

Anti-Corruption Academic Initiative
Menu of Topics
August 2012

1. Introduction to Anti-corruption Studies

In introducing the course to students, the relevance and reasons for studying corruption will be outlined. This will include career paths in anti-corruption, such as criminal law, academic scholarship, policy development and implementation, training, technical assistance and advocacy. The purpose, learning outcomes, objectives and an outline of the topics to be covered by the course will also be set out.

2. Defining Corruption I – Conceptual Considerations

** To be developed further in teacher's manual (TM):*

In this section, students will be invited to discuss and define corruption. Past, failed attempts to define corruption in a universally accepted way will be used as examples to delineate the evolution of definitions and thinking. The potential benefits of not having to work with just one definition will also be explained and students will achieve a broader understanding of corruption, particularly cultural conceptions, so that they may be able to discuss the causes, effects and remedies for corruption later in the course. The way in which corruption manifests itself in different regions and contexts varies greatly, so a flexible approach allows for comparisons and contrasts as well as functional equivalents. The benefits of a broader concept of corruption will be appreciated by students who will also consider how a descriptive approach - whereby various acts and offences are defined - can be more productive for discussion and seeking a remedy than a strict definition of corruption. The teacher will illustrate this with specific references to the ways in which international instruments and implementing legislation tackle this issue. The course will also highlight various types of and dispel myths about corruption.

A basic understanding of corruption and related concepts facilitates the identification of corruption drivers, corruption dynamics, corruption opportunities, and possible solutions in specific contexts. A basic understanding of corruption-related concepts is also crucial for any move towards a systematic quantification of the phenomenon and of progress is controlling it.

3. **Defining Corruption II – Concrete Offences**

- *Like most other segments, the breadth of this segment and the related course materials will depend on the total number of hours assigned to the course and the instructor's perception of the importance of this topic.*
- *This topic on corruption offences is also touched upon in other segments of the Outline (e.g. 5(b), 6(b) & (c), 10(e), 15 and 16).*

The purpose of this segment is to introduce students to the major types of corruption offences (public, private, domestic and international) that are defined in domestic law and international instruments. In addition to the offences in the UN Convention Against Corruption (UNCAC), teachers will introduce students to corruption offences set out in other regional instruments that are most relevant to their country, including the OECD Convention on Combating Bribery of Foreign Public Officials and the AU Convention, the Council of Europe Conventions, OAS Convention, ECOWAS Protocol and EU instruments. Students will then analyze the extent to which their domestic corruption offences are similar to and different from the corruption offences in the relevant international instruments. A key focus will be on the extent, if any, to which the students' domestic law needs to be amended to comply with international standards. Finally students will compare and contrast domestic corruption offences with corruption offences in other jurisdictions – e.g. one common law country (such as the new U.K. Bribery Act), one civil law country, one sharia law system or one mixed system (examples to be provided/suggested). The corruption laws and relevant provisions from jurisdictions around the world are now available on UNODC's TRACK portal.

(<https://track.unodc.org/LegalLibrary/Pages/home.aspx>).

Students will be able to explain the following concepts and use them confidently:

- Bribery
- Passive bribery
- Active bribery
- Bribery of national public officials
- Bribery of foreign public officials and officials of public international organizations
- Bribery in the Private Sector
- Domestic/international
- Facilitation Payments
- Fraud

- Obstruction of justice
- Embezzlement, misappropriation or other diversions of property by a public official
- Trading in influence
- Abuse of function/discretion
- Illicit enrichment
- Laundering of proceeds of corruption offences

[For further information on the relationship between domestic criminal laws and international anti-corruption instruments see Topic 6: Sources of Anti-Corruption Laws].

4. Terminology of corruption

In this section, students will familiarise themselves with the terms and their meanings that are often referred to when discussing corruption or corrupt practices. By reference to international instruments and national legislation and systems, students will be able to give clear definitions for the following terms as well as any other key terms defined in treaties or national laws:

- a) Public Official/Foreign Public Official
- b) Official of International Organisations
- c) Due process
- d) Due diligence
- e) Associated person
- f) Undue advantage

5. Concepts and nature of corruption

In this section, the historical development, categories, causes and impact of corruption will be explained to students to help them understand fundamental concepts of governance and the problematic nature of corruption.

