



INTERNATIONAL  
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**UNODC**

United Nations Office on Drugs and Crime

# **CRIMINALIZATION APPROACHES TO COMBAT MATCH-FIXING AND ILLEGAL/IRREGULAR BETTING: A GLOBAL PERSPECTIVE**



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# **Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective**

*COMPARATIVE STUDY ON THE APPLICABILITY OF CRIMINAL LAW PROVISIONS  
CONCERNING MATCH-FIXING AND ILLEGAL/IRREGULAR BETTING*

Lausanne / Vienna

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## FOREWORD

There is growing evidence that sport is corrupted by match-fixing and illegal betting. These illegal activities jeopardize the integrity of the competitions, damage the social, educational and cultural values reflected by sports, and threaten the economic role of sports.

The phenomenon of match-fixing brings to the surface its links to other criminal activities such as corruption, organized crime and money-laundering. Recent cases reveal the magnitude of the problem and indicate the dire need to address it through appropriate investigative and law enforcement tools. In fact, a criminal justice response against match-fixing would demonstrate that sporting manipulation is not a “simple” breach of sporting rules, but also an offence against the public in a broader sense.

Legislation to establish criminal offences against match-fixing is therefore needed as a complement to independent sporting sanction systems, which include bans, relegations and penalties. The current lack of uniformity in criminalization measures and legislative approaches calls for more streamlined action to develop standard-setting model instruments and facilitate convergence in criminal justice responses.

The present study, a result of joint work of the International Olympic Committee (IOC) and the United Nations Office on Drugs and Crime (UNODC), is a first step in this direction. It compiles criminal law provisions on match-fixing and illegal betting from existing legislation of Member States around the world and identifies discrepancies and similarities in legislative approaches. As a result, it suggests a corpus of guiding principles and model provisions for the creation and/or updating of relevant offences in order to facilitate international cooperation in criminal matters. It also assesses the applicability of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption in match-fixing and illegal betting cases.

Through their initiative jointly to release the present study, the IOC, as the guardian in charge of preserving the integrity of the Olympic Games, and the UNODC, as the global leader in the fight against crime and custodian of the implementation of the aforementioned United Nations conventions, are joining forces to address the poisonous impact of match-fixing and illegal betting on sports. We consider this initiative as an important first step towards assisting

national Governments and other stakeholders involved in the sports environment in cutting the Gordian knot that ties, in an increasing number of cases, those criminal activities with sport events.



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## EXECUTIVE SUMMARY

Sport is an innately human activity often idealized by valour, integrity, and fair competition. Sports have attracted over a billion people worldwide as participants and spectators, mainly due to the thrill and unpredictability of competition, and the skill and determination of athletes. However, these noble concepts of sport are coming under serious threat in the form of match-fixing - in recent years more than ever.

Match-fixing is usually defined as an arrangement or irregular alteration of the course or result of a sporting competition or any of its particular events (e.g. matches, races etc.) in order to remove all or part of the uncertainty normally associated with competition. It is a phenomenon of great concern to athletes, sports officials, law enforcement officials, the judiciary and, above all, spectators and supporters. It is not only the enormous amount of illicit gains that could be derived from match-fixing and related betting activities that makes match-fixing extremely dangerous. More importantly, influencing sporting competitions in an inappropriate manner is a direct attack on the essence of sport as a competitive activity which destroys the spirit of sport itself and frustrates millions of people who, thus, may well lose motivation to engage with sports. Therefore, a response to this threat is needed and there are various ways in which different societies can react, including the use of criminal law measures and mechanisms. However, due to the nature of criminal law as the last legal resort to deal with social problems, it is absolutely necessary to understand the existing situation and the ability of legal systems to cope with this new phenomenon.

The present study attempts to analyze the capacity of legal systems around the world to respond to match-fixing by reviewing 19 jurisdictions with civil or common-law systems (Argentina, Australia, Brazil, Canada, China, including Hong Kong (Special Administrative Region of the People's Republic of China), Japan, Malaysia, New Zealand, Nigeria, Qatar, Republic of Korea, Russian Federation, South Africa, Thailand, Trinidad and Tobago, Ukraine, United Arab Emirates and the United States of America). The study includes an assessment of the basic criminalization options available in the fight against match-fixing (ie., specific or ad hoc offences for illegal/irregular betting, match-fixing, or other offences that can serve the same purpose) and a review of other features such as jurisdiction, sanctioning of participatory acts and organized crime, liability of legal persons, whistleblowers' protection, anti-money laundering measures and special investigative techniques. Since match-fixing

often has an international dimension, there is also a detailed analysis of two important conventions - the United Nations Convention against Transnational Organized Crime (hereinafter: UNTOC) and the United Nations Convention against Corruption (hereinafter: UNCAC).

Unfortunately, the results of this study do not seem to be very encouraging as there is currently a limited number of jurisdictions which are in a position to effectively address the threat of match-fixing. A large number of substantial loopholes in the offences established in the legislation of many countries seriously hamper the efforts of law enforcement agencies and judicial authorities to combat match-fixing at the national, and even more so, at the international level. Only five of the evaluated 19 jurisdictions covered in this study have established specific or ad hoc criminal offences for match-fixing, but the related provisions still raise some serious concerns in that:

- they do not cover the same range of sporting competitions;
- bribery is still considered as the most common criminal offence in this area, with other possible occurrences of match-fixing being much less regulated by law;
- the possible perpetrators are quite different; and
- the goal of match-fixing offences is not clearly defined.

Countries that do not have specific or ad hoc match-fixing offences can use general fraud provisions to deal with match-fixing, since these provisions are defined quite extensively in a majority of national criminal laws and can serve as a solid legal basis for prosecution. However, these fraud provisions may not offer guarantees of solving the problem of match-fixing. Two other difficulties, i.e., establishing the causal link between match fixers and those benefiting by betting on fixed matches as well as differences in terminology, provide further challenges to successfully addressing the problem.

The study also found that bribery offences in the 19 analyzed jurisdictions generally cover public sector corruption appropriately, but in a majority of cases match-fixing is associated with the private sector. This may raise issues in countries where bribery in the private sector is not yet criminalized or has been considered without finally being established as a criminal offence. Additional problems related to terminology, lack of offences for trading in influence, and major differences between sanctions make it clear that the effective fight against match-fixing requires much more than the formulation of bribery offences in the public sector.

There are also major differences in the regulations of the 19 jurisdictions on gambling. In some jurisdictions gambling is absolutely prohibited, though a majority of countries allow for certain forms of it. Countries that allow gambling provide a legal framework for legal and illegal gambling, but only a limited number have provisions that would apply to irregular betting. Although betting on fixed matches is an accessory offence to match-fixing itself (thereby providing organizers of match-fixing with money), there would hardly be any positive development without the same basic principles being applied to the area of gambling. Therefore a country's decision to define legal, illegal, and irregular gambling, even without harmonizing the substance of those definitions, would be an extremely important step forward.

The overview of the legal framework in the 19 jurisdictions demonstrates progress in the adoption of legal measures in such areas as the establishment of jurisdiction, the sanctioning of participatory acts and organized crime activities, the liability of legal persons, whistleblowers' protection, as well as anti-money laundering action and the use of special investigative techniques. However, such legal solutions need to be fully and effectively implemented in order to serve as optimal responses to match-fixing and several adjustments are likely to be needed for that purpose.

Furthermore, countries seem, at this stage, not to be able to fully utilize the potential and the added value of the UNTOC and the UNCAC to effectively combat match-fixing. The absence of several important elements of match-fixing from the scope of application of these Conventions might leave different offences unaddressed.

The gaps identified can be addressed either by adjusting existing criminal law provisions or by developing new ones. Although the first option may work in some parts of the world, there is absolutely no guarantee that this approach will ensure the desired results globally.

Therefore, Annex 2 to the present study puts forward three model provisions for the criminalization of match-fixing and irregular betting; and guidelines for the regulation of other important related issues. The model provisions present suggested language for offences emanating from different conduct associated with match-fixing and irregular betting, but deliberately cover only the basic constituent elements of the offences in question. The guidelines cover other criminal justice aspects of a substantive and procedural nature that are

considered as complementary and supportive for the effective implementation of the criminal provisions. Such aspects include issues of jurisdiction; participatory acts; organized crime activities; liability of legal persons; protection of whistleblowers; anti-money laundering measures, including freezing, seizure and confiscation of proceeds of match-fixing; and special investigative techniques.

The model provisions and guidelines are offered as guidance to competent authorities of States wishing to modify their national legislation to address the illicit conduct under scrutiny. As such, they are not authoritative and it is within the discretion of national legislators to adopt and implement them as there is no international obligation to adopt match-fixing offences or other measures to ensure the effective investigation and prosecution of related offences.

## **1 INTRODUCTION AND TERMINOLOGY**

Over the last years it has become visible that areas which earlier were not so heavily exposed to criminal deeds became more and more vulnerable to “traditional” and new forms of criminal activities. One of those areas is sport, which was always characterized by the unpredictability of the results of different competitions, races and matches. The growing lucrative nature of sport itself and the development of betting industry, which found a solid ground for different types of bets exactly in the mentioned unpredictability, put sport into the spotlight: it is not anymore only the exclusive activity of romantic enthusiasts but also a solid source of income for sportsmen, sport officials, clubs, associations, as well as people betting on it and people organizing bets. Sports organizations, betting operators and States themselves were facing an extremely dangerous phenomenon, which does not only have economic consequences, but it also destroys its spirit. The spirit of sport, expressed in its unpredictability, is the one which was - and still is - attracting millions of people taking part in different sport events at different levels, hoping and believing that they are part of a “community”, an “environment” which is characterized by fairness and respect of others. Destroying this spirit by illegally influencing the results or courses of competitions may destroy the essence of sport itself and influence millions of people not to deal with it anymore.

In response, some sports organizations, betting operators and public institutions in different countries used, at an early stage, a variety of measures to fight other forms of illegal behaviour. Soon it became clear that in some countries this is not enough and therefore tailor-made measures were introduced to fight the new phenomenon of the so called “match-fixing” or “manipulation of sports results”. But the phenomenon is spreading – there is almost no country and no sports competition immune from this threat. “Match-fixing” became a global phenomenon and, as such, it has to be addressed globally.

Thorough analysis of existing criminal law measures is needed to ensure coordinated and effective criminal justice and law enforcement responses to this threat, as well as to avoid too excessive development of new measures, which would bring more harm to the sport than the phenomenon of match-fixing itself. The present study is an attempt to achieve both: to show ways for possible development of future criminal law measures countering match-fixing, and to ensure proper balance between the threat of match-fixing and intrusiveness of the new measures.

For the purposes of this analysis the most important terms will have the following meaning:

- “*Match-fixing*” shall mean the arrangement on an irregular<sup>1</sup> alteration of the course or the result of a sporting competition or any of its particular events (e.g. matches, races etc.) in order to remove all or part of the uncertainty normally associated with a competition.
- “*Legal betting*” shall mean all types of betting that are allowed on a specific territory or jurisdiction (e.g. by licence given by a regulator or recognition of licences given by the regulator of a third country).
- “*Illegal betting*” shall mean all types of betting that are not allowed on a specific territory or jurisdiction.
- “*Irregular betting*” shall mean all types of betting based on match-fixing.

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<sup>1</sup> “*Irregular*” covers any activity against legislation or sports regulations.

## **2 NATIONAL CRIMINAL LAW PROVISIONS ON MATCH-FIXING AND ILLEGAL/IRREGULAR BETTING**

Although criminal law is usually developed at the national level, the transnational nature of various forms of criminality such as organized crime and corruption led the international community to take initiatives geared towards developing international instruments aimed at, among others, promoting convergent national approaches, especially in the field of criminalization, and fostering international cooperation to combat these crimes. The UNTOC and the UNCAC are two characteristic examples of those instruments. A common element in both of them is that no definition of the targeted conduct (organized crime, corruption) is included therein. Instead, there are definitions of the perpetrators of most of the related crimes (organized criminal group, (national and foreign) public officials).

Having in mind that the manipulation of sports results or match-fixing is a dangerous form of criminality, it is worth trying to see if the existing criminal law tools at the national or international levels can also be used and to what extent in the fight against this phenomenon. The national information which has been assessed for the purposes of the study indicates indicating that existing national and international measures or their combination do not seem to ensure effective and efficient responses to match-fixing. This finding necessitates the consideration of new measures in this area. The extent of these measures needs to be determined carefully by the national legislator and the present study intends to provide guidance to this effect.

## 2.1. Analysis of criminal legislation of selected jurisdictions

In an attempt to get a representative sample of national criminal law responses to match-fixing, several jurisdictions from different regional groups and from different legal systems and traditions were selected for the analysis contained in the present study. Member States of the European Union and the Council of Europe are not examined separately as the present study goes beyond existing studies aimed at mapping relevant legislative approaches at the regional level.<sup>2</sup> Where appropriate and necessary, reference is made to these studies (see below, under section 2.1.20).

In selecting the jurisdictions for review in the present study, different substantive criteria were taken into account such as the regional representation, the legal system in place and the development of different sports disciplines. Another criterion used – in most of the cases - was the availability of the text of specific criminal laws in English.

