ethics (OGE) has mandated. OGE has promulgated regulations requiring that all executive branch employees, regardless of rank, receive training on the ethics laws and standards of conduct as part of their in-processing as a new government official.

Additionally, each employee who files a financial disclosure report (those holding senior or other high risk positions) must also receive ethics training annually. As part of its program oversight role, OGE verifies during its ethics program review that all employees required to receive training were indeed trained and that the training was conducted in accordance with requirements set forth in regulation.

3. Paragraph 2 of article 6 (independent status, resources and trained staff for anti-corruption body or bodies):

The separation of powers of the three branches provided for in Articles I, II and III of the Constitution, oversight attendant to those powers and the entity-specific statutes listed in the response to Article 5 provide the bodies with the independence and accountability necessary to carry out their functions free from undue influence. The determination of the sufficiency of material resources is provided for through a public budget/appropriations process and through oversight of one branch over another, through internal controls within each branch and through the public's access to information and opportunities to comment and make recommendations in the process.

Examples of successful use or implementation:

The system of Inspectors General (IGs) within executive branch agencies demonstrates both independence and accountability. The mission of the IGs is to conduct independent and objective audits, investigations and inspections; prevent and detect waste, fraud and abuse; promote economy, effectiveness and efficiency; review pending legislation and regulation; and keep the agency head and Congress fully and currently informed.

An Inspector General's appointment is based on integrity and ability in: accounting, auditing, financial analysis; law, management analysis, public administration; or investigations. With Senate confirmation, the President appoints IGs at Cabinet-level departments and major agencies. These IGs can only be removed by the President. The agency heads appoint and can remove IGs at other designated Federal entities. Both houses of Congress must be notified if an IG is removed by the President or an agency head.

While by law, an IG is under the general supervision of the agency head or deputy, neither the agency head nor the deputy can prevent or prohibit an IG from conducting an audit or investigation. Inspectors General are authorized to: have direct access to all records and information of the agency; have ready access to the agency head; conduct such investigations and issue such reports as the IG thinks appropriate (with limited national security and law enforcement exceptions); issue subpoenas for information and documents outside the agency (with some limited exceptions); administer oaths for taking testimony; and hire and control their own staff and contract resources.

PART 3

4. Subparagraph 1(a) of article 9 (Systems of procurement designed to prevent

corruption):

While the general statutory authorities for the public procurement system of the federal government can be found at Title 41 of the United States Code (Public Contracts), the more comprehensive reference for the federal procurement system is the implementing regulations found in Title 48 of the Code of Federal Regulations – Federal Acquisition Regulations System. This System consists of the Federal Acquisition Regulation (FAR) and it is those provisions that are cited below. The FAR serves as the primary procurement guidance but it may be implemented or supplemented by agency acquisition regulation. (Note: There are also some military procurement authorities codified in Title 10 of the United States Code – Armed Forces.) One of the guiding principles of the Federal Acquisition System is to “Conduct business with integrity, fairness, and openness.” FAR 1.102(b)(3) Please note Title 48 of the C.F.R. can be accessed at www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200648.

Processes and procedures related to publicizing contract actions are contained in the FAR Part 5, Publicizing Contract Actions. Section 5.002 states as a policy that contracting officers must publicize contract actions. Subpart 5.1 then sets out the methods of disseminating the information and the procedures to be followed in publicizing the availability of solicitations on the single government point-of-entry for Federal government procurement opportunities over \$25,000.

Examples of successful use or implementation:

FedBizOpps (<http://www.fedbizopps.gov>) is the single government point-of-entry (GPE) for Federal government procurement opportunities over \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to FedBizOpps via the Internet. Through one portal - FedBizOpps - commercial vendors seeking Federal markets for their products and services can search, monitor and retrieve opportunities solicited by the entire Federal contracting community.

5. Subparagraph 1(b) of article 9 (Establishment of conditions for participation in public procurement):

In addition to Part 5 of 48 CFR cited above, see also:

- Part 3 – Improper Business and Personal Conflict of Interest
- Part 9 – Contractor Qualifications
- Part 11 – Describing Agency Need
- Part 12 – Acquisition of Commercial Items
- Part 13 – Simplified Acquisition Procedures
- Part 14 – Sealed Bidding
- Part 15 – Contracting by Negotiation
- Part 52 – Solicitation Provisions and Contract Clauses

Examples of successful use or implementation:

See the discussion of FEDBIZOPPS found in the response to subparagraph 1(a) above.

6. Subparagraph 1(c) of article 9 (Criteria for public procurement decisions):

The provisions noted in the response to Subparagraphs 1(a) and (b) also relate to the use of objective and predetermined criteria.

7. Subparagraph 1(d) of article 9 (System of domestic review of public procurement decisions):

Part 33 of the FAR provides for the procedures for Protests, Disputes and Appeals. Part 42 addresses Contract Administration and Audit Services.

Examples of successful use or implementation:

Disappointed bidders may challenge a procurement action based upon a conflict of interest by a public official involved in the action.

8. Subparagraph 1(e) of article 9 (Measures regarding public procurement personnel):

FAR Part 1.6 sets forth the regulations on Career Development, Contracting Authority and Responsibilities.

Office of Federal Procurement Policy Memoranda related to the acquisition workforce (www.whitehouse.gov/omb/procurement/index_workforce.html)

Examples of successful use or implementation:

The Federal Acquisition Institute (FAI) (www.fai.gov) promotes the development of a professional acquisition workforce. In addition to providing information, management tools, and training opportunities, FAI also collects and analyzes acquisition workforce data, coordinates government-wide research and studies to improve the procurement process, and assists agencies with recruitment of qualified candidates for acquisition fields.

The Federal Acquisition Certification in Contracting Program was approved by the Office of Federal Procurement Policy (OFPP) and the Chief Acquisition Officers Council (CAOC) in December 2005. The goal of the certification program is to standardize the education, training, and experience requirements for contracting professionals, which will improve workforce competencies and increase career opportunities.