The overall objective of this section is to introduce, improve, and consolidate knowledge of the concept of corruption and to develop basic skills for analyzing the phenomenon of corruption.

a) Historical development

Students will chart the historical development of corruption and how it has developed since the advent of the modern nation-state, particularly in early state development stages, where government institutions are not well established and key checks and balances are slowly introduced.

b) Categories of corruption

The different types and levels of corruption will be considered by students, in particular:

- Public corruption (in relationships between public officials or between public officials and private actors)
- Private corruption (in relationships between private actors: professionals, corporations, small enterprises, NGOs, etc.)
- Petty and grand political corruption
- Domestic and international corruption
- Bureaucratic Corruption / Bureaucratic pathology

[For more detailed information on specific corruption offences see Topic 3: Defining Corruption II – Concrete Offences].

c) Causes of corruption

Students will think about the more apparent and more subtle reasons or causes of corruption which will aid their understanding of how corruption can be tackled. Students will also consider different factors operating in diverse regions and environments. Theoretical insights and contributions from different disciplines will be considered (e.g. political science, sociology, psychology, international relations, business, law, history, anthropology, religion, etc.).

d) Effects and impact of corruption

Students will explore and discuss the impact of corruption and the damaging effects it can have on a country. They will recognise the connection between the following as well as any other impacts the teacher feels is important to the aims of the course:

- Corruption and development
- Corruption and the rule of law
- Corruption and public policy

- Corruption and the environment
- Corruption and public health
- Corruption and security
- Corruption and public administration/public officials
- Corruption and human rights

e) Corruption as a global offence

The impact of globalisation will be considered in order to further contextualize and enhance the students' understanding of the nature, scale and mechanics of different types of corruption. Examples of corrupt practices on a global scale will be used to illustrate multijurisdictional activities and operations, facilitative conditions and control challenges.

f) Corruption as a facilitator of other crimes

- Corruption and organized crime
- Corruption and politics
- Corruption and business
- Corruption, economy and public policy

6. Sources of Anti-Corruption Laws

This section explores how various hard and soft law sources result into obligations for specific actors to enhance the students' understanding of legal measures and sanctions that can be imposed upon those found guilty of corruption. The discussion will cover both organizational and individual actors. The course will also explore where lies ultimately the responsibility for corrupt practices and when/whether this may reach all the way up to a high level public official or a CEO. The following sources will be considered by students in detail:

a) Principles of International Law

- Introduction and basic principles (Vienna Convention on the Law of Treaties etc.)
- Level of obligation for States parties
- Interplay between global, regional and national instruments
- Implementation in national law and challenges to implementation

b) General Concepts, Principles and Customs of International Law

- Jurisdiction/Territoriality
- National treatment
- Conflicts of Law

- EU context: *acquis communautaire* (the body of EU law)

c) International Treaties and Conventions

- UN Convention against Corruption (UNCAC)
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD)
- AU Convention on Preventing and Combating Corruption and ECOWAS Protocol
- OAS Inter-American Convention against Corruption
- Council of Europe Conventions
- EU instruments
- Mechanisms monitoring implementation (Implementation Review Group of UNCAC or IRG, Group of States Against Corruption or GRECO, Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption or MESICIC, etc.)

d) National laws and policies directly or indirectly implicated in (anti-)corruption

**To be further developed in accordance with national law*

**To be further fleshed out in TM, case studies illustrating interplay of laws etc.*

Due regard for extraterritorial application; specificities of different legal traditions

- Criminal law, procedure and policy
- Civil and administrative laws and regulations
- Accounting/Books and records laws
- Antitrust and competition laws
- Securities and corporate/company acts
- Criminal conspiracy
- Banking laws
- Anti-money laundering laws
- Tax laws
- Unfair competition and trade practices
- Fraud
- Public/private procurement
- Customs and export controls
- Whistleblower Protection laws
- Professional liability laws

- e) Strategies, Action Plans and Multi-stakeholder Initiatives** – the need for adequate and inclusive plans, strategies and initiatives to successfully combat corruption will be appreciated by students. Students will understand how to follow a basic planning procedure which will include:

- Gap analysis – to be able to contrast of what is in place and what needs to be introduced or amended in order to be fully compliant and to reach other policy goals
- Prioritization – to decide what tasks and projects need urgent attention
- Sequencing – as different tasks and policies are implemented, students will see how synergies and efficiencies can be achieved best
- Timeframes – to set realistic targets for achievement of various policy objectives
- Capacity assessment – to plan and implement pragmatically and in line with existing or expected resources
- Specific Challenges – to identify what resistance, obstacles or local specificities can be expected and planning on how to address them

7. **Prevention of Corruption: Public Sector Governance**

Students will explore the meaning of good governance and how decisions can be made and implemented in a way to ensure the maintenance of a system free from corruption and mismanagement. Students will learn that ‘good governance’ refers to the management of government in such a way that it is free from abuse and corruption and there exists due regard for the rule of law. It can be characterised as a system that includes participation, transparency, accountability, rule of law, effectiveness and equity.

Bad governance can contribute to the rise and persistence of corruption. On the other hand, corruption can erode emergent and solid democracies by affecting citizen’s confidence in public authorities. As a result, governance can be considered a starting point for the analysis and formulation of anti-corruption policies and measures. In this section students will understand the link between corruption and governance and its challenges in contemporary societies.

a) **Recruitment systems for Public Officials**

- i. Selection and training of civil servants
- ii. Criteria for candidature for and election to public office
- iii. Transparency in the funding of candidatures for elected public office / political parties

b) **Codes of Conduct, Conflicts of Interest and Asset Declarations**

Students will see how codes of conduct or ethics and compliance guides can be used to increase awareness of illicit practices and can include national as well as international regulations concerning corrupt practices. Students will learn that by

ensuring awareness it becomes more difficult for a corrupt individual to deny wrongdoing.

c) Public Procurement and management of public finances

- i. International Standards (UNCAC, OECD Convention)
- ii. National measures (Best practices, common challenges)
- iii. Accounting / auditing standards
- iv. The role of oversight bodies
- v. Procedures for the adoption of national budgets

d) Open Government / Transparency in Public Administration

- i. Freedom of Information Laws
- ii. Public education initiatives
- iii. Publication of government information
- iv. Data Protection v Open Government

This section will explore the conflict that may arise in efforts to prevent corruption; that is, the potential conflict between protecting private data and the need for information gathering and sharing. Ways of resolving this issue and reaching an appropriate and balanced approach will also be discussed

e) Judicial Integrity

- i. International Standards for the Judiciary (Bangalore Principles)
- ii. Prosecutors
- iii. Court Administration and Case Management

8. Prevention of Corruption: Corporate Governance

International attention has increasingly focused on the key role that the private sector must play in preventing and combating corruption. Measures such as codes of conduct, whistleblower protection and a clear tone from the top can all play an important role in minimising the possibility of corrupt acts taking place within a private sector body.

National criminal legislation is also now focusing its attention on corruption in the private sector, with the UK Bribery Act providing the most recent example of domestic laws which attribute criminal responsibility to legal entities for acts of corruption.

Moreover, the private sector itself has sought to play an increasingly active role in the global fight against corruption, manifested in the addition of the 10th Principle to the UN

Global Compact which provides that “Businesses should work against corruption in all its forms, including extortion and bribery”.

The topics and resources below provide some insight into what national governments and private sector bodies themselves can do to reduce the risk of corruption in the private sector.

a) National and International Legal Framework for Corporate Bodies

- National laws and regulatory rules
- UNCAC and the Private Sector
- Other treaties and international regulations
- Public functions delegated to private actors. Board, management and entity obligations under national and international instruments.

b) Self-regulation and voluntary compliance mechanisms

As many organisations, institutions and companies are now expected to internally audit their organisations and monitor staff and money flows, it is important for students to consider the internal voluntary and mandatory mechanisms currently in place in order to prevent corruption and money-laundering. The principles and mechanisms that will be considered with include:

i. Codes of Conduct and Business Ethics

- OECD Good Practice Guidance
- FATF Recommendations
- International Chamber of Commerce
- Industry codes of conduct
- Construction Industry (COST) – the particular standards kept within the construction industry will be considered
- Extractive industries (EITI) – the particular standards kept within the extractive industry will be considered

ii. Business Ethics Policy Statements

- Standards
- Ethics
- Controls
- Whistleblowers

iii. Whistleblower Protection

- Internal Reporting Mechanisms
- Internal Educational Initiatives

iv. Corporate Social Responsibility (CSR) (examples)