Notwithstanding this, a sample which can be considered as fairly representative was compiled for the purposes of the study. The legislation of each country was analyzed against elements which are important for the understanding of national provisions on basic criminal offences applicable, legal possibilities for their investigation and existing possibilities for international cooperation to combat match-fixing. These elements are the following:

- **Offence**: substantial description of the criminal offence under analysis;
- **Scope of the offence**: possible peculiarities of the definition of the offence;
- **Area of applicability**: occurrence of the offence under analysis in the public or private sector or both;
- **Participatory acts and organized criminal activity**: liability of accessories to the principal criminal offence and perpetrators of its aggravated forms;
- **Sanctions envisaged**: range of sanctions for basic forms of criminal offence under analysis and the related applicability of the UNTOC;<sup>3</sup>

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<sup>2</sup> Study on “Match-fixing in sport: A mapping of criminal law provisions in EU 27” (March 2012); survey on the present applicable legislation on the issue of “manipulation of sports results, notably match-fixing” in the Council of Europe countries, prepared by the CDPC Secretariat (Council of Europe’s body in charge of criminal law issues) (17 February 2012).

<sup>3</sup> Maximum sentence of four years of imprisonment or more.

- **Jurisdiction**: the extent to which national criminal laws are applicable to conducts of match-fixing and the grounds for the establishment of national jurisdiction to prosecute them;
- **Liability of legal persons**: the extent to which legal persons can also be held liable for match-fixing;
- **Protection of witnesses and whistleblowers**: The possibility of detecting match-fixing through whistleblowers, the use of evidence before the courts through testimonies of witnesses and measures to protect both whistleblowers and witnesses;
- **Anti-money laundering measures** (incrimination of money laundering, freezing, seizure, confiscation): Availability of restraint and confiscation measures to deprive the perpetrators of the illicit proceeds of their crimes and to recover the damage caused;
- **Application/use of special investigative techniques**: Availability of measures to enable law enforcement authorities to apply effective<sup>4</sup> investigative methods.

The description of the abovementioned elements facilitates the assessment of the effectiveness of criminal justice responses to match-fixing in the jurisdictions under scrutiny, demonstrate patterns and trends around the world, identify possibilities for necessary improvements and point at some examples of already existing best practices.

The legislation in the following jurisdictions was examined in the present study: Argentina, Australia, Brazil, Canada, China (including Hong Kong as Special Administrative Region of PR of China), Japan, Malaysia, New Zealand, Nigeria, Qatar, Republic of Korea, Russian Federation, South Africa, Thailand, Trinidad and Tobago, Ukraine, United Arab Emirates, and United States of America.

In addition and for the sake of comprehensiveness, reference is also made to the results and main findings of a similar study recently conducted at the level of the European Union.

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<sup>4</sup> Also the most intrusive ones: wire-tapping, electronic surveillance, observations, undercover operations (including fictitious ones).

## 2.1.1 ARGENTINA

### 2.1.1.1 Criminal Code of Nation of Argentina 1984<sup>5</sup>

The following preview is based on the Argentine Criminal Code (hereinafter: argCC), as amended by the Ethics in the Public Service Act 1999.

#### **Common characteristics:**

- Jurisdiction: Territorial principle<sup>6</sup> applies. Active personality principle<sup>7</sup> applies to official agents and employees while discharging their official duties outside Argentine territory.<sup>8</sup>
- Participatory acts; organized crime activity: Articles 45 et seq. of argCC distinguishes: instigators, accomplices and accessories after the fact.<sup>9</sup> Participation in an organised criminal group is an offence under Article 210 argCC. Participation in a criminal group is punishable by imprisonment from 3 to 10 years. Leading such group is punishable by imprisonment of no less than 5 years.
- Liability of legal persons: None.<sup>10</sup>
- Protection of witnesses and whistle-blowers: There appears to be no comprehensive witness protection program established under Argentine federal law.
- Anti-money laundering measures<sup>11</sup>: Fraud (Article 172 argCC) and bribery offences (Articles 256-268 argCC) are predicate offences to money-laundering offences (Articles 277-278 argCC). Confiscation is applicable under Article 23 argCC. The same provision also allows for seizure or freezing of assets. Seizure is additionally applicable under Article 231 of the Code of Criminal Procedure 1991.
- Applicability of special investigative techniques: Interception of communications is applicable under Article 236 of Code of Criminal Procedure.

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<sup>5</sup> Law 11.19 on Criminal Code of Nation of Argentina 1984.

<sup>6</sup> The territorial principle (also territoriality principle) is a principle of public international law under which a sovereign state can prosecute criminal offences that are committed within its borders.

<sup>7</sup> Following the Argentine nationality of the offender.

<sup>8</sup> Ferrante, Marcelo: Argentina, in The Handbook of Comparative Criminal Law (ed. Kevin Heller, Markus Dubber), p. 15.

<sup>9</sup> Ibid., p. 31 et seq.

<sup>10</sup> Ibid., p. 34.

<sup>11</sup> Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism - Argentina, FATF, October 2010.

### **Fraud (Article 172 argCC)**

- **Offence:** Under Article 172, the offence of fraud must include the following elements:<sup>12</sup>
  - *a kind of deception,*
  - *that causes a person mistakenly to believe that there are reasons to transfer property of any kind, when there are no such reasons; and*
  - *that the deceived person, acting on the basis of his or her mistaken beliefs, makes the transfer and causing harm to him/her or somebody else.*
- **Scope:** The offence is general in nature.
- **Area of applicability:** Private sector.
- **Sanctions envisaged:** The offence under Article 172 argCC is punishable *by imprisonment from one month to six years.*

### **Bribery offences:**

Chapter VI contains several bribery offences. Here, bribery offences relating to public officials are presented as follows:

#### **Acceptance of a bribe (Article 256 argCC)**

- **Offence:** It is an offence for *any public official to personally or by means of an intermediary:*
  - *receive money or any other gift,*
  - *or directly or indirectly accept a promise of such,*
  - *in order to carry out, delay, or not to do something in relation to his duties.*
- **Scope:** The offence relates to passive bribery of a public official.
- **Area of applicability:** Public sector.
- **Sanctions envisaged:** The offence is punishable by:
  - *imprisonment or jailing from one to six years*
  - *and disqualification from holding a public office for life.*

#### **Exertion of influence (Article 256bis/1 argCC)**

- **Offence:** It is an offence for *a public official to, by himself or by a proxy:*
  - *request or receive money or any other gift,*

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<sup>12</sup> Ferrante, Marcelo: Argentina, in The Handbook of Comparative Criminal Law (ed. Kevin Heller, Markus Dubber), p. 41.

- *or accepts a promise directly or indirectly,*
- *to unduly assert his influence with a public servant, so that he does, refrains or stops doing an official act.*
- Scope: The offence relates to passive trading of influence of public officials.
- Area of applicability: Public sector.
- Sanctions envisaged: The offence under Article 256bis/1 is punishable by:
  - *imprisonment of one to six years,*
  - *and disqualification.*

### **Offering of a bribe (Article 258 argCC)**

- Offence: Under Article 258 argCC, it is an offence *to directly or indirectly give or offer gifts in pursuit of acts under Articles 256 and 256bis/1.*
- Scope: The offence relates to active bribery of public officials.
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable *by imprisonment of one to six years.* If the offender is a public official, the offence is also punishable *by disqualification of two to six years.*

### **2.1.1.2 Applicability of the Argentine criminal law in the fight against match-fixing**

It seems<sup>13</sup> that there is no special criminal offence of match-fixing in Argentina. Therefore, only provisions on fraud and bribery serve as basis for the current analysis.

#### **2.1.1.2.1 Fraud**

The description of fraud<sup>14</sup> in the Criminal Code covers general forms of fraud and may also cover different occurrences of fraud in sport (match-fixing) and gambling. In the area of jurisdiction, the territoriality principle applies and the active personality principle may also apply, but only for official agents and employees while discharging their official duties outside Argentine territory. Participatory acts and organized criminality are subject to adequate sanctions. Sanctions provided for the criminal offence are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable

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<sup>13</sup> Conclusion made on the basis of absence of any other information.

<sup>14</sup> “Deceit”, Article 399 argCC).

for this offence. Whistleblowers and witnesses cannot be protected. Anti-money laundering measures and special investigative techniques may be applied.

#### ***2.1.1.2.2 Bribery offences***

Provisions on bribery cover active and passive bribery of public officials. Provisions on active and passive trading of influence also exist. Private sector bribery is not incriminated. In the area of jurisdiction, the territoriality principle applies and the active personality principle may also apply, but only for official agents and employees while discharging their official duties outside the Argentine territory. Participatory acts and organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for these offence. Whistleblowers and witnesses cannot be protected,. Anti-money laundering measures and special investigative techniques may be applied.

Argentina has ratified the UNCAC on 28 August 2006.

#### **2.1.1.3 Conclusion**

The Argentinian legislations seems to provide only limited possibilities to fight match-fixing per se. There is no special criminal offence incriminating this conduct. In addition, other provisions do not allow full coverage of possible forms of criminal activity related to match-fixing since there is no incrimination of bribery in the private sector. Sanctions provided for fraud and bribery, however, allow for the application of the UNTOC. In addition, participatory acts and organized criminality are subject to adequate sanctions. There is no system in place to protect whistleblowers and witnesses, whereas legal persons are not liable for criminal offences. Special investigative techniques and anti-money laundering measures are in place.

## **2.1.2 AUSTRALIA**

The criminal law of Australia is generally administered by individual jurisdictions. These jurisdictions include the Commonwealth, six States and two major mainland self-governing territories. Criminal law is largely a matter for the States with only a small subset of criminal activities reserved for Commonwealth government to legislate on. This being said, the Commonwealth has very limited constitutional power to enact laws in relation to match-fixing behaviours. There are no specific match-fixing offences contained in the Commonwealth Criminal Code Act of 1995. Some State governments have begun to introduce or institute match-fixing legislation which is based on agreed set of match-fixing behaviours that legislative arrangements in each State should cover.

For the purposes of this analysis three criminal statutes were examined: the Commonwealth Criminal Code Act 1995 as a federal act, the Australian Capital Territory Criminal Code 2002 and the New South Wales Criminal Act 1900 No. 40 as examples of legislation in a self-governing territory or a State. In addition, several other important pieces of legislation were also examined.

### **2.1.2.1 Commonwealth Criminal Code Act 1995**

This Commonwealth Criminal Code Act 1995 (hereinafter: the Code) contains the major offences against Commonwealth law. The principles of criminal responsibility in Chapter 2 of the Code apply to all Commonwealth offences (whether or not they are included in the Code). The geographical jurisdiction of the Code depends on the individual offence. In certain circumstances the Code will apply to activities which occur partly or wholly outside Australia. Provisions will expressly state if extended geographical jurisdiction applies. The Criminal Code also applies to every external territory of Australia<sup>15</sup> and to every offshore installation that is deemed by the Australian Customs Act of 1901 to be part of Australia.<sup>16</sup>

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<sup>15</sup> Criminal Code Act of 1995, Section 3A.

<sup>16</sup> Criminal Code Act of 1995, Section 3B.

In the Code there is no special criminal offence of match-fixing, but several others criminal offences might apply:

**Obtaining a financial advantage by deception (Section 134.2)**

(1) *A person is guilty of an offence if:*

(a) *the person, by a deception, dishonestly obtains a financial advantage from another person; and*

(b) *the other person is a Commonwealth entity.*

- Scope: Offence is limited to cases where the victim is a “Commonwealth entity”, which<sup>17</sup> is the Commonwealth itself or a “Commonwealth authority”. A “Commonwealth authority” is a body established by or under a law of the Commonwealth, but does not include:

(a) *a body established by or under:*

(ii) *the Australian Capital Territory (Self-Government) Act 1988; or*

(iii) *the Corporations Act 2001; or*

(vi) *the Norfolk Island Act 1979; or*

(v) *the Northern Territory (Self-Government) Act 1978; or*

(aa) *a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006; or*

(ab) *an organisation registered, or an association recognised, under the Fair Work (Registered Organisations) Act 2009; or*

(b) *a body specified in the regulations.*

- Area of applicability: Public sector.

- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organisation; directing activities of a criminal organization.

- Sanctions envisaged: 10 years of imprisonment.

- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.

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<sup>17</sup> According to the Dictionary of the Code.

- Liability of legal persons: Yes<sup>18</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>19</sup>.
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>20</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>21</sup>.
- Application of special investigative techniques: Yes<sup>22</sup>.

### **General dishonesty (Section 135.1)**

There are several offences under the general dishonesty provision.

- *Persons are guilty of an offence if they:*
  - *do anything with the intention of dishonestly obtaining a gain from a Commonwealth entity,*<sup>23</sup>
  - *do anything with the intention of dishonestly causing a loss to a Commonwealth entity,*<sup>24</sup> *or*
  - *do anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.*<sup>25</sup>
- Scope: Offence is limited to cases where the victim is a “Commonwealth entity”, which<sup>26</sup> is the Commonwealth itself or a “Commonwealth authority<sup>27</sup>”.
- Area of applicability: Public sector.
- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization.
- Sanctions envisaged: 5 years of imprisonment for any of the three offences listed above.