The statutory authority for the management of public finances is codified in title 31 of the United States Code – Money and Finance (www.access.gpo.gov/cgi-bin/cfrassemble.cgi). The implementing regulations are in title 41 of the U.S. Code of Federal Regulations – Money and Finance: Treasury (www.access.gpo.gov/cgi-bin/cfrassemble.cgi).

9. Subparagraph 2(a) of article 9 (Transparency and accountability in public finances):

31 U.S.C. 1104-1105 requires the President to prepare a proposed budget for the United States Government, which is transmitted to Congress for its consideration each February. The Office of Management and Budget prepares the President's budget and provides guidance to U.S. Government departments and agencies on how to submit budget requests and justifications via the OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget (http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html). The Congressional Budget Act establishes a framework for congressional consideration of spending and revenue measures that, after being signed into law by the President, collectively comprise the national budget.

Examples of successful use or implementation

The national budget is published for public access to foster transparency and accountability. The American public has access to the President's budget proposal, and the appropriations and authorizing laws enacted by Congress, via the internet (<http://www.whitehouse.gov/omb/budget/fy2008> and <http://thomas.loc.gov>, respectively). The national budget also provides historical spending trends to help readers place future budget requests into context.

10. Subparagraph 2(b) of article 9 (Timely reporting on revenue and expenditures):

As authorized by 31 U.S.C. 3513(a), the U.S. Department of the Treasury reports cash receipts and outlays daily ("Daily Treasury Statement"), monthly ("Monthly Treasury Statement of Receipts and Outlays of the U.S. Government") and annually ("Combined Statement of Receipts, Outlays, and Balances of the U.S. Government"). Further, Article I, section 9, of the U.S. Constitution requires that "a regular statement and account of receipts and expenditures of all public money shall be published from time to time."

31 U.S.C. 901-902 requires the departments and agencies within the Executive Branch of the U.S. Government to report annually on revenue and expenditures from the prior fiscal year via financial statements. The Office of Management and Budget provides guidance to the departments and agencies on the format and content of the financial statements via the OMB Circular No. A-136, Financial Reporting Requirements (http://www.whitehouse.gov/omb/circulars/a136/a136_revised_2007.pdf). 31 U.S.C. 331 requires the Department of the Treasury, in coordination with the Office of Management and Budget, to prepare annual consolidated financial statements for the U.S. Government (<http://fms.treas.gov/fr/index.html>).

Examples of successful use or implementation:

The departments and agencies publish their annual financial statements on the internet (for example, State Department financial statements can be found at

<http://www.state.gov/s/d/rm/rls/perfrpt>). Similarly, the Department of the Treasury publishes the annual consolidated financial statements of the U.S. Government on the internet (<http://fms.treas.gov/fr/index.html>).

11. Subparagraph 2(c) of article 9 (Accounting and auditing standards):

The Federal Accounting Standards Advisory Board (FASAB) was established in 1990 to develop accounting standards for the U.S. Government. Since 1999, FASAB standards have been recognized as generally accepted accounting principles (GAAP) for the U.S. Government. FASAB has released 32 accounting standards to date (www.fasab.gov).

The Government Accountability Office (Legislative branch of the U.S. Government) publishes generally accepted government auditing standards (<http://www.gao.gov/govaud/ybk01.htm>). The Office of Management and Budget (Executive Branch of the U.S. Government) publishes an audit bulletin (<http://www.whitehouse.gov/omb/bulletins/fy2006/b06-03.pdf>), which provides additional audit requirements for financial statement audits of departments and agencies.

The Government Accountability Office and Offices of Inspector General within Executive Branch departments and agencies perform financial statement audits to ensure that financial reporting from departments and agencies are reliable. The Offices of Inspector General are granted their authority through the Inspector General Act (5 U.S.C. Appendix). The Office of Management and Budget reviews departments' and agencies' financial statements for consistency and reliability as well.

Examples of successful use or implementation:

The accounting standards and concepts published by FASAB are accessible via the internet (www.fasab.gov). FASAB also publishes current projects and meeting agenda. The Government Accountability Office also publishes its audit reports on the internet (www.gao.gov).

12. Subparagraph 2(d) of article 9 (Systems of risk management internal control):

The Federal Managers' Financial Integrity Act (31 U.S.C. 3512) requires the head of each department and agency to report annually on the effectiveness of the internal control within each respective department and agency. The Office of Management and Budget provides guidance to departments and agencies on implementing and maintaining effective internal control in the OMB Circular No. A-123, Management's Responsibility for Internal Control (http://www.whitehouse.gov/omb/circulars/a123/a123_rev.html).

As authorized by 5 U.S.C. Appendix, the Offices of Inspector General conduct audits and investigations for the purposes of promoting economy and efficiency in programs and operations, and detecting fraud and abuse.

Examples of successful use or implementation:

OMB Circular No. A-123 addresses multiple facets of internal control. Appendix A of the Circular addresses internal control over financial reporting and became effective beginning with fiscal year 2006. Numerous departments and agencies have indicated that by implementing the Circular requirements they have identified deficiencies within their internal control framework and have subsequently corrected/mitigated those deficiencies. Appendix C of the Circular addresses improper payments. Through implementing the requirements of this appendix, the U.S. Government has reduced its improper payments by approximately \$9 billion since 2004.

13. Subparagraph 2(e) of article 9 (Corrective action upon failure to comply):

The Inspector General Act (5 U.S.C. Appendix) authorizes the Inspector General to conduct audits and investigations for alleged violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds.

OMB Circular A-50, Audit Follow-up (<http://www.whitehouse.gov/omb/circulars/a050/a050.html>) requires the management of departments and agencies to respond to audit findings and provide corrective actions to resolve the deficiencies.

The Anti-Deficiency Act (31 U.S.C. 1341(a), 1342, 1350) provides civil and criminal penalties for U.S. Government employees who knowingly and willingly authorize and execute improper expenditures.

Examples of successful use or implementation:

The departments' and agencies' Inspectors General report semi-annually to the Congress on the activities, audits, and investigations performed during the preceding six-month period. The reports are available to the public as well (for example, State Department Semi-Annual Report can be found at <http://oig.state.gov/documents/organization/88720.pdf>).