- OECD Guidelines for Multinational Enterprises
- ISO 26000
- Global CSR standard setting programs (e.g. Global Reporting Initiative [GRI])
- Industry CSR Programs:
- Apparel industry – the particular standards kept within the apparel industry will be considered
- Extractive industry – the particular standards kept within the apparel industry will be considered

c) Incentive systems

This sub-section explains how incentives or rewards can be used to motivate private employees to follow good practices and encourage anti-corruption and anti-bribery systems to flourish within government, private companies and international organisations.

d) “Tone At The Top”

This sub-section will highlight how leadership and commitment to ethics can be a deciding factor in the creation and maintenance of an organizational culture in a company. An ethical atmosphere amongst company heads, where ethics and integrity are upheld can encourage employees to do the same via a trickle-down effect. However, if upper management and senior officials behave in a corrupt and exploitative manner, then employees will feel there is little reason to conduct themselves in an ethical way.

e) Value Chain Framework

The value chain framework has emerged as an important tool for strategic business planning and can be used to value private and public companies where there are only limited public data available. It can also be used to determine the value added by anti-corruption and anti-bribery processes as well as the benefit to the end consumer.

9. Prevention of Corruption: Civil Society and the Media

This Topic considers the important role that all aspects of society can play in the fight against corruption. In particular, the crucial work of civil society and the media in uncovering corrupt practices and promoting effective anti-corruption efforts will be addressed. Article 13 of the United Nations Convention against Corruption requires

States parties to involve a broad range of stakeholders in the development and implementation of anti-corruption measures and also emphasises the important role of the media in this regard.

The resources provided below consider both the role that Civil Society and the media have to play and the types of legal and political frameworks which most effectively allow them to contribute to the fight against corruption.

(a) Legal and institutional mechanisms for the participation of civil society in the development of public policy.

- (i) Reporting Mechanisms.
- (ii) Public consultations.
- (iii) The role of specialised anti-corruption bodies.

(b) Oversight by civil society organizations

Students will learn about some of the valuable work done by CSOs and how to determine whether the information is valid and accurate.

(c) Reporting and oversight by the press

Students will learn about some of the valuable work done by journalists and the press and how to determine whether the information is valid and accurate.

- a. Media licensing arrangements
- b. Defamation Laws
- c. Legal Protection of Journalists

(d) Multi-stakeholder Processes and Collective Action

This section will explore the advantages of collaborative and collective actions against corrupt practices as well as the potential harm or ineffectiveness, if there are too many parties involved. More recent developments suggest that it may be necessary for anti-corruption processes to involve more groups and individuals in order to be successful.

10. Anti-corruption measures and controls

This section is devoted to the discussion of various anti-corruption measures and controls.

Preventive measures that will be considered include:

(a) Due diligence requirements

- i. customer identification,
- ii. record and document keeping
- (b) Professional controls and mechanisms for:**
 - i. detecting and prevent money laundering
 - ii. reporting suspicious transactions
 - iii. conformity control
- (c) Organization of a warning mechanism**
- (d) The role of supervising authorities and administrative sanctions**
- (e) The role of prosecuting authorities and judicial sanctions**
 - i. Legal investigations
 - ii. Prosecution
 - iii. Police cooperation and international legal assistance
 - iv. Confiscation of criminal assets
- (f) Prevention of conflict of interests: lobbying – political financing**
- (g) Civil society and its judicial role in prevention and prosecution of corruption.**

This unit will include a theoretical component and a practical one. Once the various concepts have been presented, in a second step, students will apply them by working on short case studies. A final case study embracing the entire course will allow them to put what they have learned in a global context.