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<sup>18</sup> Part 2.5, Division 12 of the Code.

<sup>19</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>20</sup> Part 10.2, Division 400 of the Code.

<sup>21</sup> Proceeds of Crime Act 2002.

<sup>22</sup> Crimes Act No. 12 of 1994, Surveillance Devices Act No. 152 of 2004 and Telecommunications (Interception and Access) Act 1979.

<sup>23</sup> Section 135.1(1) of the Code.

<sup>24</sup> Section 135.1(3) of the Code.

<sup>25</sup> Section 135.1(7) of the Code.

<sup>26</sup> According to Dictionary of the Code.

<sup>27</sup> See description above.

- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.
- Liability of legal persons: Yes.
- Protection of witnesses and whistleblowers: Yes<sup>28</sup>.
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>29</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>30</sup>.
- Application of special investigative techniques: Yes.

### **Obtaining financial advantage (Section 135.2)**

*(1) A person is guilty of an offence if:*

*(a) the person engages in conduct; and*

*(aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and*

*(ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and*

*(b) the other person is a Commonwealth entity.*

- Scope: Offence is limited to cases where the victim is a “Commonwealth entity”, which<sup>31</sup> is the Commonwealth itself or a “Commonwealth authority<sup>32</sup>”.
- Area of applicability: Public sector.
- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization.
- Sanctions envisaged: 12 months of imprisonment.

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<sup>28</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>29</sup> Part 10.2, Division 400 of the Code.

<sup>30</sup> According to the Proceeds of Crime Act 2002.

<sup>31</sup> According to Dictionary of the Code.

<sup>32</sup> See description above.

- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.
- Liability of legal persons: Yes<sup>33</sup>.
- Protection of witnesses and whistleblowers: Yes.<sup>34</sup>
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>35</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>36</sup>.
- Application of special investigative techniques: Yes<sup>37</sup>.

### **Conspiracy to defraud (Section 135.4)**

There are several offences under the general dishonesty provision.

*A person is guilty of an offence if they conspire with another person with the intention of dishonestly*

- *obtaining a gain from a Commonwealth entity*<sup>38</sup>
- *causing a loss to a Commonwealth entity*<sup>39</sup>
- *influencing a public official in the exercise of the official's duties as a public official*<sup>40</sup>
- Scope: Offence is limited to cases where the victim is the Commonwealth itself or a “Commonwealth authority<sup>41</sup>” or cases which involve a public official.
- Area of applicability: Public sector.
- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization.
- Sanctions envisaged: 10 years of imprisonment for any of the offences listed above.

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<sup>33</sup> Part 2.5, Division 12 of the Code.

<sup>34</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>35</sup> Part 10.2, Division 400 of the Code.

<sup>36</sup> According to the Proceeds of Crime Act 2002.

<sup>37</sup> Crimes Act No. 12 of 1994, Surveillance Devices Act No. 152 of 2004 and Telecommunications (Interception and Access) Act 1979.

<sup>38</sup> Section 135.4(1) of the Code.

<sup>39</sup> Section 135.4(3) of the Code.

<sup>40</sup> Section 135.4(7) of the Code.

<sup>41</sup> See description above.

- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.
- Liability of legal persons: Yes<sup>42</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>43</sup>.
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>44</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>45</sup>.
- Application of special investigative techniques: Yes<sup>46</sup>.

**Bribery of a Commonwealth public official (Section 141.1)**

There are two offences under this provision:

**Giving a bribe**<sup>47</sup>

*(1) A person is guilty of an offence if:*

*(a) the person dishonestly:*

*(i) provides a benefit to another person; or*

*(ii) causes a benefit to be provided to another person; or*

*(iii) offers to provide, or promises to provide, a benefit to another person; or*

*(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and*

*(b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the official's duties as a public official; and*

*(c) the public official is a Commonwealth public official; and*

*(d) the duties are duties as a Commonwealth public official.*

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<sup>42</sup> Part 2.5, Division 12 of the Code.

<sup>43</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>44</sup> Part 10.2, Division 400 of the Code.

<sup>45</sup> According to the Proceeds of Crime Act 2002.

<sup>46</sup> Crimes Act No. 12 of 1994, Surveillance Devices Act No. 152 of 2004 and Telecommunications (Interception and Access) Act 1979.

<sup>47</sup> Section 141.1(1) of the Code.

### **Receiving a bribe**<sup>48</sup>

(3) A Commonwealth public official is guilty of an offence if:

(a) the official dishonestly:

(i) asks for a benefit for himself, herself or another person; or

(ii) receives or obtains a benefit for himself, herself or another person; or

(iii) agrees to receive or obtain a benefit for himself, herself or another person; and

(b) the official does so with the intention:

(i) that the exercise of the official's duties as a Commonwealth public official will be influenced; or

(ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a Commonwealth public official will be influenced.

- **Scope**: The offence is limited to cases where a Commonwealth public official is involved. In relation to section 141.1 (1), the prosecution does not need to prove that the defendant knew that the official was a Commonwealth public official or that he or she was carrying out duties as a Commonwealth public official.<sup>49</sup>
- **Area of applicability**: Public sector.
- **Participatory acts and organized criminal activity**: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization.
- **Sanctions envisaged**: 10 years of imprisonment for any person committing one of the offences described above or a fine of not more than 100,000 penalty units if the offence is committed by a corporate body.<sup>50</sup>
- **Jurisdiction**: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.
- **Liability of legal persons**: Yes<sup>51</sup>.
- **Protection of witnesses and whistleblowers**: Yes<sup>52</sup>.

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<sup>48</sup> Section 141.1(3) of the Code.

<sup>49</sup> Section 141.1(2) of the Code.

<sup>50</sup> Section 141.1(5) and (6) of the Code.

<sup>51</sup> Part 2.5, Division 12 of the Code.

- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>53</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>54</sup>.
- Application of special investigative techniques: Yes<sup>55</sup>.

**Corrupting benefits given to, or received by, a Commonwealth public official (Section 142.1)**

There are two offences under this provision:

**Giving a corrupting benefit**<sup>56</sup>

(1) *A person is guilty of an offence if:*

(a) *the person dishonestly:*

(i) *provides a benefit to another person; or*

(ii) *causes a benefit to be provided to another person; or*

(iii) *offers to provide, or promises to provide, a benefit to another person;*

(iv) *causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and*

(b) *he receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official; and*

(c) *the public official is a Commonwealth public official; and*

(d) *the duties are duties as a Commonwealth public official.*

**Giving a corrupting benefit**<sup>57</sup>

(3) *A Commonwealth public official is guilty of an offence if:*

(a) *the official dishonestly:*

(i) *asks for a benefit for himself, herself or another person; or*

(ii) *receives or obtains a benefit for himself, herself or another person; or*

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<sup>52</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>53</sup> Part 10.2, Division 400 of the Code.

<sup>54</sup> According to the Proceeds of Crime Act 2002.

<sup>55</sup> Crimes Act No. 12 of 1994, Surveillance Devices Act No. 152 of 2004 and Telecommunications (Interception and Access) Act 1979.

<sup>56</sup> Section 142.1 (1) of the Code

<sup>57</sup> Section 142.1(3) of the Code.

*(iii) agrees to receive or obtain a benefit for himself, herself or another person;  
and*

*(b) the receipt, or expectation of the receipt, of the benefit would tend to influence a Commonwealth public official (who may be the first-mentioned official) in the exercise of the official's duties as a Commonwealth public official.*

- Scope: The offence is limited to cases where a Commonwealth public official is involved. In relation to section 142.1(1), the prosecution does not need to prove that the defendant knew the person was a Commonwealth public official or that he or she was carrying out duties as a Commonwealth public official.<sup>58</sup>
- Area of applicability: Public sector.
- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization.
- Sanctions envisaged: 5 years of imprisonment.
- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.
- Liability of legal persons: Yes.
- Protection of witnesses and whistleblowers: Yes<sup>59</sup>.
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>60</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>61</sup>.
- Application of special investigative techniques: Yes.

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<sup>58</sup> Section 141.1(2) of the Code.

<sup>59</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>60</sup> Part 10.2, Division 400 of the Code.

<sup>61</sup> According to the Proceeds of Crime Act 2002.

### **2.1.2.2 Interactive Gambling Act 2001**

The Interactive Gambling Act 2001 (IGA) regulates interactive gambling services by placing restrictions on certain services being provided to customers in Australia or in designated countries.

#### **Offence of providing an interactive gambling service to customers in Australia (Section 15)**

*(1) A person is guilty of an offence if:*

- (a) the person intentionally provides an interactive gambling service<sup>62</sup>; and*
- (b) the service has an Australian-customer link.*

#### **Offence of providing an Australian-based interactive gambling service to customers in designated countries (Section 15A)**

*(1) A person is guilty of an offence if:*

- (a) the person intentionally provides an Australian-based interactive gambling service;*
- (b) the service has a designated country-customer link.*

There are plenty of exemptions from the description of criminal offences given above. One of them is an exemption on sport-related bets called “excluded wagering services”, next presented.

#### **Excluded wagering service (Section 8A)**

*(1) For the purposes of this Act, an excluded wagering service is:*

- (a) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:*
  - i. a horse race;*
  - ii. a harness race;*
  - iii. a greyhound race;*
  - iv. a sporting event;*
- (b) a service to the extent to which it relates to betting on:*
  - (i) an event; or*
  - (ii) a series of events; or*

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<sup>62</sup> Interactive gambling services include, but are not limited to, services described as 'online casinos' and usually involve using the internet to play games of chance, or games of mixed chance and skill. Examples include roulette, poker, craps, online 'pokies' and blackjack. Services which allow in-play betting on the internet are also prohibited, although bets are allowed to be made online *before* an event has started.

(iii) a contingency;

(iv) that is not covered by paragraph (a).

It is important that these bets are exempted from the scope of criminal offences only if the bets are placed, made, received or accepted before the beginning of the sport event<sup>63</sup>.

- Scope: Offences from Sections 15 and 15A target the providers of interactive gambling services in Australia, in each of the external territories, and also in other designated countries<sup>64</sup>. The scope of the offences does not cover customers of those services.
- Area of applicability: Private sector.
- Participatory acts and organized criminal activity: complicity; joint commission; commission by proxy; incitement; conspiracy; associating in support of serious organized criminal activity; supporting a criminal organization; committing an offence for the benefit of, or at the direction of, a criminal organization; directing activities of a criminal organization<sup>65</sup>.
- Sanctions envisaged: 2000 penalty units.
- Jurisdiction: Universal, it applies whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia<sup>66</sup>.
- Liability of legal persons: Yes.
- Protection of witnesses and whistleblowers: Yes<sup>67</sup>.
- Anti-money laundering measures: This offence is a predicate offence for money laundering offences<sup>68</sup>; freezing, seizure and confiscation of proceeds derived from the offence are possible<sup>69</sup>.
- Application of special investigative techniques: Some<sup>70</sup>.

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<sup>63</sup> Paragraph 2 of the same Section (Subsection 8A(2)).

<sup>64</sup> Sections 9A, 14 and 15 of IGA.

<sup>65</sup> Section 62 of IGA.

<sup>66</sup> Subsections 15(5) and 15A(5) of IGA.

<sup>67</sup> According to the Witness Protection Act No. 124 of 1994.

<sup>68</sup> Part 10.2, Division 400 of the Commonwealth Criminal Code Act 1995.

<sup>69</sup> According to the Proceeds of Crime Act 2002.

<sup>70</sup> Telecommunications' interceptions (Section 5E of the Telecommunications (Interception and Access) Act 1979) but no electronic surveillance.

### 2.1.2.3 Australian Capital Territory (ACT) Criminal Code 2002

#### Chapter 3

#### Division 3.3.3 Other indictable offences for pt 3.3:

#### Obtaining financial advantage by deception<sup>71</sup> (Section 332)

- Offence: A person commits an offence if the person, by deception, dishonestly obtains a financial advantage from someone else.
- Scope: Criminal offence covers all categories of persons.
- Area of applicability: All sectors.
- Participatory acts and organized criminal activity<sup>72</sup>: Attempt, complicity and common purpose, joint commission, commission by proxy, incitement, conspiracy, participating in a criminal group<sup>73</sup>, participating in a criminal group – causing harm<sup>74</sup>, recruiting people to engage in criminal activity<sup>75</sup>.
- Sanctions envisaged: 1000 penalty units, imprisonment for 10 years or both.
- Jurisdiction: Territorial: if the offence occurs in the territory of the ACT or beyond its territorial limits if the required geographical nexus<sup>76</sup> exists.
- Liability of legal persons: Yes<sup>77</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>78</sup>.
- Anti-money laundering measures: Freezing, seizure and forfeiture (confiscation) of proceeds derived from the offence are possible<sup>79</sup> - in the form<sup>80</sup> of a “conviction”

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<sup>71</sup> *Deception* means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or law, and includes:

- (a) a deception about the intention of the person using the deception or anyone else; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do. (Part 3.3., Division 3.3.1. of the the Australian Capital Territory Criminal Code 2002.