14. Paragraph 3 of article 9 (Prevention of falsification of public expenditure records):

The Anti-Deficiency Act (31 U.S.C. 1341(a), 1342, 1350) provides civil and criminal penalties for U.S. Government employees who knowingly and willingly authorize and execute improper expenditures.

The Inspector General Act (5 U.S.C. Appendix) authorizes the Inspectors General to recommend policies for the identification and prosecution of participants in fraud and abuse. The Inspector General Act also authorizes the Inspectors General to conduct audits and report findings in which costs are not supported by adequate documentation.

U.S. Government employees are subject to administrative measures, which can include

separation from employment, if the employees do not maintain high standards of integrity, conduct, and concern for the public interest (5 U.S.C. 2301(b)(4), 7511-14). Depending on the type of conduct at issue, criminal and civil penalties may also be provided under Federal law.

PART 4:

Examples of Successful Use of UNCAC Articles 15, 17, 25 and 52(5)-(6), Bribery of national public officials and associated offenses

A. Summary of Recent United States Law Enforcement Efforts

The United States Department of Justice aggressively investigates, prosecutes, and punishes corruption of and by public officials at all levels of government (including local, state, and national public officials), in all branches of government (executive, legislative, and judicial), and involving both major United States political parties.

Within the past two years alone, for example, the Justice Department has convicted one sitting Member of Congress and one former Member of Congress of substantial public corruption charges, and has indicted another sitting Member of Congress on significant corruption and other charges. The Department has also recently convicted two former state governors of bribery offenses, and has conducted a large-scale bribery investigation into the activities of a well-known Washington, D.C. lobbyist. To date, that investigation has netted a total of 11 bribery-related convictions. Those convictions have included a guilty plea by the former Deputy Secretary of the Department of the Interior and the jury conviction of a former official of the United States General Services Administration, among others.

Statistically, the Justice Department has increased its enforcement efforts against public corruption in recent years. Over the five-year period from 2001 to 2005 (the most recent period for which data is available), the Department charged 5,749 individuals with public corruption offenses nationwide and obtained 4,846 convictions. Compared with the previous five year period (1996-2000), these figures represent an increase of 7.5 percent in the number of defendants charged and a 1.5 percent increase in the number of convictions.

B. Institutional Resources

1. The Criminal Division

The Justice Department has a dedicated unit within its Criminal Division in Washington, D.C., the Public Integrity Section, that specializes in enforcing the nation's anti-corruption laws. The Public Integrity Section was created in 1976 to consolidate into one unit the Justice Department's responsibilities for the prosecution of criminal abuses of the public trust by government officials.

The Section currently has 29 attorneys working full-time to prosecute selected cases involving federal, state, or local officials, and also to provide advice and assistance to prosecutors and investigators in the 93 United States Attorneys' Offices around the country. Collectively, the Section's attorneys possess a great deal of criminal trial experience, having conducted more than 700 criminal trials in their careers.

The Criminal Division supplements the resources available to the Public Integrity Section with attorneys from other sections within the Criminal Division – including the Fraud, Organized Crime and Racketeering, Computer Crimes and Intellectual Property, and Asset Forfeiture and Money Laundering sections, to name just three – and from the 93 U.S. Attorneys Offices.

2. The United States Attorneys' Offices

The United States federal judicial system is broken into 93 separate districts, and each one of those districts is assigned a senior prosecutor (called the United States Attorney, who is an official of the Department of Justice) and a staff of prosecutors to enforce federal laws in that district. Those offices, in addition to the Public Integrity Section, also enforce the United States anti-corruption laws.

3. The Federal Bureau of Investigation

The Justice Department has also dedicated increased resources to combating domestic public corruption. The Federal Bureau of Investigation, for example, currently has 639 agents dedicated to investigating public corruption matters, compared to 358 in 2002.

C. Examples of Recent Cases

Many examples of successful use of the UNCAC criminalization provisions by the United States involve overlapping criminal charges (*e.g.*, both bribery and obstruction), or involve criminal charges that are not necessarily directly related to alleged bribery but nevertheless part of the UNCAC and are used to prosecute abuses of the public trust (*e.g.*, wire fraud or the filing of false financial disclosure forms). Accordingly, the following cases are listed as examples of successful use of UNCAC articles 15, 17, 25 and 52(5)-(6), as well as successful prosecution and punishment of public corruption in the United States generally.

1. U.S. Congressional Cases

- 1 Former Congressman Randall Cunningham pleaded guilty to bribery charges and was sentenced in March 2006 to more than eight years in prison.
- 2 Sitting Congressman William Jefferson was indicted in June 2007 on charges of bribery, racketeering, honest services fraud, conspiracy, and violation of the Foreign Corrupt Practices Act. Jefferson's former

Legislative Assistant pleaded guilty to conspiracy and bribery and was sentenced in May 2006 to eight years in prison.

- 3 In connection with the ongoing investigation of a prominent Washington, D.C. lobbyist, Jack Abramoff, the Justice Department's Public Integrity and Fraud Sections have obtained many convictions to date, including:
 - ✓ Ohio Congressman Robert Ney pleaded guilty in September 2006 to conspiracy to commit multiple offenses – including honest services fraud, making false statements, and violations of his former chief of staff's one-year lobbying ban – and to making false statements to the U.S. House of Representatives. Ney was sentenced to 30 months in prison.
 - ✓ Former lobbyist Michael Scanlon pleaded guilty in November 2005 to conspiracy to commit bribery and honest services fraud.
 - ✓ Former lobbyist Jack Abramoff pleaded guilty in January 2006 to conspiracy, honest services fraud, and tax evasion.
 - ✓ Former lobbyist Neil Volz pleaded guilty in May 2006 to honest services fraud and violating the one-year lobbying ban applicable to former government officials.
 - ✓ Former lobbyist Tony C. Rudy pleaded guilty in March 2006 to conspiring with Jack Abramoff, Michael Scanlon and others to commit honest services fraud, mail and wire fraud, and a violation of conflict of interest post-employment restrictions.
 - ✓ Department of the Interior employee Roger G. Stillwell pleaded guilty in June 2006 to falsely certifying his Executive Branch Confidential Financial Disclosure Report, and was sentenced to six months of probation.
 - ✓ William Heaton, former Chief of Staff for Ohio Congressman Robert Ney, pleaded guilty to conspiracy to commit honest services wire fraud on February 26, 2007.
 - ✓ Mark Zachares, a former staff member of the House Transportation and Infrastructure Committee and former Secretary for the Department of Labor and Immigration in the Commonwealth of Northern Mariana Islands, pleaded guilty on April 24, 2007 to conspiracy to commit honest services fraud.
 - ✓ Italia Federici, the president of the Council of Republicans for Environmental Advocacy (CREA), pleaded guilty on June 8, 2007, to

one count of income tax evasion and one count of obstructing the United States Senate investigation into the activities of former lobbyist Jack Abramoff.