11. Roles and Obligations of different actors

The roles and obligations of different international actors will be understood by students and will also be considered in light of national contexts in order to grasp the problems, overlaps and levels of authority more fully. Some of the institutions and actors that will be considered include:

- a) Anti-Corruption Authority**
 - Mandate, functions, role (prosecution/prevention/education/awareness-raising)
 - Structure
 - Challenges (level of independence)

b) Business enterprises and corporate actors

- Trade associations
- Financial institutions
- Accounting and Consulting Firms
- Professional networks

[See also: Topic 8: Prevention of Corruption Corporate Governance]

c) Civil servants (public officials)**d) Parliaments/Parliamentarians**

(check Sources of self-regulation and voluntary compliance mechanisms-Parliamentarian)

e) Judiciary

[See also Topic 7: Prevention of Corruption: Public Sector Governance]

f) Civil society organizations

- Actors
- Actions
- Effects and limitations

[See also Topic 9: Prevention of Corruption: Civil Society and the Media]

g) Media/press

- Awareness-raising
- Investigative reporting
- Responsible reporting
- Corruption and the press
- Visualizing concepts, issues, corruption and its effects

[See also Topic 9: Prevention of Corruption: Civil Society and the Media]

h) Multilateral and bilateral institutions

- Regional and international organizations
- Development agencies

12. Measuring levels of corruption and assessing anti-corruption measures

Students will learn how to monitor levels of corruption, to assess how robust corruption controls and governance procedures are, and how to apply them. Assessment is crucial to tracking changes and progress in addressing corruption. Assessment may apply to any of the basic concepts related to corruption, from the form and category of

corruption, and to its causes and consequences. Assessment is relevant to how extensively and effectively anticorruption frameworks are being applied.

- a) **Evolution of anti-corruption movement and methods of assessment**
- b) **Efforts to measure corruption**

At the global, regional and national levels, some key measurement tools either possessing corruption measurement components or designed to assess corruption directly are:

- Transparency International (TI)'s measurement tools, such as the Corruption Perception Index, the Bribe Payer Index, the World Corruption Barometer, and the National Integrity System Assessment.
- The World Bank's Worldwide Governance Indicators (WGI), a set of six indicators (voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption), one of which focuses specifically on corruption.
- The Ibrahim Index of African Governance, one example of a regional tool with corruption measurement elements, which consists of four measurement categories: safety and the rule of law, participation and human rights, sustainable economic opportunity, and human development. It consists of a total of 84 indicators. The safety and rule of law categories comprise four sub-categories: personal safety, rule of law, accountability and corruption, and national security.
- The Global Integrity Index, which assesses the existence, effectiveness and citizen access to key national-level anticorruption mechanisms used to hold governments accountable. The Index does not measure corruption directly; rather, it measures risks of corruption and prescribes actions to be used against it by enhancing government accountability, transparency, and citizen oversight. The Index is reportedly generated by aggregating more than 300 Integrity indicators gathered from each country covered.
- The World Bank Governance and Anticorruption (GAC) Diagnostics Surveys is a country-specific tool used to assess corruption at the national level.

- MESISIC, OECD WGB, GRECO, etc.
- National authorities (public records, statistics), Civil Society Organisations
- Different methodologies
- Strengths and weaknesses

c) Efforts to assess anti-corruption measures and governance

Measurement of corruption and measurement of governance are not the same, although they may overlap or supplement one another. Governance measurements encompass a country's socio-economic and political processes. Corruption is an aspect of governance which may be treated as a separate sphere or a cross-cutting governance problem. Certain good governance indicators can be used to help measure corruption risks and trends. Overall, good governance practices are assumed to contribute to reducing corruption. Controlling corruption as a separate or cross-cutting undertaking further reinforces a system of governance.

- OECD Doing Business
- World Bank
- Civil Society Organisations

d) Domestic Efforts

- Local sector-specific laws
- Brazil Anti-Corruption Performance Indicator and Benchmark Approach to assessing how government initiatives tackle and reduce incentives or opportunities for corruption

e) Technical Assistance

13. International Cooperation: Extradition

In light of the cross-border nature of many acts of corruption, international law enforcement cooperation is increasingly central to the effective investigation and prosecution of corruption offences.

Students should be aware of the legal bases that can be used for the purposes of extradition, including the potential use of the UN Convention against Corruption in this regard. Key concepts such as dual criminality, the 'extradite or prosecute' principle and the grounds on which States may refuse a request, could be explored.