<sup>72</sup> Part 2.4 of the Australian Capital Territory (ACT) Criminal Code 2002 (ACT CC) - with the exception of conspiracy, which in the case of fraud is covered by Section 334 (see below).

<sup>73</sup> At least 3 persons, Sections 651 and 652 of the ACT CC.

<sup>74</sup> Section 653 of the ACT CC.

<sup>75</sup> Section 655 of the ACT CC.

<sup>76</sup> Section 64/2 of the ACT CC: if the offence is committed completely or partly in the ACT, whether or not the offence has any effect in the ACT; or the offence is committed completely outside the ACT (whether or not outside Australia) but has an effect in the ACT.

<sup>77</sup> Part 2.5 of the ACT CC.

<sup>78</sup> According to the ACT Witness Protection Act 1996.

<sup>79</sup> According to the ACT Confiscation of Criminal Assets Act 2003.

<sup>80</sup> According to Part 2 of the ACT Confiscation of Criminal Assets Act 2003.

forfeiture (which becomes automatic if the person is convicted for a serious<sup>81</sup> offence) and in the form of a civil forfeiture<sup>82</sup>.

- Application of special investigative techniques: Yes<sup>83</sup>.

### **General dishonesty (Section 333)**

(1) *A person commits an offence if:*

(a) *the person does something with the intention of dishonestly obtaining a gain from someone else; and*

(b) *the other person is the Territory.*

- Scope: Offence is limited to cases where the victim is the Australian Capital Territory.
- Area of applicability: All sectors.
- Participatory acts and organized criminal activity<sup>84</sup>: attempt, complicity and common purpose, joint commission, commission by proxy, incitement, conspiracy to defraud<sup>85</sup> (but the proceeding may only begin following the consent of the Attorney General or the director of public prosecutions<sup>86</sup>), participating in a criminal group<sup>87</sup>, participating in a criminal group – causing harm<sup>88</sup>, recruiting people to engage in criminal activity<sup>89</sup>.
- Sanctions envisaged: 500 penalty units, imprisonment for 5 years or both.
- Jurisdiction: Territorial - if the offence occurs in the territory of the ACT or beyond its territorial limits if the required geographical nexus<sup>90</sup> exists.
- Liability of legal persons: Yes<sup>91</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>92</sup>.

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<sup>81</sup> Punishable by imprisonment of at least 5 years.

<sup>82</sup> If a court is satisfied on the balance of probabilities that a person has committed a serious offence, it may make an order for the forfeiture even though the person has not been convicted, or the person has been cleared, of the relevant offence – Part 2, Section 9, Note 3 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>83</sup> According to Crimes (Surveillance Devices) Act 2010, Crimes (Controlled Operations) Act 2008,...

<sup>84</sup> Part 2.4 of the Australian Capital Territory (ACT) Criminal Code 2002 (ACT CC) - with the exception of conspiracy, which in the case of fraud is covered by Section 334 (see below).

<sup>85</sup> Section 334 of the ACT CC.

<sup>86</sup> Paragraph 11 of Section 334 of the ACT CC.

<sup>87</sup> At least 3 persons, Sections 651 and 652 of the ACT CC.

<sup>88</sup> Section 653 of the ACT CC.

<sup>89</sup> Section 655 of the ACT CC.

<sup>90</sup> Section 64/2 of the ACT CC: if the offence is committed completely or partly in the ACT, whether or not the offence has any effect in the ACT; or the offence is committed completely outside the ACT (whether or not outside Australia) but has an effect in the ACT.

<sup>91</sup> Part 2.5 of the ACT CC.

<sup>92</sup> According to the ACT Witness Protection Act 1996.

- Anti-money laundering measures: Freezing, seizure and forfeiture (confiscation) of proceeds derived from the offence are possible<sup>93</sup>- in the form<sup>94</sup> of a “conviction” forfeiture (which becomes automatic if the person is convicted for a serious<sup>95</sup> offence) and in the form of a civil forfeiture<sup>96</sup>.
- Application of special investigative techniques: Yes<sup>97</sup>.

### **Division 3.7.2 Offences for pt 3.7**

#### **Bribery (Section 356)**

(1) *A person commits an offence if:*

(a) *the person dishonestly—*

(i) *provides a benefit to an agent or someone else; or*

(ii) *causes a benefit to be provided to an agent or someone else; or*

(iii) *offers to provide, or promises to provide, a benefit to an agent or someone else; or*

(iv) *causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to an agent or someone else; and*

(b) *the person does so with the intention that the agent will provide a favour.*

(2) *An agent commits an offence if:*

(a) *the agent dishonestly—*

(i) *asks for a benefit for the agent or someone else; or*

(ii) *obtains a benefit for the agent or someone else; or*

(iii) *agrees to obtain a benefit for the agent or someone else; and*

(b) *the agent does so with the intention:*

(i) *that the agent will provide a favour; or*

(ii) *of inducing, fostering or sustaining a belief that the agent will provide a favour.*

- Scope: Criminal offence covers the categories of “agents” and “principals”, persons acting in public and private sector<sup>98</sup>.

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<sup>93</sup> According to the ACT Confiscation of Criminal Assets Act 2003.

<sup>94</sup> According to Part 2 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>95</sup> Punishable by imprisonment of at least 5 years.

<sup>96</sup> If a court is satisfied on the balance of probabilities that a person has committed a serious offence, it may make an order for the forfeiture even though the person has not been convicted, or the person has been cleared, of the relevant offence – Part 2, Section 9, Note 3 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>97</sup> According to Crimes (Surveillance Devices) Act 2010, Crimes (Controlled Operations) Act 2008.

- Area of applicability: All sectors.
- Participatory acts and organized criminal activity<sup>99</sup>: Attempt, complicity and common purpose, joint commission, commission by proxy, incitement, conspiracy (but the proceeding may only begin following the consent of the Attorney General or the director of public prosecutions), participating in a criminal group<sup>100</sup>, participating in a criminal group – causing harm<sup>101</sup>, recruiting people to engage in criminal activity<sup>102</sup>.
- Sanctions envisaged: 1000 penalty units, imprisonment for 10 years or both.
- Jurisdiction: Territorial - if the offence occurs in the territory of the ACT or beyond its territorial limits if the required geographical nexus<sup>103</sup> exists.
- Liability of legal persons: Yes<sup>104</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>105</sup>.
- Anti-money laundering measures: Freezing, seizure and forfeiture (confiscation) of proceeds derived from the offence are possible<sup>106</sup> - in the form<sup>107</sup> of a “conviction” forfeiture (which becomes automatic if the person is convicted for a serious<sup>108</sup> offence) and in the form of a civil forfeiture<sup>109</sup>.
- Application of special investigative techniques: Yes<sup>110</sup>.

#### **2.1.2.4 Australian Capital Territory Unlawful Gambling Act 2009**

The Act gives several important definitions:

- “unlawful betting” means betting that is not authorised under this Act or another gaming law<sup>111</sup>,

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<sup>98</sup> Section 353 of the ACT CC.

<sup>99</sup> Part 2.4 of the Australian Capital Territory (ACT) Criminal Code 2002 (ACT CC).

<sup>100</sup> At least 3 persons, Sections 651 and 652 of the ACT CC.

<sup>101</sup> Section 653 of the ACT CC.

<sup>102</sup> Section 655 of the ACT CC.

<sup>103</sup> Section 64/2 of the ACT CC: if the offence is committed completely or partly in the ACT, whether or not the offence has any effect in the ACT; or the offence is committed completely outside the ACT (whether or not outside Australia) but has an effect in the ACT.

<sup>104</sup> Part 2.5 of the ACT CC.

<sup>105</sup> According to the ACT Witness Protection Act 1996.

<sup>106</sup> According to the ACT Confiscation of Criminal Assets Act 2003.

<sup>107</sup> According to Part 2 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>108</sup> Punishable by imprisonment of at least 5 years.

<sup>109</sup> If a court is satisfied on the balance of probabilities that a person has committed a serious offence, it may make an order for the forfeiture even though the person has not been convicted, or the person has been cleared, of the relevant offence – Part 2, Section 9, Note 3 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>110</sup> According to Crimes (Surveillance Devices) Act 2010, Crimes (Controlled Operations) Act 2008.

- “unlawful” game<sup>112</sup> means a game of chance, or of mixed chance and skill, in which money or any other valuable thing is offered as a prize or is staked or risked (by a participant or someone else) on an event or contingency; or a game declared by the commission under subsection (2); but does not include an exempt game<sup>113</sup>,
- “unlawful gambling” means the playing or conduct of an unlawful game; or unlawful betting.

This act also establishes several offences, including that of “cheating”, which is presented below.

### **Cheating (Section 23)**

*A person commits an offence if:*

*(a) the person*

*(i) participates in a game of chance, or of mixed chance and skill, in which money or any other valuable thing is offered as a prize or is staked or risked (by a participant or someone else) on an event or contingency; or*

*(ii) otherwise places or accepts a bet; and*

*(b) the person dishonestly:*

*(i) obtains for the person or someone else money, benefit, advantage, valuable consideration or security; or*

*(ii) induces someone to deliver, give or credit to the person or someone else money, benefit, advantage, valuable consideration or security; and*

*(c) the person does so by:*

*(i) trick, device, sleight of hand or representation; or*

*(ii) a scheme or practice; or*

*(iii) the use of:*

- *an instrument of gambling; or*
- *anything else.*

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<sup>111</sup> Unlawful Gambling Act 2009 (UGA), Section 6.

<sup>112</sup> UGA, Section 7.

<sup>113</sup> A game that is authorised under territory law – UGA, Section 9.

- Scope: This offence enables punishment of anybody who is cheating while taking part in gambling, but it does not allow sanctioning of persons who are cheating during the event offered for bets (e.g. sportsmen fixing the match) and not taking part in gambling.
- Area of applicability: Private sector.
- Participatory acts<sup>114</sup> and organized criminal activity: Attempt, complicity and common purpose, joint commission, commission by proxy, incitement, conspiracy (but the proceeding may only begin following the consent of the Attorney General or the director of public prosecutions). No prosecution for organized criminality in this area is possible.
- Sanctions envisaged: 200 penalty units, 2 years of imprisonment or both.
- Jurisdiction: Territorial<sup>115</sup> - if the offence occurs in the territory of the ACT or beyond its territorial limits if the required geographical nexus exists.
- Liability of legal persons: Yes<sup>116</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>117</sup>.
- Anti-money laundering measures: Freezing, seizure and forfeiture (confiscation) of proceeds derived from the offence are possible<sup>118</sup> - in the form<sup>119</sup> of “conviction” forfeiture only. The Unlawful Gambling Act 2009 itself<sup>120</sup> enables seizure and confiscation of the instrument of gambling used for the commitment of this offence.
- Application of special investigative techniques: No, since due to Crimes (Surveillance Devices) Act 2010 and Crimes (Controlled Operations) Act 2008, this offence does not fall in the category of “relevant offences”<sup>121</sup>.

In addition to “cheating” mentioned above, Section 23 contains 10 offences<sup>122</sup> related to “unlawful gambling” for which the same characteristics can be identified:

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<sup>114</sup> UGA, Note 1 + Part 2.4 of the ACT CC.

<sup>115</sup> UGA, Note 1 + Section 64/2 of the ACT CC.

<sup>116</sup> UGA, Note 1 + Part 2.5 of the ACT CC.

<sup>117</sup> According to the ACT Witness Protection Act 1996.

<sup>118</sup> According to the ACT Confiscation of Criminal Assets Act 2003.

<sup>119</sup> According to Part 2 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>120</sup> Part 6 of UGA.

<sup>121</sup> It does not carry the sentence of 3 years or more.

<sup>122</sup> Arranging unlawful gambling, Conducting unlawful gambling, Owning etc place used for unlawful gambling, Advertising etc unlawful gambling or place where unlawful gambling, Inviting child to bet, Participating in unlawful gambling, Receiving proceeds from unlawful gambling, Possessing instrument of gambling, Failing to comply with condition of approval to conduct game, Failing to comply with requirements about charge etc for exempt two-up.

- Scope: These offences mainly enable punishment of anyone taking part in unlawful gambling or enabling it.
- Area of applicability: Private sector.
- Participatory acts<sup>123</sup> and organized criminal activity: Attempt, complicity and common purpose, joint commission, commission by proxy, incitement, conspiracy (but the proceeding may only begin following the consent of the Attorney General or the director of public prosecutions). No prosecution for organized criminality in this area is possible.
- Sanctions envisaged: Different - from 50 penalty units to 200 penalty units, 2 years of imprisonment or even both.
- Jurisdiction: Territorial<sup>124</sup> - if the offence occurs in the territory of the ACT or beyond its territorial limits if the required geographical nexus exists.
- Liability of legal persons: Yes<sup>125</sup>.
- Protection of witnesses and whistleblowers: Yes<sup>126</sup>.
- Anti-money laundering measures: Freezing, seizure and forfeiture (confiscation) of proceeds derived from the offences are possible<sup>127</sup> in the form<sup>128</sup> of “conviction” forfeiture only. The Unlawful Gambling Act 2009 itself<sup>129</sup> enables seizure and confiscation of instruments of gambling used for the commitment of these offences.
- Application of special investigative techniques: No, since due to Crimes (Surveillance Devices) Act 2010 and Crimes (Controlled Operations) Act 2008 these offences do not fall in the category of “relevant offences”<sup>130</sup>.