2. U.S. Executive Branch Cases

- 1 In connection with the Abramoff investigation, David Safavian, former Chief of Staff to the Administrator of the United States General Services Administration, was convicted by a jury in June 2006 of submitting false statements to an ethics official, agents of the Inspector General, and a Senate committee, and of obstructing the Inspector General's investigation. Safavian was sentenced to 18 months in prison.
- 2 Former Deputy Secretary for the Department of the Interior, James Steven Griles, pleaded guilty in March 2007 to obstruction of justice for lying to the Senate Committee on Indian Affairs, which was investigating the Abramoff matter. Griles was sentenced to 10 months in prison.
- 3 In March 2007, Kenneth Harvey, the former Chief of the Acquisition Logistics and Field Support Branch within the Army's Intelligence and Security Command (INSCOM), was sentenced to 72 months in prison for his accepting more than \$40,000 in bribes from a defense contractor.
- 4 In February 2007, Steven Merkes, a former Department of Defense employee, pleaded guilty to accepting illegal gratuities – including \$24,000 in cash and a job offer – in return for official acts while working as an operational support planner in the Future Operations Division of the U.S. Army Headquarters, Special Operations Command-Europe.

3. State Cases

- 1 Former Governor of Illinois George Ryan was convicted by a jury in April 2006 on numerous charges corruption including racketeering and honest services fraud.
- 2 Former Governor of Alabama Don Siegelman and former corporate Chief Executive Officer Richard Scrushy, were convicted by a jury in June 2006 of conspiracy, bribery, and mail fraud. In June, 2007, Siegelman was sentenced to 88 months in prison and a \$50,000 fine, and Scrushy was sentenced to 82 months in prison and a \$150,000 fine.
- 3 Former Mayor of Atlanta Bill Campbell was convicted by a jury in March 2006 on tax evasion charges.
- 4 Former Secretary General Marcos Morell-Corrada and gubernatorial campaign manager Rene Vazquez-Botet of the New Progressive Party in

Puerto Rico were convicted of conspiracy, extortion, and tax fraud by a jury in November 2006 and sentenced to 60 months in prison.

PART 5:

Examples of successful use of Article 16, Bribery of foreign public officials

A. Summary of United States Law Enforcement Efforts

Enforcing the United States Foreign Corrupt Practices Act (FCPA) is a significant priority for the Criminal Division of the United States Department of Justice. Since 2001, the Criminal Division's Fraud Section has substantially increased its enforcement of this important law prohibiting bribery of foreign public officials. In the last two years alone, FCPA enforcement has hit historic highs. In 2006, for example, the Fraud Section initiated eight FCPA prosecutions, which was a record high for a single year in the 30-year history of the FCPA. As of July 2007, the Justice Department has already exceeded that total. These prosecutions involve both individuals and companies from a broad range of industries involving bribery in a broad range of geographical locations.

In addition to those law enforcement efforts, the Justice Department's senior law enforcement officials have conducted outreach to the United States business community in speeches, interviews and otherwise, to reinforce the message that bribery is bad for business. An example of one of those speeches, by Assistant Attorney General Alice Fisher, can be found at

<http://www.usdoj.gov/criminal/fraud/docs/reports/speech/2006/10-16-06AAGFCPASpeech.pdf>.

Finally, the Justice Department has dedicated additional resources to enforcing this important law, including dedicating full-time prosecutors and FBI agents to FCPA enforcement. Cumulatively, these efforts have had the effect of increasing awareness of the FCPA among businesses and individuals doing business overseas.

B. Recent Cases

The following are summaries of some recent FCPA enforcement cases formally charged or resolved by the Department of Justice:

- 1 **United States v. Steven Ott and Roger Young** (2007): Steven J. Ott and Roger Michael Young, former executives of the global telecommunications company ITXC Corporation, pled guilty on July 25, 2007, to separate one-count criminal informations charging them with conspiring to violate the Foreign Corrupt Practices Act (FCPA) and the Travel Act. The defendants face up to five years in prison and a \$250,000 fine. Sentencing is scheduled for Oct. 29, 2007. ITXC was a publicly traded company that provided telecommunication services, primarily Voice Over Internet Protocol (VOIP) services, to carriers across the globe. Ott served as ITXC's Executive Vice-President of Global Sales and Young served as ITXC's Managing Director for Africa and the Middle East. In pleading, both defendants admitted that between September 1999 and October 2004, they conspired with each other and other former ITXC employees and

officers to make corrupt payments to employees of foreign state-owned and foreign-owned telecommunications carriers in Nigeria, Rwanda, and Senegal to obtain and retain contracts for ITXC. The employees of the state-owned telecommunications carriers were foreign officials, as defined by the FCPA. The informations charge that Ott, Young, and their co-conspirators caused ITXC to pay approximately \$266,000 in bribes to foreign officials; specifically, about \$166,000 to an official employed by Nitel, a telecommunications company wholly owned by the Nigerian government; approximately \$26,000 to an official employed by Rwandatel, a telecommunications company that was wholly owned by the Rwandan government; and approximately \$74,000 to an employee of Sonatel, a telecommunications carrier partly owned by the Senegalese government.