The topics and resources below briefly touch on some of the key areas in relation to international cooperation for the purposes of extradition in relation to corruption offences.

a) Dual Criminality

- (i) The conduct-based test
- (ii) State approaches to dual-criminality

b) Legal Bases for Extradition

- i. Bilateral International Agreements as a basis for Extradition
- ii. Regional International Agreements as a basis for Extradition
- iii. UNCAC / UNTOC as a basis for Extradition
- iv. Extradition without a treaty base
 - o Reciprocity
 - o Domestic legislation

c) Grounds for refusal of an extradition request

- i. Political Offences
- ii. Requests for nationals of the requested State / 'Extradite or Prosecute'
- iii. Human Rights concerns

d) The extradition process

- i. Content and form of an extradition request
- ii. Arrest of requested individual (incl. provisional arrest)
- iii. Provisional detention
- iv. Extradition hearing
- v. Surrender
- vi. Transit of the requested individual
- vii. Conditional extradition
- viii. The role of intermediary bodies (Interpol, Regional Organisations)

14. International Cooperation: Mutual Legal Assistance

Mutual legal assistance plays an increasingly important role in the investigation and successful prosecution of corruption-related offences. As more and more cases involve cross-border issues including the transfer of the proceeds of corruption crimes, the need for assistance to be provided between different national law enforcement authorities has never been greater.

In approaching this topic, students may wish to consider the legal bases that can be used for the provision of mutual legal assistance, the formal and informal networks that are used for the provision of such assistance and case-examples in which mutual legal assistance successfully contributed to the prosecution of corruption offences.

Key issues and principles such as dual criminality, the grounds on which mutual legal assistance can be approved, and the role of international agreements (both bilateral and multilateral) should be addressed.

The topics and resources below cover a number of these key areas in relation to the provision of mutual legal assistance.

a) The obligation to provide Mutual Legal Assistance

- i. MLA requirements under international agreements (UNCAC)
- ii. Forms of assistance
- iii. Non-coercive measures

b) Legal Bases for Mutual Legal Assistance

- i. Bilateral International Agreements as a basis for MLA
- ii. Regional International Agreements as a basis for MLA
- iii. UNCAC / UNTOC as a basis for MLA
- iv. MLA without a treaty base
 - o Reciprocity
 - o Domestic legislation

c) The process and form of MLA requests

- i. The role of Central Authorities in MLA requests
- ii. UNCAC requirements regarding the form and content of requests
- iii. International mechanisms for cooperation (Interpol, Regional Mechanisms)

d) Grounds for refusal of an MLA request

- i. Prejudice of sovereignty, security ordre public or other essential interests
- ii. Domestic Law
- iii. Human Rights
- iv. Prohibition of refusal on grounds of bank secrecy

15. Asset Recovery

With the adoption and ratification of the United Nations Convention against Corruption there is now, for the first time, international agreement on a globally

binding legal framework for the return of assets obtained through the commission of corruption-related offences. In light of this breakthrough, in addition to the recent political changes in a number of regions, the issue of asset recovery has moved rapidly up the international agenda.

Students may wish to begin this topic by considering the steps that governments and financial institutions can take to prevent the transfer of assets obtained through corruption. Such measures include the imposition of reporting requirements on banking institutions in relation to suspicious transactions, improving cooperation between national authorities and financial institutions, and prohibiting the use of so-called 'shell-banks'.

Students may also consider the legal bases for the provision of mutual legal assistance for the purposes of asset recovery, the ability of States in some cases to take direct actions in the domestic courts of other States for the return of assets, and the domestic procedures and legislation that are required to facilitate this process. The role of Financial Intelligence Units in the above matters could also be considered.

The topics and resources below cover some of the key areas in relation to asset recovery.

a) Prevention and detection of transfers of proceeds of crime

- i. Identification of customers of financial institutions
- ii. Enhanced scrutiny of high-level public officials
- iii. Cooperation between national authorities and financial institutions
- iv. Prohibition on 'Ghost Banks'

b) Recovery of Property through International Cooperation

- i. Civil Proceedings as a method of recovery
- ii. Confiscation
- iii. Freezing / Seizure of Property
- iv. Third-party rights

c) Return and disposal of assets

- i. Domestic measures to enable competent authorities to return confiscated property
- ii. International obligations as regards the return of confiscated property
- iii. Institutional mechanisms for the recovery and return of assets – Financial Intelligence Units

16. Roles and Obligations of Professions

Teachers are invited to consider employing case studies to illustrate multiple facets of different dilemmas and scenarios that are common. Students will be familiarised with the do's and don'ts of acting as intermediaries for companies and politicians whether as lawyers, accountants, financial advisors, consultants etc. Students will also realise their own educational roles and obligations to promote preventive policies and mechanisms when serving as intermediaries, engaging intermediaries or in an advisory role in relation to conflicts of interest, transparency and accountability.