#### **2.1.2.5 New South Wales Crimes Act 1900 No. 40**

##### **Common characteristics**

- Jurisdiction: The provisions on offences under the Crimes Act 1900 No. 40 (CA 1900) are applicable, when the offence is committed within the territory of the State; when committed abroad, a geographical nexus between the State and the offence (Sec. 10C) is required. A geographical nexus exists between the State and an offence if:

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<sup>123</sup> UGA, Note 1 + Part 2.4 of the ACT CC.

<sup>124</sup> UGA, Note 1 + Section 64/2 of the ACT CC.

<sup>125</sup> UGA, Note 1 + Part 2.5 of the ACT CC.

<sup>126</sup> According to the ACT Witness Protection Act 1996.

<sup>127</sup> According to the ACT Confiscation of Criminal Assets Act 2003.

<sup>128</sup> According to Part 2 of the ACT Confiscation of Criminal Assets Act 2003.

<sup>129</sup> Part 6 of UGA.

<sup>130</sup> It does not carry the sentence of 3 years or more.

- a) *the offence is committed wholly or partly in the State (whether or not the offence has any effect in the State), or*
- b) *the offence is committed wholly outside the State, but the offence has an effect in the State, that is<sup>131</sup>:*
  - *any place whose peace, order or good government is threatened by the offence, and*
  - *any place in which the offence would have an effect (or would cause such a threat) if the criminal activity concerned were carried out.*

The geographical nexus exists in case of:

- larceny or any offences that includes larceny; and
- fraud or any other offence under Part 4AA of the Act (deception, obtaining property belonging to another etc.),

if it involves public money of the State or property held by the public official for or on behalf of the State (Sec. 10F).

Otherwise, the necessary geographical nexus is to be presumed, unless rebutted (Sec. 10E/1).

Extra-territorial application is conditioned upon double-criminality rule (Sec. 10D/2), *unless the trier of fact is satisfied that the offence constitutes such a threat to the peace, order or good government of the State that the offence warrants criminal punishment in the State<sup>132</sup>.*

- Participatory acts and organized crime activity: Yes:
  - for offences punishable on summary conviction (Sec. 351B, 546): aiding, abetting, counseling, or procuring the commission of crime,
  - for minor indictable offences, that is, indictable offences not falling under category of serious indictable offences (Sec. 351): aiding, abetting, counseling, or procuring the commission of crime,
  - for serious indictable offences, that is, indictable offences punishable by imprisonment of 5 years or more (Secs. 345 et seq.): principals in the second degree, accessory before the fact, accessory after the fact.

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<sup>131</sup> Under Section 10B/3 of the CA 1900.

<sup>132</sup> Section 10D/2(2) of the CA 1900.

It is an offence:

- to recruit a person to engage in criminal activity, punishable by imprisonment of up to 7 years (10 years, if recruiting a child) (Sec. 351A),
  - to participate in criminal groups (Sec. 93T, the basic offence punishable by up to 5 years of imprisonment),
  - to receive material benefit derived from criminal activities of criminal groups (Sec. 93TA; the basic offence punishable by imprisonment of up to 5 years).
- Liability of legal persons: Yes, under Sec. 4, the term „*person*“ includes society, company or corporation.
- Protection of witnesses and whistle-blowers: Yes, under Witness Protections Act 1995, providing protection both in and outside of criminal procedure.
- Anti-money laundering measures: Money laundering is an offence under Sec. 193B, as well as dealing with property suspected of being proceeds of crime (Sec. 193C) or property that subsequently becomes an instrument of crime (Sec. 193D), referring to proceeds or instruments of crime<sup>133</sup>.
- Confiscation orders are governed by Confiscation of Proceeds of Crime Act 1990, and include forfeiture and pecuniary penalty, when a person is convicted of a serious offence (Sec. 13 of the Act), where a „*serious offence*“ is any offence that may be prosecuted on indictment<sup>134</sup>. The Act also governs powers of search and seizure, freezing notices and restraining orders.
- Non-conviction criminal assets recovery is governed by Criminal Assets Recovery Act 1990, providing for restraining orders and asset forfeiture, applicable to property of a person engaged in serious crime related activity, where „*serious crime related activity*“, under Sec. 6 of the Act, also includes an offence that is punishable by imprisonment for 5 years or more and involves theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide.
- Applicability of special investigative techniques: Yes, following measures can be applied:

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<sup>133</sup> “Crime“ being a commission of a serious offence, typically any offence prosecuted on indictment; Sec. 193A).

<sup>134</sup> Under Sec. 5 of the Criminal Procedure Act, offences punishable by imprisonment of up to (and not including) 2 years must be dealt with summarily.

*controlled operations*<sup>135</sup>, *assumed identities*<sup>136</sup>, *surveillance devices*<sup>137</sup>.

**Engaging in conduct that corrupts betting outcome of event (Section 193N)**

- **Offence**: It is an offence if a person *engages in conduct that corrupts a betting outcome of an event*:
  - (a) *knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and*
  - (b) *with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.*
- **Scope**: Under Sec. 193H, conduct corrupts a betting outcome of an event if the conduct:
  - (a) *affects or, if engaged in, would be likely to affect the outcome of any type of betting on the event, and*
  - (b) *is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.*
- **Area of applicability**: Private sector.
- **Sanctions envisaged**: The offence is punishable by imprisonment of up to 10 years.

**Facilitating conduct that corrupts betting outcome of event (Section 193O)**

- **Offence**: It is an offence for a person to *facilitate conduct that corrupts a betting outcome of an event*:
  - (a) *knowing or being reckless as to whether the conduct facilitated corrupts a betting outcome of the event, and*
  - (b) *with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.*
- **Scope**: A person facilitates conduct that corrupts a betting outcome of an event if the person:
  - (a) *offers to engage in conduct that corrupts a betting outcome of an event, or*
  - (b) *encourages another person to engage in conduct that corrupts a betting outcome of an event, or*
  - (c) *enters into an agreement about conduct that corrupts a betting outcome of an event.*

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<sup>135</sup> Governed by Law Enforcement (Controlled Operations) Act 1997.

<sup>136</sup> Governed by Law enforcement and National Security (Assumed Identities) Act 2010.

<sup>137</sup> Governed by Surveillance Devices Act 2007.

- Area of applicability: Private sector.
- Sanctions envisaged: The offence is punishable by up to 10 years of imprisonment.

**Concealing conduct or agreement about conduct that corrupts betting outcome of event (Section 193P)**

- Offence: It is an offence for *a person to encourage another person to conceal from any appropriate authority conduct, or an agreement about conduct, that corrupts a betting outcome of an event:*
  - (a) *knowing or being reckless as to whether the conduct corrupts a betting outcome of the event, and*
  - (b) *with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event.*
- Scope: An appropriate authority includes:
  - (a) *a police officer, or*
  - (b) *a body that has the official function of controlling, regulating or supervising an event, or any betting on an event.*
- Area of applicability: Private sector.
- Sanctions envisaged: The offence is punishable by up to 10 years of imprisonment.

**Use of corrupt conduct information or inside information for betting purposes (Section 193Q)**

- Offence: Under this Section, it is an offence for *a person who possesses information in connection with an event that is (i) corrupt conduct information or (ii) inside information, and who knows or is reckless as to whether the information is corrupt conduct information or inside information, if the person:*
  - (a) *bets on the event, or*
  - (b) *encourages another person to bet on the event in a particular way, or*
  - (c) *communicates the information to another person who the first person knows or ought reasonably to know would or would be likely to bet on the event.*
- Scope: Information in connection with an event is corrupt conduct information if the information is about conduct, or proposed conduct, that corrupts a betting outcome of the event. Information in connection with an event is inside information if the information:
  - (a) *is not generally available, and*

(b) if it were generally available, would, or would be likely to influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision.

- Area of applicability: Private sector.
- Sanction envisaged: Use of corrupt conduct information is punishable by imprisonment of up to 10 years. Use of inside information is punishable by imprisonment of up to 2 years.

### **Corrupt commissions or rewards (Section 249B)**

- Offence: It is an offence if *any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:*
  - (a) *as an inducement or reward for or otherwise on account of: (i) doing or not doing something, or having done or not having done something, or (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person, in relation to the affairs or business of the agent's principal, or*
  - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal.*
- Scope: The offence covers passive corruption, in both private and public sector. The term „agent“ includes<sup>138</sup>:
  - (a) *any person employed by, or acting for or on behalf of, any other person (who in this case is referred to in this Part as the person's principal) in any capacity,*
  - (b) *any person purporting to be, or intending to become, an agent of any other person (who in this case is referred to in this Part as the person's principal), and*
  - (c) *any person serving under the Crown (which in this case is referred to in this Part as the person's principal), and*
  - (d) *a police officer (and in this case a reference in this Part to the agent's principal is a reference to the Crown), and*
  - (e) *a councillor within the meaning of the Local Government Act 1993 (and in this case a reference in this Part to the agent's principal is a reference to the local council of which the person is a councillor), and*
  - (f) *a councillor within the meaning of the Aboriginal Land Rights Act 1983 (and in this case a reference in this Part to the agent's principal is a reference to the New South*

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<sup>138</sup> Section 249A.

*Wales Aboriginal Land Council), and*

*(g) a Board member of a Local Aboriginal Land Council within the meaning of the Aboriginal Land Rights Act 1983 (and in this case a reference in this Part to the agent's principal is a reference to the Local Aboriginal Land Council).*

- Area of applicability: General.
- Participatory acts: Under Sec. 249F, a person who *aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence.*
- Sanctions envisaged: The offence is punishable by up to 7 years of imprisonment and disqualification for office, for the period of no more than 7 years<sup>139</sup>.

#### **Misleading documents or statements used or made by agents (Section 249C)**

- Offence: It is an offence for *an agent who*
  - *uses, or gives to the agent's principal, a document which contains anything that is false or misleading in any material respect, with intent to defraud the agent's principal;*
  - *makes a statement to the agent's principal which is false or misleading in any material respect, with intent to defraud the principal.*
- Scope: See above, section on corrupt commissions and rewards.
- Area of applicability: General.
- Sanctions envisaged: The offence is punishable by up to 7 years of imprisonment.

#### **Offence of conducting unlawful gambling operation (Section 93V)**

- Offence: Under Sec. 93V, it is an offence for *a person to conduct an unlawful gambling operation.*
- Scope: „*An unlawful gambling operation*“ under Sec. 93V/2 means *an operation involving a substantial loss of potential revenue to the State that would be derived from lawful forms of gambling, and at least on more of the following elements:*
  - (a) the keeping of at least 2 premises (whether or not either or both are gambling premises) that are used for the purposes of any form of gambling that is prohibited by or under the Unlawful Gambling Act 1998,*
  - (b) substantial planning and organisation in relation to matters connected with any such form of prohibited gambling (as evidenced by matters such as the number of persons, and the amount of money and gambling turnover, involved in the*

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<sup>139</sup> Section 249H.

*operation),*

*(c) the use of sophisticated methods and technology (for example, telephone diverters, telecommunication devices, surveillance cameras and encrypted software programs) in connection with any such form of prohibited gambling or in avoiding detection of that gambling.*

- Area of applicability: Private sector.
- Sanctions envisaged: The offence is punishable by:
  - *a fine of 1,000 penalty units,*
  - *or imprisonment up to 7 years,*
  - *or both.*

#### **2.1.2.6 Applicability of Australian criminal law in the fight against match-fixing**

As stated above, criminal law in Australia is largely left for its territorial units with only a small subset of criminal activities reserved for Commonwealth government to prosecute. As it was impossible to analyze all pieces of legislation at the level of all Australian territorial units, only relevant legislation from two of the units, Australian Capital Territory and New South Wales, was analysed. Therefore, results of the present analysis may deviate from the results achieved through analyses of legislative acts of other territorial units.

There are no special criminal offences incriminating match-fixing in Australia at the Commonwealth level, therefore, provisions of selected laws on fraud, bribery and illegal/irregular gambling have been examined. At the territorial level, in the legislation of New South Wales there are provisions explicitly dealing with match-fixing in a form of 4 special criminal offences<sup>140</sup> related to betting.

Several provisions of relevant criminal codes<sup>141</sup> of Australian territorial units are reflected in the federal, Commonwealth legislation with one difference: the later applies only if the victim is a “Commonwealth entity”. Some offences at the regional level are also limited by the definition of a victim being the “regional entity”. Otherwise, descriptions of relevant criminal offences are almost similar and can be dealt with jointly.

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<sup>140</sup> Sections 193N - 193Q.

<sup>141</sup> On fraud and bribery.