- 2 **United States v. Jason E. Steph** (2007): A federal grand jury in Houston has indicted a former executive of a subsidiary of Houston-based Willbros Group Inc., on charges of conspiring to make corrupt payments to Nigerian officials in violation of the Foreign Corrupt Practices Act (FCPA). The four-count indictment charges Jason Edward Steph, 37, a U.S. citizen residing in Kazakhstan, with conspiring to make over \$6 million in bribe payments to Nigerian officials in order to obtain and retain gas pipeline construction business from a joint venture majority-owned and controlled by the Nigerian state oil company.
- 3 **United States v. Si Chan Wooh** (2007): Si Chan Wooh, a former senior officer of SSI International, Inc., a wholly-owned subsidiary of Schnitzer Steel Industries Inc. until 2006, (see Schnitzer Steel, below) pled guilty on June 29, 2007 to conspiracy to violate the FCPA. Wooh admitted that he had conspired with Schnitzer Steel, SSI International, SSI Korea, a former senior executive officer of Schnitzer Steel, and others, to violate the FCPA in connection with corrupt payments paid over almost a 10-year period to officers and employees of nearly all of Schnitzer Steel's government-owned customers in China. As part of his plea, Wooh agreed to cooperate with the Department of Justice's ongoing investigation.
- 4 **United States v. Leo Winston Smith** (2007): On June 22, 2007, Leo Winston Smith of Newport Beach, Calif., a former executive of Santa Ana, Calif.-based Pacific Consolidated Industries LP (PCI), was arrested for allegedly violating the Foreign Corrupt Practices Act (FCPA) as part of a conspiracy to bribe a United Kingdom Ministry of Defense official in order to obtain lucrative contracts with the U.K. Royal Air Force. Smith was initially indicted by a federal grand jury in Santa Ana on April 25, 2007. The indictment alleges that Smith conspired to make over \$300,000 in bribe payments for the benefit of the U.K. Ministry of Defense official in order to obtain equipment contracts for Pacific Consolidated Industries valued at over \$11 million dollars. In addition to the FCPA violations, the indictment also charges Smith with money laundering and tax offenses.
- 5 **United States v. Christian Sapsizian and Edgar Valverde Acosta** (2007): On March 20, 2007, in the Southern District of Florida, a 10-count superseding

indictment added a second former executive of Alcatel CIT, a wholly owned subsidiary of Alcatel, S.A., a French telecommunication services company, to the original December 2006 indictment charging Christian Sapsizian, former Deputy Vice President of Latin America for Alcatel CIT. The superseding indictment charges Sapsizian, a French citizen, and Edgar Valverde Acosta, a Costa Rican citizen and former Senior Country Officer at Alcatel de Costa Rica, Alcatel's local affiliate, each with one count of conspiring to violate the Foreign Corrupt Practices Act (FCPA) (Count 1: 18 U.S.C. § 371), eight counts of making corrupt payments in violation of the FCPA (Counts 2-9: 15 U.S.C. § 78dd-1), and one count of conspiracy to commit money laundering (Count 10: 18 U.S.C. § 1956). The charges stem from the alleged payment of more than \$2.5 million to a government official serving on the evaluation committee for the award of a \$149 million contract, won by Alcatel CIT, with the state-owned telecommunications authority, el Instituto Costarricense de Electricidad, half of which is alleged to have been given to the former President of Costa Rica. On June 7, 2007, Sapsizian pleaded guilty to participating in the payment of more than \$2.5 million in bribes to senior Costa Rican officials.

- 6 **United States v. Baker Hughes Services International, Inc.** (2007): On April 26, in the Southern District of Texas, Baker Hughes Services International, Inc. (BHSI), a wholly owned subsidiary of Baker Hughes Incorporated, pled guilty to a three-count criminal information, filed under seal on April 11, charging it with one count of conspiracy, one count of violating the Foreign Corrupt Practices Act (FCPA), and one count of aiding and abetting the falsification of books and records. Also on April 26, the parent corporation, Baker Hughes Incorporated, entered into a two-year deferred prosecution agreement in connection with a three-count criminal information, filed under seal on April 11, charging it with one count of conspiracy, one count of violating the FCPA and one count of falsification of books and records. Both informations were unsealed on April 26. As part of the plea and deferred prosecution agreements, it was agreed that BHSI would pay a criminal fine of \$11 million, serve a three-year term of organizational probation and adopt a comprehensive anti-bribery compliance program. In a related matter, Baker Hughes reached a settlement of a complaint filed by the Securities and Exchange Commission, under which it agreed to pay \$10 million in civil penalties and more than \$23 million in disgorgement of all profits it earned in connection with the Karachaganak project, including prejudgment interest. The \$44 million in combined fines and penalties is the largest monetary sanction ever imposed in an FCPA case. As the charging and plea documents reflect, the government of Kazakhstan and Kazakhoil, entered into an agreement with a consortium of four international oil companies for the purpose of developing and operating a giant oil field known as Karachaganak in northwestern Kazakhstan. In February 2000, BHSI submitted a bid, on behalf of Baker Hughes, to perform comprehensive services such as project management, oil drilling, and support services in connection with the Karachaganak project. Kazakhoil wielded considerable influence as Kazakhstan's national oil company, and the ultimate award of any contract by the consortium of international oil companies depended upon the favorable recommendation of Kazakhoil officials. After BHSI

submitted its bid for the Karachaganak project and before the award was announced, Kazakhoil officials demanded that Baker Hughes pay a commission to “Consulting Firm A,” located on the Isle of Man, to act as its agent. Although Consulting Firm A had performed no services to assist Baker Hughes, in September 2000, BHSI agreed to pay a commission equal to 2 percent of the revenue earned on the Karachaganak project, and 3 percent on future projects in Kazakhstan. Baker Hughes was awarded the contract for Karachaganak in October 2000. From May 2001 through November 2003, Baker Hughes paid a total of \$4.1 million in commissions to Consulting Firm A. The payments were made from a BHSI bank account in Houston to an account of Consulting Firm A at a bank in London.