The International Bar Association has developed a specialised Unit to be used in the teaching of this topic which is provided as a .pdf document here

a) Roles and Obligations of the Legal Profession

- Lawyer as intermediary – lawyers play an important role in ensuring the integrity of internal anti-corruption and anti-money laundering policies and that appropriate procedures are in place when conducting internal audits or advising companies and organisations. Law students will discover that they play an integral role in educating others about their duties, liability and the importance of ensuring there are checks and balances in place.
- Professional liability – Students will become familiar with the sometimes heavy penalties and serious consequences of breaches of professional codes of conduct and attempts to break or circumvent controls and the law.
- Firm and Enterprise Anti-corruption Policies – This part will explain how lawyers must ensure that their firm or the organisation they advise in respect to anti-corruption and anti-money laundering policies and legislation should have a robust system of checks, balances and procedures to be transparent and accountable.
- Reporting obligations (e.g. Anti-Money Laundering Officer or AMLO) As will be explained, many organisations employ an AMLO or another person to ensure that suspicious circumstances or transactions are reported to the relevant authorities. In certain jurisdictions, lawyers act as gatekeepers and ensure client due diligence, reporting of suspicious transactions and protect DNFBPs (Designated Non-Financial Businesses and Professions) from violations and legal sanctions.
- Conflicts of interest – Students will see that many organisations will have procedures in place to assess any transaction or agreement and ensure there are no conflicts of interest within their own firm and any organisation they represent is protected from legal, regulatory and reputational risk. An unreported or prohibited representation that results in a conflict of interest could result in serious legal consequences.

- Code of professional responsibility – The code of ethics and responsibilities governing the legal profession must be adhered to by lawyers, judges and other members of the legal profession in order to avoid disciplinary action by the governing bodies, legal action or damage to their professional reputation.
- Confidentiality – This part of the course covers the special fiduciary duty owed by lawyers to their clients and the importance of confidentiality as well as disclosure of confidential information where compelled by law.

b) Roles and Obligations of the Accounting Profession

c) Roles and Obligations of the Financial Services Profession

17. Legal Advice and Counsel: Anti-corruption laws

Law students will be given specific instruction on how to advise clients on relevant anti-corruption and anti-money laundering laws and penalties for different actors in order to ensure compliance.

- a) Ratification, application and effect of international treaties and conventions**
- b) National laws and their application to address domestic Corruption (examples based on jurisdiction)**
- c) Territoriality and extraterritorial application of national laws, examples:**
 - Overlapping jurisdictions
 - Conflicting and inconsistent legal requirements
 - UK Bribery Act
 - US FCPA
- d) Concepts/theories of liability** – Students will discover the different levels and theories of intent and what is necessary to show intent in different circumstances. This will allow them to choose the best way to proceed with a criminal or civil case based on what the claimant's goals are and what the jurisdiction allows.
 - Strict liability theory or intent
 - Liability of legal entities
 - Liability of directors, officers and employees
 - Liability for agents and associated persons
 - Liability among joint and in-concert actors
- e) Location of activities and communication**
 - Domestic/single country activities

- Transnational or global activities (esp. applicable to international actors)
- Cyberspace and internet-facilitated activities

18. Legal Advice and Counsel: Enterprise Governance and Compliance

Students will be introduced to a variety of tasks performed by in-house or private lawyers in regard to preventing and responding to corruption through governance and risk management strategies, due diligence and compliance mechanisms, corporate social responsibility (CSR) systems, and mechanisms for changes in corporate culture. These tasks are prefaced by a brief section on a lawyer's fiduciary duties to his/her client while at the same time acting ethically and legally.