It should be mentioned that in 2011 Australia introduced the Interactive Gambling and Broadcasting Amendment (Online Transactions and Other Measures) Bill 2011 with intention to add special provision on sports fraud to the existing Section 135 and with an interesting definition of a “sports deception” that should be understood as:

- a) *conduct by a person that contrives the outcome of a sporting match or the occurrence of a micro-event during a sporting match;*
- b) *deliberate underperformance by a player during a sporting match that achieves a particular result in the sporting match;*
- c) *contriving the withdrawal of a player during a sporting match to achieve a particular result in the sporting match;*
- d) *use by a person of confidential information in relation to a code of sport, to which the person has access because of the person’s association with the code of sport, before that information is publicly available;*
- e) *making a deliberately incorrect refereeing or like decision during a sporting match to influence the outcome of the sporting match;*
- f) *deliberate interference before a sporting match with the equipment or playing surface to be used during the sporting match;*
- g) *offering a bribe or making a threat, or engaging in any other coercive behaviour, against a person to achieve a particular result in a sporting match;*
- h) *any other conduct prescribed by the regulations.*

Definitions of three important terms from the offence: “code of sport”, “micro-event” and “sporting match” according to the Bill were withheld to the “regulations” of the Governor – General<sup>142</sup>.

#### **2.1.2.6.1 Fraud**

Descriptions of fraud<sup>143</sup> are broad enough to cover instances of match-fixing. Jurisdiction is extremely broad (universal at the federal level and territorial with broad exceptions at the state and territory level). Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offences are high enough

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<sup>142</sup> Section 4 of the Bill.

<sup>143</sup> The Australian legislation uses the terms of “deception” and “dishonesty”.

to serve as basis for the application of the provisions of the UNTOC. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected. Special investigative techniques and all anti-money laundering measures, including seizure, freezing and confiscation, may be applied.

#### **2.1.2.6.2 Bribery**

Provisions on bribery at the federal level are limited to “Commonwealth Public Official” but provisions at the state and territory level are broad enough to cover all instances of bribery in the public and private sectors. Jurisdiction is extremely broad (universal at the federal level and territorial with broad exceptions at the state and territory level). Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected, whereas special investigative techniques and all anti-money laundering measures, including seizure, freezing and confiscation, may be applied.

Australia has ratified the UNCAC on 7 December 2005.

#### **2.1.2.6.3 Illegal/irregular gambling**

Concerning *illegal* gambling, legislation at both levels apply the same principle: gambling is illegal if not otherwise provided by the law. Interestingly, the Commonwealth legislation also mentions sports bets as one of the allowed forms of gambling<sup>144</sup>. Jurisdiction is extremely broad (universal at the federal level and territorial with broad exceptions at the state and territory level). Participatory acts are subject to sanctions. Forms of organized criminality can be sanctioned only at the Commonwealth level. Due to low sanctions, provisions of the UNTOC cannot be applied in the Australian Capital Territory, contrary to New South Wales where they can be applied. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected. Only some special investigative techniques<sup>145</sup> and the majority<sup>146</sup> of anti-money laundering measures, including seizure, freezing and confiscation, may be applied.

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<sup>144</sup> As “excluded wagering service”, see above in 2.1.2.2.

<sup>145</sup> Only at the federal level, no special investigative techniques can be applied at the state and territory level.

<sup>146</sup> With the exception of civil forfeiture at the state and territory level.

Provisions on *irregular* gambling exist in a form of “cheating”<sup>147</sup> in Australian Capital Territory. These provisions can be easily used for sanctioning of fraudulent behaviour of those taking part in gambling (and not others, i.e. sportsmen, sport officials) related to sports events, too. Jurisdiction is extremely broad (territorial with broad exceptions at the state and territory level). Participatory acts are subject to sanctions. Forms of organized criminality related to this offence cannot be sanctioned. Due to low sanctions, provisions of the UNTOC cannot be applied. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected. No special investigative techniques are applicable. The majority of anti-money laundering measures, including seizure, freezing and confiscation, might be applied.

As a special form of *irregular gambling*, corruption of “betting outcome of the event” is part of the New South Wales Criminal Act 1900 No. 40<sup>148</sup>, whereby in practical terms match-fixing is incriminated. Those incriminations are extremely important, although they have severe constraints: they relate only to the outcome of betting events and neither to courses of those events nor to events not placed for betting. Beside influencing the outcomes of betting events several other important features are also criminalized: facilitation of match-fixing, concealment of match-fixing and misuse of insider information with a special emphasis on misuse of information about the corrupt conduct. Jurisdiction is territorial with broad exceptions. Participatory acts are subject to sanctions. Forms of organized criminality related to this offence can also be sanctioned. Provisions of the UNTOC on organized criminal groups may be applied. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected. Special investigative techniques and anti-money laundering measures, including seizure, freezing and confiscation may also be applied.

#### **2.1.2.7 Conclusion**

A combination of the Australian legal provisions at the federal and state and territory levels establishes a decent level of protection against match-fixing through provisions on fraud and bribery, accompanied by provisions on illegal/irregular gambling. Sanctions provided for fraud and bribery allow for the application of the UNTOC. In addition, participatory acts and organized criminality are subject to adequate sanctions. There is a system in place to protect

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<sup>147</sup> See above, Chapter 2.1.2.4.

<sup>148</sup> Sections 193N – 193Q.

whistleblowers and witnesses, whereas legal persons can be held liable for related offences. Special investigative techniques and anti-money laundering measures may also be applied.

The latest legislative developments in Australia demonstrate that emphasis is placed on the suppression of match-fixing and the protection of integrity of sports.

## 2.1.3 BRAZIL

### 2.1.3.1 Criminal Code (brCC) 1940

#### Common characteristics:

- Participatory acts; organized crime activity: Assistance and instigation are punishable under Arts. 29-31 brCC. Participation in an organized criminal group is a separate offence under Art. 288 brCC, punishable by imprisonment from 1 to 3 years.
- Jurisdiction: Territorial principle applies by virtue of Art. 5 brCC. Extraterritorial jurisdiction applies, *inter alia*, also to (Art. 7/II brCC):
  - offences that Brazil is obligated to prosecute under international treaties;
  - offences committed by Brazilian nationals;

*provided that:*

  - the offender is apprehended within Brazilian territory;
  - double criminality and *ne bis in idem* principles are satisfied;
  - the offence is an extraditable one.
- Liability of legal persons: No, not in general.<sup>149</sup>
- Protection of witnesses and whistleblowers: Witness protection is applicable under Law 9807/1999.
- Anti-money laundering measures: After the promulgation of Law No. 12.683, the list of predicted offences to money laundering was extended, adopting an "all crimes approach." Confiscation is applicable by virtue of Arts. 43 and 54 brCC and Arts. 122 and 124 of Criminal Procedure Code 1941.<sup>150</sup> Seizure is applicable by virtue of Arts. 127 and 137 of the Criminal Procedure Code. Seizure and detention of assets is also applicable under Article 8, paragraph 2 of Brazilian AML Law.<sup>151</sup>
- Special investigative techniques: the following SITs are applicable in cases involving criminal organisations:<sup>152</sup> controlled delivery (Law 9034/1995; Law 11343/2006; AML Law Art.4, para.4), undercover operations (Law 9934/1995; Law 11343/2006), electronic surveillance (Law 9296/1996; Law 75/1993), other forms of electronic surveillance such

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<sup>149</sup> United Nations Convention against Corruption: Brazil - First Cycle of Review, UNODC, 11th Oct 2010, p. 46.

<sup>150</sup> Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism - Federative Republic of Brazil . FATF, 25 June 2010, p. 44.

<sup>151</sup> Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism - Federative Republic of Brazil, FATF, 25 June 2010, p. 45; Money Laundering: Brazilian Law, BMF/COAF, p. 16.

<sup>152</sup> Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism - Federative Republic of Brazil. FATF, 25 June 2010, p. 74-75.

as environmental recording, filming or determining the place of someone by the signs emitted by its cell phone are permitted under a judge authorization and executed by the general powers of the federal police.

### **Fraud (Art. 171 brCC)**

- Offence: *It is an offence for any person to obtain, for one-self or another, unfair advantage at the expense of others, by inducing or keeping someone in error, through artifice, deception, or other fraudulent means.*
- Scope: This provision is a general offence of fraud.
- Area of application: Private sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment of one to five years;*
  - *and a fine.*

### **Active bribery (Art. 333 brCC)**

- Offence: Under Art. 333 brCC, it is an offence *to offer or promise undue advantage to an official in order to convince him to act, fail to act or hold back an official act.*
- Scope: The offence relates to active bribery of public officials.
- Area of application: Public sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment from 2 to 12 years*
  - *and a fine.*

The sentence is to be increased by one third if, due to advantage or a promise, the official holds back or omits an official act and by doing so breaks his official duty.

### **Passive bribery (Art. 317 brCC)**

- Offence: Under Art. 317, it is an offence for a *public official, to solicit or receive, for himself or others, directly or indirectly, even outside the function or before assuming function, undue advantage, or accepts a promise of such an advantage.*
- Scope: The offence relates to passive bribery of public officials.
- Area of application: Public sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment of 2 to 12 years*
  - *and a fine.*

The penalty is increased by one third if, in consequence of the promise or advantage, the official slows or ceases to perform any official act or practice violating his official duty.

#### **Prevarication (Art. 319 brCC)**

- Offence: It is an offence to *delay or refrain from doing, wrongfully, any official act, or practice it against an express provision of law, to satisfy interest or personal feeling.*
- Scope: The offence relates to breach of official duties resulting not from offers or promises of a bribe. Instead, the official refrains from his official duties to satisfy personal interests etc.
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment from three months to one year*
  - *and a fine.*

#### **Trafficking in influence (Art. 332 brCC)**

- Offence: It is an offence to *request, demand, collect or obtain for himself or for another, advantage or promise of benefit, under the pretext of influencing an act committed by a public official in the exercise of his function.*
- Scope: The offence relates to passive trading in influence.
- Area of application: Public sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment of 2 to 5 years*
  - *and a fine.*

The penalty is increased by half if the offender claims or implies that the advantage is also intended for the public official.

### **2.1.3.2 Law n. 9.279, of May 14 1996 (Law on Industrial Property)**

#### **Disloyal Competition (Article 195)**

- Offence: any agent will commit this crime *when he or she gives or promises money or any other utility to a competitor's employee, in order that he or she, in breach of his or her duties, provides the agent with advantage.*
- Scope: This is an offence incriminating active bribery in the private sector.
- Area of application: Private sector.

- Sanctions envisaged: The offence is punishable by:
  - *imprisonment from 3 months to 1 one year,*
  - *or a fine.*

### **2.1.3.3 Applicability of Brazilian criminal law in the fight against match-fixing**

It seems that there are no special criminal law provisions on match-fixing in the Brazilian legislation.

#### **2.1.3.3.1 Fraud**

The description of fraud is broad enough to cover instances of match-fixing. Jurisdiction is subject to the territoriality principle and active personality principle with some conditions<sup>153</sup>. Participatory acts and forms of organized criminality are properly incriminated. Sanctions provided for the basic form of the offence are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence. Measures for the protection of witnesses are available. Special investigative techniques and all anti-money laundering measures, including seizure, freezing and confiscation may be applied.

#### **2.1.3.3.2 Bribery offences**

There are five criminal offences directly related to corruption: active<sup>154</sup> and passive<sup>155</sup> bribery, omission of a duty for private gain<sup>156</sup>, passive trading in influence<sup>157</sup> and active bribery in the private sector<sup>158</sup>. Jurisdiction is subject to the territoriality principle and active personality principle with some conditions Participatory acts and forms of organized criminality are properly incriminated. Legal persons cannot be held liable for these offences. Measures for the protection of witnesses are available. Special investigative techniques and all anti-money laundering measures, including seizure, freezing and confiscation may be applied.

Brazil has ratified the UNCAC on 15 June 2005.

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<sup>153</sup> The offender has to be apprehended within Brazilian territory, double criminality and *ne bis is idem* principles have to be satisfied. The offence is also an extraditable one.

<sup>154</sup> Article 333 brCC.

<sup>155</sup> Article 319 brCC.

<sup>156</sup> “Prevarication”, Article 319 brCC.

<sup>157</sup> Article 332 brCC.

<sup>158</sup> Disloyal Competition (Article 195), Law n. 9.279, of May 14 1996 (Law on Industrial Property).

#### **2.1.3.4 Conclusion**

The Brazilian legislation seems to provide limited possibilities to fight match-fixing per se. There is no special criminal offence incriminating this conduct. In addition, other provisions also do not allow full coverage of possible forms of criminal activity related to match-fixing. Besides the narrow definition of the active private sector bribery, there is no incrimination of passive bribery in the private sector. Sanctions provided for fraud and main public bribery offences, however, allow for the application of the UNTOC. In addition, participatory acts and organized criminality are subject to adequate sanctions. There seems to be no system in place to protect whistleblowers, whereas legal persons cannot be held liable for related offences. Special investigative techniques and anti-money laundering measures may be applied.