- 7 **United States v. Vetco Gray Controls, Inc., Vetco Gray Controls, Ltd., Vetco Gray UK Ltd., and Aibel Group Limited** (2007): On February 6, 2007 three wholly owned subsidiaries of Vetco International, Ltd., a global supplier of products and services for oil drilling production, pleaded guilty and were sentenced for conspiring to violate the FCPA and for violating the anti-bribery provisions of the FCPA in connection with the payment of approximately \$2.1 million in corrupt payments to Nigerian government officials to avoid paying customs duties. From September 2002 to April 2005 these corrupt payments were paid through a major international freight forwarding and customs clearance company to employees of the Nigerian Customs Service. Aibel Group, Ltd., another wholly owned subsidiary of Vetco International, simultaneously entered into a deferred prosecution agreement regarding the same underlying conduct. As part of the plea and deferred prosecution agreements, it was agreed that Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd. would pay criminal fines of \$6 million, \$8 million, and \$12 million, respectively, for a total of \$26 million. In addition to the criminal fines, the plea agreements and the deferred prosecution agreement require the defendants to hire an independent monitor to oversee the creation and maintenance of a robust compliance program.
- 8 **United States v. SSI International Far East Ltd.** (2006): On October 16, 2006, SSI International Far East Ltd. (SSI Korea), a wholly-owned subsidiary of Schnitzer Steel Industries Inc., pleaded guilty to violating the Foreign Corrupt Practices Act, conspiracy, and wire fraud in connection with more than \$1.8 million in corrupt payments to officers and employees of government-owned customers in China and South Korea to induce them to purchase scrap metal from Schnitzer Steel. SSI Korea was sentenced to pay a \$7.5 million criminal fine. Schnitzer Steel Industries Inc. entered into a three-year deferred prosecution agreement regarding the same underlying activity and agreed to the appointment of a compliance consultant.
- 9 **United States v. Statoil ASA** (2006): Statoil ASA, a Norwegian corporation listed on the New York Stock Exchange, entered into a three-year deferred prosecution agreement on October 13, 2006; admitted to paying \$5.2 million in bribes to an Iranian official in order to secure oil and gas rights in Iran; agreed to pay a \$10.5 million penalty, with a credit for the approximately \$3 million fine

- imposed by Okokrim in connection with a proceeding in Norway; and agreed to the appointment of a compliance consultant. Statoil agreed to cooperate fully with the Department of Justice and the SEC in connection with further inquiries.
- 10 **United States v. Jim Bob Brown** (2006): Jim Bob Brown, a former executive of a subsidiary of Houston-based Willbros Group Inc., pleaded guilty to violating the FCPA on September 14, 2006. Brown acknowledged that he and another Nigeria-based Willbros executive paid approximately \$1.5 million in cash as part of a conspiracy to make corrupt payments to officials of the Nigerian state-owned oil company to obtain and retain gas pipeline construction business in Nigeria. Brown also admitted that he conspired with Willbros employees to pay at least \$300,000 to officials of the Ecuadorian state-owned oil company to obtain a gas pipeline rehabilitation contract.
 - 11 **United States v. Yaw Osei Amoako** (2006): On September 6, 2006, Yaw Osei Amoako pleaded guilty to conspiring to violate the FCPA and the Travel Act during his employment as a regional manager for Africa by the ITXC Corporation (in 2004, ITXC merged with Teleglobe International Holdings Ltd.). Amoako acknowledged that he paid approximately \$266,000 in bribes in the form of illegal “commissions” to employees of foreign state-owned telecommunications carriers in various African countries. Amoako was sentenced to 18 months in prison.
 - 12 **United States v. Faheem Mousa Salam** (2006): Faheem Mousa Salam, a former employee of a U.S. government contractor working in Iraq, pleaded guilty to violations of the FCPA on August 4, 2006. Salam admitted that he offered a senior Iraqi police official approximately \$60,000 in exchange for the official’s assistance with facilitating the sale of armored vests and a sophisticated map printer for approximately \$1 million. Salam also acknowledged that he later offered an undercover agent of the Office of the Special Inspector General for Iraq Reconstruction a separate bribe to process the contracts. Salam was sentenced on February 2, 2007 in the U.S. District Court for the District of Columbia to 36 months’ imprisonment and two years’ supervised release.
 - 13 **United States v. Steven Lynnwood Head** (2006): Steven Lynnwood Head, former CEO of Titan Africa, Inc., a subsidiary of the Titan Corporation, pleaded guilty to a one-count Information charging falsification of the books, records, and accounts of Titan Corporation. Further discussion regarding the Titan case appears below under United States v. Titan Corporation.
 - 14 **United States v. Richard John Novak** (2006): On March 20, 2006, Richard John Novak pleaded guilty to one count of violating the FCPA and an additional count of wire fraud and mail fraud in connection with corrupt payments to embassy officials of Liberia, the Director of National Commission of Higher Education of Liberia, and the Director General of Higher Education of Liberia for their assistance in obtaining false accreditation for online universities as part of an online “diploma-mill” scheme.