The topics covered in this section are also related to the content in a few other topic modules, namely

1. Topic 16 on "the Role of Lawyers" and in particular the lawyer's role when acting in international business transactions as an intermediary, or in dealing with third party intermediaries; and as advisor in developing anti-corruption policies and due diligence systems within the company
2. Topic 17 on "Anti-corruption Laws" and in particular part (d) entitled "Liability of Corporations and Other Legal Entities" which introduces students to civil, criminal and administrative/regulatory liability of both individuals within or associated with a company or the company itself (or other similar entities) as a distinct "legal person."
3. Topic 19 on "Investigations and Litigation" which deals with the type of advice a lawyer should provide to a company and its officials while a criminal investigation and/or a prosecution are underway. In addition to Topic 19 resources, see Tarun, R.W., *The Foreign Corrupt Practices Act Handbook: A Practical Guide for Multinational General Counsel, Transactional Lawyers and White Collar Criminal Practitioners*, 2nd ed., 2012, American Bar Association, Chicago, U.S.A, esp. chs. 8 and 9.

(a) Fiduciary Duties versus Gatekeeping in the Public Interest

Lawyers in most jurisdictions have a fiduciary duty to their clients. A lawyer's fiduciary duties include a duty (1) to act impartially, in good faith and in the client's best interests, (2) to disclose any conflicts of interest, and (3) to keep client's information and activities confidential except in circumstances where disclosures are consented to by the client or required by law. Lawyers are also expected to uphold the law in the public good. In practice there is often a tension between fiduciary and public interest duties, including:

1. the fact that the lawyer's client is the corporation and therefore the lawyer's duties are owed to the best interests of the corporation. But lawyers tend to associate with senior managers and may identify with or feel pressure to support executive officers' these profit-driven activities even if those activities are not necessarily in the best interests of the other corporate stakeholders or shareholders;
2. the competitive pressure amongst lawyers to keep corporations as clients may cause them to be subservient to the corporate managers' goals and activities, rather than acting as independent and impartial gatekeepers who put in place clear checks on profit-motivated, but unlawful or potentially unlawful behaviour of corporate managers.

(b) Corporate Culture and Corporate Governance

(c) Corporate Social Responsibility and Anti-Corruption Policies

Corporate Social Responsibility [CSR] is a broad umbrella concept that can vary based on differing cultures, economies and political systems. Nonetheless, the extent to which a corporation adopts CSR principles in its governance policies can reflect on its integrity and its likelihood of avoiding corruption. For a fuller discussion of the nature and scope of CSR, refer to the materials cited in Topic 8(b)(iv) "Corporate Social Responsibility."

(d) Compliance Strategies, Risk Assessments and Due Diligence Procedures

Lawyers can and should play an important role in developing and regularly reviewing a corporation's compliance, risk assessment and due diligence policies and strategies. Subtopics in this segment include

- a. Model Compliance Guidelines and Precedents
- b. Training and Monitoring
- c. Financial Controls and Audits
- d. Reporting and Disclosure Policies
- e. Due Diligence Checks of Clients, Agents and Intermediaries
- f. Risk Assessments of Countries and Markets

(e) Transactional Advice

This is an optional component for instructors who wish to focus on the corporate-commercial transactional aspects of legal advice to corporations, or government officials. This topic could include:

- a) Requests for proposals and bidding
- b) Public procurement process
- c) Contract terms and conditions
- d) Performance of contractual conditions and obligations

19. Legal Advice and Counsel: Investigations and Litigation

(a) Investigations

Students will learn the specific advice and procedures they ought to follow and how they should advise clients while investigations are ongoing. This will include:

- i. Nature and scope of investigating authority
- ii. Liability of legal persons/enterprise accountability
- iii. Whistleblowers (both sides: the whistleblower and how to handle a whistleblower within the company)
- iv. Disclosures and mitigation

(b) Litigation and Enforcement

Students will learn about the scope of liability and enforcement as well as the sort of legal advice and representation that needs to be sought in circumstances where compliance measures may not have been followed.

- i. Nature and Scope of Enforcement Authority
- ii. Accountability and Liability
 - o Criminal and Civil
 - o Individual, Enterprise and Collaborator
- iii. Causes of Action
 - o Elements of Action or Claim
 - o Defences
 - o Evidence and Burdens of Proof
- iv. Sanctions, remedies and other measures
 - o Settlement Conditions
 - o Sanctions:
 - o Imprisonment
 - o Monetary
 - o Administrative
 - o Disclosure
 - o Asset Recovery

20. Policy Implications and Conclusions

The broader policy implications of corruption and money-laundering will be considered by students as well as the future mechanisms and issues that will be faced by various actors as technologies improve.