## 2.1.4 CANADA

Canada has a federal constitution which vests exclusive power in the federal Parliament to enact legislation in relation to criminal law matters. The key areas of fraud, gambling, corruption, as well as conspiracy and other laws in relation to organized crime are all considered as “criminal law” matters within the federal legislative competence. The enforcement of the criminal law is divided between the federal sector (Royal Canadian Mounted Police) and law enforcement agencies established by the provinces and municipalities, depending on the offence(s) alleged and the facts in each case. All of the relevant *Criminal Code* offences are prosecuted by the Attorney General of the appropriate province.

Canada is a common law country and some of the following provisions<sup>159</sup> are affected by significant case law decisions, which have been included where appropriate. The following preview of Canadian legislation is based on the provisions of the *Criminal Code* (hereinafter: cCC) as amended to 01-01-2013.

### 2.1.4.1 Criminal Code 2010

#### **Fraud (Section 380 cCC)**

- **Offence:** Under Section 380, *every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service*, is guilty of an offence.
- **Scope:** This offence enables punishment of anybody, who is involved in fraudulent activities. The elements of dishonesty of the offender and deprivation or loss to the victim must be present and causally connected. In general, these would not apply to actions taken to affect the outcome of a match or sporting event in isolation, but they would apply to such actions if they are part of a larger scheme to defraud gamblers or others by

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<sup>159</sup> Canadian federal laws are available on-line in English and French at: <http://laws-lois.justice.gc.ca/eng/> and <http://laws-lois.justice.gc.ca/fra/>.

dishonestly depriving them of anything of tangible or intangible value or financial or other material benefit<sup>160</sup>.

- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Aiding and abetting (Section 21 cCC), accessory after the fact (Section 23 cCC); conspiracy (Section 465 cCC); participating in activities of criminal organizations (Section 467.11 cCC); commission of offence for criminal organization (Section 467.12 cCC), where a "criminal organization" under Section 467.1 cCC means *a group, however organized, that (a) is composed of three or more persons in or outside Canada; and (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.* It does not include a group of persons that forms randomly for the immediate commission of a single offence.
- Sanctions envisaged: The offence is punishable:
  - where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars:
    - o by a term of imprisonment not exceeding fourteen years
  - where the value of the subject-matter of the offence does not exceed five thousand dollars:
    - o (as indictable offence) by imprisonment for a term not exceeding two years, or
    - o the offence is punishable on summary conviction, the general penalty under Section 787 cCC being a fine of not more than five thousand dollars or to a term of imprisonment not exceeding six months or to both.
- Jurisdiction: Under Canadian law, subject to special provisions, "no person shall be convicted or discharged under section 730<sup>161</sup> of an offence committed outside Canada." (Section 6/2 cCC). There are no such special provisions relating to fraud under Section 380 cCC. Territoriality principle is applicable, with with the exception of an offence committed outside Canada by a public employee; in this case, active personality principle

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<sup>160</sup> Re: *London and Globe Finance* [1903] Ch.728 (UK) and *R. v. Olan, Hudson and Hartnett* [1978] 2 S.C.R. 1175 (Supreme Court of Canada).

<sup>161</sup> Section 730 is a general section on "absolute and conditional discharges".

applies (Section 7/4 cCC<sup>162</sup>). Territorial jurisdiction under Canadian law is relatively broad though. Where there is a “real and substantial link” between the offence and Canada, a Canadian court may try the offenders if they are in Canada and before the court. A “real and substantial link” includes any case where any part of the offence or a conspiracy to commit the offence takes place in Canada, or where the offence has significant effects in Canada. It does not include links between the offenders or victims and Canada unless the offence itself is linked.

- Liability of legal persons: All criminal offences in Canada apply equally to natural and legal persons if the *actus reus* is capable of being committed by a legal person, and sentencing law substitutes fines for imprisonment if a legal person is convicted<sup>163</sup>. The legislation also includes a specific provision on negligence and fault elements where the accused is a legal person<sup>164</sup>.
- Protection of witnesses and whistle-blowers: Yes, under: Witness Protection Program Act 1996; several sections of Criminal Code, including Sections 486(1,2), 486(5), 487(3) cCC; The Canadian legislation does not fully protect the identity of whistleblowers<sup>165</sup> and does not allow for a testimony of an anonymous witness<sup>166</sup> but there is a possibility to enable the witness to testify outside of the court room or behind the screen<sup>167</sup>.
- Anti-money laundering measures: Any indictable offence is considered a predicate offence to laundering proceeds of crime under Section 462.31 cCC<sup>168</sup>. Anti-money laundering measures are applicable to fraud as an indictable offence. Seizure, detention of proceeds of crime and forfeiture are applicable under Sections 462.32 et seq. In the case of persons convicted of an organized crime offence, cCC provides for the reversed burden of

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<sup>162</sup> Sec. 7/4 cCC: "Every one who, while employed as an employee within the meaning of the Public Service Employment Act in a place outside Canada, commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada."

<sup>163</sup> Section 735 cCC.

<sup>164</sup> Section 22.1 and 22.2 cCC.

<sup>165</sup> Accused persons have the right to full disclosure of all information in the possession of prosecutors whether it will be tendered in evidence or not, and if privilege is asserted to protect the identity of confidential informants the matter is decided in confidence by the judge, who may deny disclosure, allow disclosure or redact the materials to allow a full defence while still protecting identity.

<sup>166</sup> Ferguson, Gerry: Protection and Treatment of Witnesses and Informants under the United Nations Convention against Corruption and under Canadian Law, International Centre for Criminal Law Reform and Criminal Justice Policy, 2007, p. 11 *et seq.*

<sup>167</sup> Section 486.2 cCC.

<sup>168</sup> A “designated offence”, as defined under Section 462.3 cCC.

proof: proceeds of crime will be forfeited unless the offender can prove that it is not derived from criminal activity.

- Applicability of special investigative techniques: Yes. See Sections 183 et seq. cCC.

The Canadian Criminal Code includes several offences related to corruption:

- bribery of holders of judicial office, etc. (Sec 119 cCC);
- bribery of criminal justice officers (Section 120 cCC);
- bribery of officials (Section 121 cCC);
- fraud or breach of trust by public officer (Section 122 cCC);
- municipal corruption (Section 123 cCC);
- selling or purchasing office (Section 124 cCC); and
- influencing or negotiating appointments or dealing in offices (Section 125 cCC).

With regard to match-fixing, offences included in Section 119-123 appear to be most relevant, given that Sections 124 and 125 cCC apply to appointments to or resignations from the office.

### **Bribery of holders of judicial office and others (Section 119 cCC)**

- Offence: Under Section 119 cCC, it is an indictable offence for a person:
  - (a) *being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by them in their official capacity, or*
  - (b) *directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by that person in their official capacity.*
- Scope: The offence includes both, passive (Section 119/a) and active (Section 119/b) corruption of members of the judiciary, Parliament or legislature of a province.
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding fourteen years.

- Participatory acts and organized crime activity: Identical rules apply as in case of other offences: participatory acts include aiding and abetting under Section 21 cCC, accessory after the fact (Section 23 cCC); conspiracy (Section 465 cCC); participating in activities of criminal organizations (Section 467.11 cCC); commission of offence for criminal organization (Section 467.12 cCC), where a "criminal organization" under Section 467.1 cCC means *a group, however organized, that (a) is composed of three or more persons in or outside Canada; and (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.* It does not include a group of persons that forms randomly for the immediate commission of a single offence.
- Jurisdiction: In case of bribery offences, there are no such special provisions regarding extraterritorial jurisdiction, with the exception of Section 7/4 cCC. Therefore, as to bribery offences committed by public employees, active personality principle applies. In other cases, territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: All criminal offences in Canada apply equally to natural and legal persons if the *actus reus* is capable of being committed by a legal person, and sentencing law substitutes fines for imprisonment if a legal person is convicted<sup>169</sup>. The legislation also includes a specific provision on negligence and fault elements where the accused is a legal person<sup>170</sup>.
- Protection of witnesses and whistle-blowers: Yes, under: Witness Protection Program Act 1996; several sections of Criminal Code, including Sections 486(1,2), 486(5), 487(3) cCC; The Canadian legislation does not fully protect the identity of whistleblowers<sup>171</sup> and does not allow for a testimony of an anonymous witness<sup>172</sup>, but there is a possibility to enable the witness to testify outside of the court room or behind the screen<sup>173</sup>.

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<sup>169</sup> Section 735 cCC.

<sup>170</sup> Section 22.1 and 22.2 cCC.

<sup>171</sup> Accused persons have the right to full disclosure of all information in the possession of prosecutors whether it will be tendered in evidence or not, and if privilege is asserted to protect the identity of confidential informants the matter is decided in confidence by the judge, who may deny disclosure, allow disclosure or redact the materials to allow a full defence while still protecting identity.

<sup>172</sup> Ferguson, Gerry: Protection and Treatment of Witnesses and Informants under the United Nations Convention against Corruption and under Canadian Law, International Centre for Criminal Law Reform and Criminal Justice Policy, 2007, p. 11 *et seq.*

<sup>173</sup> Section 486.2 cCC

- Anti-money laundering measures: Any indictable offence is considered a predicate offence to laundering proceeds of crime under Section 462.31 cCC<sup>174</sup> (“a designated offence”, as defined under Section 462.3 cCC). As all of the bribery offences under Sections 119-123 are indictable offences, anti-money laundering measures are applicable. Seizure, detention of proceeds of crime and forfeiture are also applicable under Sections 462.32 et seq. In the case of persons convicted of a criminal organization offence, cCC provides for the reversed burden of proof: proceeds of crime will be forfeited unless the offender can show that it is not derived from criminal activity.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

**Bribery of criminal justice officers (Section 120 cCC)**

- Offence: Under Section 120 cCC, it is an indictable offence for any person:
  - (a) *being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, directly or indirectly, corruptly accepts, obtains, agrees to accept or attempts to obtain, for themselves or another person, any money, valuable consideration, office, place or employment with intent*
    - *to interfere with the administration of justice,*
    - *to procure or facilitate the commission of an offence, or*
    - *to protect from detection or punishment a person who has committed or who intends to commit an offence; or*
  - (b) *directly or indirectly, corruptly gives or offers to a person mentioned in paragraph (a), or to anyone for the benefit of that person, any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(i), (ii) or (iii).*
- Scope: Offence under Section 120 cCC includes both passive and active corruption of officers involved with criminal justice system.
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding fourteen years.

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<sup>174</sup> A “designated offence”, as defined under Sec. 462.3 cCC.

- Participatory acts and organized crime activity: Identical rules apply as in case of other offences<sup>175</sup>.
- Jurisdiction: In case of bribery offences, there are no such special provisions regarding extraterritorial jurisdiction, with the exception of Section 7/4 cCC. Therefore, as to bribery offences committed by public employees, active personality principle applies. In other cases, territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: Yes, see above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on Fraud.
- Anti-money laundering measures: Yes, see above in the part on Fraud.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

### **Bribery of officials (Section 121 cCC)**

- Offence: Under Section 121/1 cCC, it is an indictable offence for any person to:
  - (a) *directly or indirectly*
    - (i) *give, offer or agree to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or*
    - (ii) *being an official, demand, accept or offer or agree to accept from any person for himself or another person,*  
*a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with*
    - (iii) *the transaction of business with or any matter of business relating to the government, or*
    - (iv) *a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,*  
*whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;*
  - (b) *having dealings of any kind with the government, directly or indirectly pay a commission or reward to or confer an advantage or benefit of any kind on an employee or official of the government with which the dealings take place, or to any member of the employee's or official's family, or to anyone for the benefit of*

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<sup>175</sup> See above, in the part on Section 119.

*the employee or official, with respect to those dealings, unless the person has the consent in writing of the head of the branch of government with which the dealings take place;*

- (c) being an official or employee of the government, directly or indirectly demand, accept or offer or agree to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind for themselves or another person, unless they have the consent in writing of the head of the branch of government that employs them or of which they are an official;*
- (d) having or pretending to have influence with the government or with a minister of the government or an official, directly or indirectly demand, accept or offer or agree to accept, for themselves or another person, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with
  - (i) anything mentioned in subparagraph (a)(iii) or (iv), or*
  - (ii) the appointment of any person, including themselves, to an office;**
- (e) directly or indirectly give or offer, or agree to give or offer, to a minister of the government or an official, or to anyone for the benefit of a minister or an official, a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence, or an act or omission, by that minister or official, in connection with
  - (i) anything mentioned in subparagraph (a)(iii) or (iv), or*
  - (ii) the appointment of any person, including themselves, to an office; or**
- (f) having made a tender to obtain a contract with the government,
  - (i) directly or indirectly give or offer, or agree to give or offer, to another person who has made a tender, to a member of that person's family or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or*
  - (ii) directly or indirectly demand, accept or offer or agree to accept from another person who has made a tender a reward, advantage or benefit of any kind for themselves or another person as consideration for the withdrawal of their own tender.**

- Scope: The offence includes both active and passive corruption, with regard to business transactions to which government is a party, including public procurement through tenders etc.