- 15 **United States v. DPC (Tianjin) Co. Ltd.** (2005): On May 20, 2005, DPC (Tianjin) Co. Ltd., the Chinese subsidiary of Los Angeles-based Diagnostic Products Corporation (DPC) – pleaded guilty to violating the FCPA in connection with the payment of approximately \$1.6 million in bribes in the form of illegal “commissions” to physicians and laboratory personnel employed by government-owned hospitals in the People’s Republic of China. In addition to pleading guilty, the company, a producer and seller of diagnostic medical equipment, agreed to adopt internal compliance measures, cooperate with ongoing criminal and SEC civil investigations, and appoint an independent compliance expert to audit the company’s compliance program and monitor its implementation of new internal policies and procedures. DPC Tianjin paid a criminal penalty of \$2 million.
- 16 **Micrus Corporation** (2005): On February 28, 2005, Micrus Corporation, a privately held company based in Sunnyvale, California, and its Swiss subsidiary Micrus S.A. entered into a two-year deferred prosecution agreement with the Justice Department in which Micrus and its subsidiary admitted paying more than \$105,000 to doctors employed at publicly owned and operated hospitals in the French Republic, the Republic of Turkey, the Kingdom of Spain and the Federal Republic of Germany, in return for the hospitals purchase of Micrus’ medical devices; agreed to pay \$450,000 in penalties; agreed to implement a rigorous compliance program with a monitor for a period of three years; and agreed to cooperate fully in the investigation by the Department of Justice.
- 17 **United States v. Titan Corp.** (2005): On March 1, 2005, Titan Corporation, a San Diego-based military intelligence and communications company, pleaded guilty to a three-count Information charging it with violating the anti-bribery and books and records provisions of the FCPA and assisting in the filing of a false tax return. The charges stem from Titan’s corrupt payment of more than \$2 million towards the election of Benin’s then-incumbent President. That same day, Titan was sentenced to pay a criminal fine of \$13,000,000 and serve three years’ probation. Titan was ordered to adopt a strict FCPA compliance program. Titan also agreed to pay \$15.4 million in a parallel civil case filed by the SEC. The combined civil/criminal penalty of \$28 million imposed is the largest FCPA penalty for a public company.
- 18 **InVision Technologies Inc.** (2004): On December 6, 2004, InVision Technologies, Inc., a U.S. company, entered into a two-year deferred prosecution agreement with the Justice Department in which it admitted to violations of the FCPA in Thailand, China, and the Philippines, agreed to pay \$800,000 in penalties, agreed to implement a rigorous compliance program with a monitor, and agreed to cooperate fully in the ongoing parallel investigations by the Justice Department and the SEC. General Electric Company, which acquired InVision after the criminal conduct, agreed to ensure compliance by InVision of InVision's obligations under its agreement and to effect FCPA compliance programs within GE's new InVision business. GE and InVision conducted an internal investigation of potential FCPA violations discovered in the course of acquisition due diligence and voluntarily disclosed their findings to the Justice Department

and the SEC. Related complaints and orders were filed by the SEC.

- 19 **United States v. Monsanto Co.** (2005): On January 6, 2005, Monsanto Company entered into a deferred prosecution agreement with the Justice Department in which it agreed to pay a \$1 million penalty and admit to violations of the FCPA involving a payment to an Indonesian official to induce him (unsuccessfully) to repeal an environmental regulation, and a related false books and records entry. Pursuant to the agreement, the Government will seek the dismissal of the charges in three years provided the company implements a strict compliance program and continues to cooperate with the Government's investigation. Monsanto also agreed to hire an independent compliance monitor to meet its obligations. Related complaints and orders were filed by the SEC.
- 20 **United States v. Hans Bodmer** (2003): In 2003, a grand jury in New York returned an indictment charging Hans Bodmer, a Swiss lawyer, with conspiring to violate the FCPA in connection with alleged bribery of senior officials of the Government of Azerbaijan. At the United States' request, Korea extradited Mr. Bodmer to the United States in 2004. In June 2004, the trial court dismissed the FCPA charges based on technical issues relating to extradition. In October 2004, Mr. Bodmer pleaded guilty to money laundering.
- 21 **United States v. ABB Vetco Gray, Inc. and ABB Vetco Gray (UK) Ltd.; SEC v. ABB Ltd.** (2004): In July 2004, two subsidiaries of ABB Ltd., a Swiss company, pleaded guilty to violations of the FCPA in connection with obtaining oil construction projects in Nigeria and agreed to pay a combined fine of \$11 million. On the same date, the SEC charged the Swiss parent company with violations of the books and records provisions of the FCPA related to the Nigerian conduct and issues involving payments in other countries, and the parent company agreed to disgorge illicit profits of \$5.9 million.

C. Global Anti-Corruption Training Efforts

The United States works closely with our international partners to build and strengthen the ability of prosecutors around the world to fight corruption through our overseas prosecutorial and police training programs. Among other things, the United States sends experienced U.S. prosecutors (called Resident Legal Advisors or RLAs) and law enforcement officials across the globe to provide anticorruption assistance through seminars and hands-on consultations.

Some of this training occurs on a bilateral basis, and some occurs at the various International Law Enforcement Academies (ILEAs) in various regions of the world including Europe, Asia and Africa. That assistance involves the development of specialized prosecutorial and investigative units, anti-corruption task forces, anti-corruption commissions and national strategies, internal integrity programs, and training on how to investigate and prosecute corruption.

For example, in 2006, the U.S. Justice Department's police training unit, ICITAP, in

partnership with the U.S. Department of State, provided 94 Public Integrity, Accountability, and Anti-Corruption training sessions in 13 countries. Additionally, the Department's prosecutorial training unit, OPDAT, has 40 Resident Legal Advisors working in 27 different countries to train our foreign counterparts in anti-corruption prosecutions. OPDAT also organizes and implements bi-lateral and regional conferences on anti-corruption prosecution around the world.

PART 6:

Examples of Successful Use of UNCAC Article 23, Laundering of Proceeds of Crime

A. Summary of Anti-Money Laundering Efforts

The United States Department of Justice aggressively investigates, prosecutes and punishes the laundering of proceeds of crime, consistent with UNCAC Article 23. An overview of the Justice Department's efforts in this area – and of the anti-money laundering programs and strategies of the entire United States government, including prosecution statistics – can be found at Appendix B to the 2007 National Money Laundering Strategy at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>. Among other things, the Justice Department has specialized unit of prosecutors dedicated to money laundering and asset forfeiture. Additionally, the United States has numerous anti-money laundering programs and initiatives both domestically and around the world, many of which are summarized in a recent report by the Department of State's Bureau of International Narcotics and Law Enforcement, at <http://www.state.gov/documents/organization/62393.pdf>.

B. Case Examples

Virtually every type of major criminal case in the United States – from domestic corruption to foreign corruption to embezzlement – potentially has a money laundering component, and the United States government charges money laundering offenses and forfeits ill-gotten funds (in the billions of U.S. dollars to date) where appropriate. Although individual cases are too numerous to list in their entirety in this annex, a review of the U.S. Justice Department's website (searching for the phrase “money laundering”) reveals dozens of recent cases involving money laundering charges. One particularly illustrative case, which reveals the intersection these issues, is the recent indictment of sitting U.S. Congressman William Jefferson, described in the following press release: http://www.usdoj.gov/criminal/pr/press_releases/2007/06/06-04-07wjefferson-indict.pdf.

Cases involving foreign corruption often have a money-laundering component. As described above, for example, on June 22, 2007, Leo Winston Smith of Newport Beach, Calif., a former executive of Santa Ana, Calif.-based Pacific Consolidated Industries LP (PCI), was arrested for allegedly violating the Foreign Corrupt Practices Act (FCPA) as part of a conspiracy to bribe a United Kingdom Ministry of Defense official in order to obtain lucrative contracts with the U.K. Royal Air Force. Smith was initially indicted by a federal grand jury in Santa Ana on April 25, 2007. The indictment alleges that Smith conspired to make over \$300,000 in bribe payments for the benefit of the U.K. Ministry of Defense official in order to obtain equipment contracts for Pacific Consolidated Industries valued at over \$11 million dollars. In addition to the FCPA violations, the indictment also charges Smith with money laundering and tax offenses.

Additionally, on March 20, 2007, in the Southern District of Florida, a 10-count superseding indictment added a second former executive of Alcatel CIT, a wholly owned

subsidiary of Alcatel, S.A., a French telecommunication services company, to the original December 2006 indictment charging Christian Sapsizian, former Deputy Vice President of Latin America for Alcatel CIT. The superseding indictment charges Sapsizian, a French citizen, and Edgar Valverde Acosta, a Costa Rican citizen and former Senior Country Officer at Alcatel de Costa Rica, Alcatel's local affiliate, each with one count of conspiring to violate the Foreign Corrupt Practices Act (FCPA) (Count 1: 18 U.S.C. § 371), eight counts of making corrupt payments in violation of the FCPA (Counts 2-9: 15 U.S.C. § 78dd-1), and one count of conspiracy to commit money laundering (Count 10: 18 U.S.C. § 1956). The charges stem from the alleged payment of more than \$2.5 million to a government official serving on the evaluation committee for the award of a \$149 million contract, won by Alcatel CIT, with the state-owned telecommunications authority, el Instituto Costarricense de Electricidad, half of which is alleged to have been given to the former President of Costa Rica. On June 7, 2007, Sapsizian pleaded guilty to participating in the payment of more than \$2.5 million in bribes to senior Costa Rican officials.

Finally, in 2003, a grand jury in New York returned an indictment charging Hans Bodmer, a Swiss lawyer, with conspiring to violate the FCPA in connection with alleged bribery of senior officials of the Government of Azerbaijan. At the United States' request, Korea extradited Mr. Bodmer to the United States in 2004. In June 2004, the trial court dismissed the FCPA charges based on technical issues relating to extradition. In October 2004, Mr. Bodmer pleaded guilty to money laundering.

These cases are by no means exhaustive, but rather are intended to demonstrate that the United States regularly uses its robust battery of anti-money laundering laws in a wide range of criminal cases and with great frequency.

PART 7:

Examples of Successful Use of UNCAC Article 54, Mechanisms for recovery of property through international cooperation in confiscation, and Article 57, Disposal of confiscated property

The United States has repeatedly taken necessary legal actions in its courts to recover ill-gotten property allegedly connected to corruption in other States Parties and to appropriately dispose of that property, consistent with U.S. law and UNCAC Articles 54 and 57. One very recent example of this occurred in July 2007, when the U.S. Justice Department filed a civil complaint in federal court in Miami seeking the forfeiture of approximately \$110 million in proceeds from Italian public corruption offenses that were allegedly laundered in the United States. A description of that case can be found at: http://www.usdoj.gov/criminal/pr/press_releases/2007/07/07-16-07afmls-complaint.pdf.

Another recent example is the Justice Department's recent filing of an "in rem" forfeiture action against \$84 million allegedly traceable to illegal payments and agreement to conditional release of funds to foundation to benefit poor children in Kazakhstan: <http://www.usdoj.gov/usao/nys/pressreleases/May07/pictetforfeiturecomplaintpr.pdf>.

Additionally, in 2004, the United States repatriated funds to Peru and Nicaragua in conjunction with investigations and forfeiture actions involving foreign official corruption. In August 2004, the United States repatriated \$20.2 million to the Government of Peru, representing 100 percent of the net assets forfeited in two Department of Justice "in rem" forfeiture actions filed in connection with an FBI investigation into fraud, corruption and money laundering committed by former Peruvian intelligence chief Vladimiro Montesinos, his associate Victor Alberto Venero-Garrido, and other associates of the government of former Peruvian President Alberto Fujimori. The funds were transferred in accordance with an agreement entered into between the United States and Peru at the 2004 Special Summit of the Americas that provides for transparency as well as special consideration for the compensation of victims and support for Peruvian anticorruption efforts. This financial investigation also contributed to the successful apprehension of Montesinos in Venezuela and the successful repatriation of additional funds to Peru, including more than \$14 million voluntarily repatriated by Venero.

In December 2004, the Treasury Department transferred \$2.7 million to the Government of Nicaragua, representing 100 percent of the net assets forfeited in a Department of Justice "in rem" forfeiture action filed in conjunction with a Department of Homeland Security/Immigration and Customs Enforcement investigation related to the criminal conduct of Byron Jerez, former Nicaraguan Director of Taxation and associate of former President Aleman. Pursuant to the agreement authorizing the transfer of these funds, almost all of the funds will be utilized for education projects, with \$100,000 going to support anticorruption efforts of the Nicaraguan Prosecutor General's Office.

Finally, in late 2006, the Department for the first time enforced a foreign restraining order (from the United Kingdom) to freeze more than \$400,000 in assets connected to a former Nigerian Governor who is charged with alleged corruption

offenses in Nigeria and money laundering in the United Kingdom.

These and other cases are summarized in a recent report on United States anti-money laundering efforts by the Department of State's Bureau of International Narcotics and Law Enforcement, at <http://www.state.gov/documents/organization/62393.pdf>. These cases, which are by no means exhaustive, exemplify the effective use of asset forfeiture and financial investigations to combat transnational money laundering and demonstrate the commitment of the United States to finding, seizing, forfeiting and recovering the proceeds of foreign official corruption on behalf of other countries.