The term “government” includes (Section 118):

- *the Government of Canada,*
- *the government of a province, or*
- *Her Majesty in right of Canada or a province.*
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding five years.
- Participatory acts and organized crime activity: Identical rules apply as in case of other offences<sup>176</sup>.
- Jurisdiction: In case of bribery offences, there are no such special provisions regarding extraterritorial jurisdiction, with the exception of Section 7/4 cCC. Therefore, as to bribery offences committed by public employees, the active personality principle applies. In other cases, territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: Yes, see above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on Fraud.
- Anti-money laundering measures: Yes, see above in the part on Fraud.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

### **Fraud or breach of trust by an official (Section 122 cCC)**

- Offence: Under Section 122 cCC, it is an indictable offence for an official *to, in connection with the duties of his office, commit fraud or a breach of trust.*
- Scope: In relation to the offences of fraud, this is a special provision, since it relates to conduct of officials alone, whereas the term “official” denotes a person who:
  - *holds an office, or*
  - *is appointed or elected to discharge a public duty;*
  - *and where the term “office” includes*
    - o *an office or appointment under the government,*

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<sup>176</sup> See above, in the part on Section 119.

- *a civil or military commission, and*
- *a position or an employment in a public department;*
- Area of applicability: Public sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding five years.
- Participatory acts and organized crime activity: Identical rules apply as in case of other offences<sup>177</sup>.
- Jurisdiction: In case of bribery offences, there are no such special provisions regarding extraterritorial jurisdiction, with the exception of Section 7/4 cCC. Therefore, as to bribery offences committed by public employees, the active personality principle applies. In other cases, territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: Yes, see above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on Fraud.
- Anti-money laundering measures: Yes, see above in the part on Fraud.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

### **Municipal corruption and influencing a municipal official (Section 123 cCC)**

- Offence:
  - Under Section 123/1, it is an indictable offence for a person to:
    - (1) *directly or indirectly give, offer or agree to give or offer to a municipal official or to anyone for the benefit of a municipal official - or, being a municipal official, directly or indirectly demand, accept or offer or agree to accept from any person for themselves or another person – a loan, reward, advantage or benefit of any kind as consideration for the official:*
      - (a) *to abstain from voting at a meeting of the municipal council or a committee of the council;*
      - (b) *to vote in favour of or against a measure, motion or resolution;*
      - (c) *to aid in procuring or preventing the adoption of a measure, motion or resolution; or*

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<sup>177</sup> See above, in the part on Section 119.

*(d) to perform or fail to perform an official act.*

- Under Section 123/2 cCC, influencing a municipal official is declared an indictable offence, *committed by a person who influences or attempts to influence a municipal official to do anything mentioned in Section 123/1(a) to (d) (see above), by*
  - (a) suppression of the truth, in the case of a person who is under a duty to disclose the truth;*
  - (b) threats or deceit; or*
  - (c) any unlawful means.*
- Scope: The offence includes active and passive corruption of a municipal official, and influencing a municipal official by other unlawful means. “Municipal official” for the purpose of this section means a member of a municipal council or a person who holds an office under a municipal government (Section 123/3 cCC).
- Area of applicability: Public sector.
- Sanctions envisaged: Municipal corruption under Section 123/1 cCC and influencing a municipal official under Section 123/2 cCC are punishable by imprisonment for a term not exceeding five years.
- Participatory acts and organized crime activity: Identical rules apply as in case of other offences<sup>178</sup>.
- Jurisdiction: In case of bribery offences, there are no such special provisions regarding extraterritorial jurisdiction, with the exception of Section 7/4 cCC. Therefore, as to bribery offences committed by public employees, the active personality principle applies. In other cases, territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: Yes, see above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on Fraud.
- Anti-money laundering measures: Yes, see above in the part on Fraud.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

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<sup>178</sup> See above, in the part on section 119.

### Private bribery (Section 426 cCC)

- Offence:

- o Under Section 426/1 it is an offence if somebody:

(a) *directly or indirectly, corruptly gives, offers or agrees to give or offer to an agent or to anyone for the benefit of the agent<sup>179</sup> - or, being an agent, directly or indirectly, corruptly demands, accepts or offers or agrees to accept from any person, for themselves or another person — any reward, advantage or benefit of any kind as consideration for doing or not doing, or for having done or not done, any act relating to the affairs or business of the agent's principal<sup>180</sup>, or for showing or not showing favour or disfavour to any person with relation to the affairs or business of the agent's principal; or*

(b) *with intent to deceive a principal, gives to an agent of that principal, or, being an agent, uses with intent to deceive his principal, a receipt, an account or other writing*

*(i) in which the principal has an interest,*

*(ii) that contains any statement that is false or erroneous or defective in any material particular, and*

*(iii) that is intended to mislead the principal.*

- o Under Section 426/2 it is also an offence if somebody *commits an offence who is knowingly privy to the commission of an offence under subsection (1).*

- Scope: The offence includes active and passive corruption in a private company but also knowledge about those bribes<sup>181</sup>. It is difficult to predict how this offence might be applied in cases of match-fixing as it is rarely prosecuted, probably because the primary fraud offences will usually also have been committed and will be more easily proven in court. In general, it would apply in cases where a player or other participant such as a referee was secretly and corruptly offered or accepted a benefit to alter the normal course of the match based on the player's relationship with the team or club as an employer and the referee's relationship with the league or other employer. It is less clear to what extent this might apply in cases of amateur sport, where some of the underlying relationships

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<sup>179</sup> Employee – Subsection 4 of Section 426 cCC.

<sup>180</sup> Employer – Subsection 4 of Section 426 cCC.

<sup>181</sup> Subsection 2 of Section 426 cCC.

may be less clear, or in cases where the sports team was itself implicated in the match-fixing and/or underlying gambling fraud. In general, the offence requires that the benefit be paid without disclosure to a principal, such as a sports team or league based on the relationships between them and the players or other participants, but not based on a lack of disclosure more generally<sup>182</sup>.

- Area of applicability: Private sector.
- Sanctions envisaged: Offence is punishable by imprisonment for a term not exceeding five years<sup>183</sup>.
- Participatory acts and organized crime activity: Identical rules apply as in case of other offences<sup>184</sup>.
- Jurisdiction: In case of this offence there are no special provisions regarding extraterritorial jurisdiction. Therefore, the territoriality principle is applicable (Section 6/2 cCC). See also above, in the part on Fraud.
- Liability of legal persons: Yes, see above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on Fraud.
- Anti-money laundering measures: Yes, see above in the part on Fraud.
- Applicability of special investigative techniques: Yes, they are applicable to bribery offences under Sections 119-123. See Sections 183 et seq. cCC.

### **Betting, pool-selling, book-making (Section 202 cCC)**

- Offence: Everyone commits an offence who:
  - (a) *uses or knowingly allows a place under his control to be used for the purpose of recording or registering bets or selling a pool;*
  - (b) *imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting;*
  - (c) *has under his control any money or other property relating to a transaction that is an offence under this section;*
  - (d) *records or registers bets or sells a pool;*

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<sup>182</sup> cCC.s.426 and *R. v. Kelly* [1992] 2 S.C.R. 170 and *R. v. Arnold* [1992] 2 S.C.R. 208).

<sup>183</sup> Subsection 3 of Section 426 cCC.

<sup>184</sup> See above in the part on section 119.

- (e) engages in book-making or pool-selling, or in the business or occupation of betting, or makes any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or betting;*
- (f) prints, provides or offers to print or provide information intended for use in connection with book-making, pool-selling or betting on any horse-race, fight, game or sport, whether or not it takes place in or outside Canada or has or has not taken place;*
- (g) imports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, book-making, pool-selling or betting on a horse-race, fight, game or sport, and where this paragraph applies it is immaterial*
  - (i) whether the information is published before, during or after the race, fightgame or sport, or*
  - (ii) whether the race, fight, game or sport takes place in Canada or elsewhere, but this paragraph does not apply to a newspaper, magazine or other periodical published in good faith primarily for a purpose other than the publication of such information;*
- (h) advertises, prints, publishes, exhibits, posts up, or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest;*
- (i) wilfully and knowingly sends, transmits, delivers or receives any message that conveys any information relating to book-making, pool-selling, betting or wagering, or that is intended to assist in book-making, pool-selling, betting or wagering; or*
- (j) aids or assists in any manner in anything that is an offence under this section.*

- Scope: A “bet”, under Section 197/1 cCC, means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada.

Section 202 does not apply in case of exemptions, set out in Section 204 cCC. According to Section 204 cCC provisions of Section 202 do not apply to:

- 1.(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked, to be paid to*
- (i) the winner of a lawful race, sport, game or exercise,*
  - (ii) the owner of a horse engaged in a lawful race, or*
  - (iii) the winner of any bets between not more than ten individuals;*
- (b) a private bet between individuals not engaged in any way in the business of betting;*
- (c) bets made or records of bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races if*
- (i) the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race-course in or out of Canada, and, in the case of a race conducted on a race-course situated outside Canada, the governing body that regulates the race has been certified as acceptable by the Minister of Agriculture and Agri-Food or a person designated by that Minister pursuant to subsection (8.1) and that Minister or person has permitted pari-mutuel betting in Canada on the race pursuant to that subsection, and*
  - (ii) the provisions of this section and the regulations are complied with, and persons, which in accordance with the regulations, do anything described in section 201 or 202, if they do it for the purposes of legal pari-mutuel betting<sup>185</sup>.*

- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on Fraud.
- Sanctions envisaged: The offence under Section 202 cCC is an indictable offence and punishable:
  - for a first offence, by imprisonment for not more than two years;
  - for a second offence, by imprisonment for not more than two years and not less than fourteen days;
  - for each subsequent offence, by imprisonment for not more than two years and not less than three months.
- Jurisdiction: Under the Canadian legislation, subject to special provisions, “no person shall be convicted or discharged under section 730 of an offence committed outside

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<sup>185</sup> Pari mutuel betting, according to Section 207 cCC, may also include any race or fight or a single sporting event or athletic contest.

Canada.” (Section 6/2 cCC). There are no such special provisions relating to Section 202 cCC. The territoriality principle is applicable with the exception of an offence committed outside Canada by a public employee; in this case, active personality principle applies (Section 7/4 cCC). See also above, in the part on Fraud.

- Liability of legal persons: Yes. See above, in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes. See above, in the part on Fraud.
- Anti-money laundering measures: Yes. See above, in the part on Fraud.
- Application of special investigative techniques: Measures under Section 183 and seq. are applicable to Section 202(1)(e), that is, engaging in book-making or pool-selling, or in the business or occupation of betting, or making any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or betting.

### **Cheating at play (Section 209 cCC)**

- Offence: Under Section 209, *every one who, with intent to defraud any person, cheats:*
  - *while playing a game<sup>186</sup> or*
  - *in holding the stakes for a game or*
  - *in betting*is guilty of an indictable offence.
- Scope: The offence covers any person involved in a betting related fraud. The “intent to defraud” would lie either in tampering with the contingency such that the actual outcome probabilities were not the same as they appeared to be to other bettors, or alternatively in misleading other players as to what the real probabilities actually were.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on Fraud.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding two years.
- Jurisdiction: Under the Canadian legislation, subject to special provisions, “no person shall be convicted or discharged under section 730 of an offence committed outside Canada.” (Section 6/2 cCC). There are no such special provisions relating to cheating at play under Section 209 cCC, therefore, only territoriality principle applies - with the exception of an offence committed outside Canada by a public employee; in this case, the

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<sup>186</sup> According to Section 197 cCC, “game” means a game of chance or mixed chance and skill.

active personality principle applies (Section 7/4 cCC). See also above, in the part on Fraud.

- Liability of legal persons: Yes. See above in the part on Fraud.
- Protection of witnesses and whistle-blowers: Yes. See above, in the part on Fraud.
- Anti-money laundering measures: Yes. See above, in the part on Fraud.
- Application of special investigative techniques: Measures under Section 183 et seq. cCC are not applicable.

#### **2.1.4.2 Applicability of Canadian criminal law in the fight against match-fixing**

Canada does not explicitly incriminate match-fixing as such but it comes very close to it with descriptions of some other criminal offences, especially in the area of betting.

##### ***2.1.4.2.1 Fraud***

The description of fraud<sup>187</sup> is broad enough to cover instances of match-fixing one way or another. Jurisdiction is subject to the territoriality principle in general and the active personality principle in the case of public employees. Participatory acts and forms of organized criminality are adequately incriminated. Sanctions provided for the basic form of the offence where the value of what is obtained or sought to be obtained exceeds \$5,000 are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected<sup>188</sup>. Special investigative techniques and all anti-money laundering measures, including seizure, freezing and confiscation may be applied.

##### ***2.1.4.2.2 Bribery offences***

Provisions on corruption and bribery extend to different categories of public officials from the highest to the municipal levels and to private sector bribery, too. There is also a specific provision on breach of trust and fraud in the public office<sup>189</sup>.

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<sup>187</sup> Section 380 cCC.

<sup>188</sup> Although no anonymous witnesses are allowed.

<sup>189</sup> Section 122 Ccc.

Jurisdiction is subject to the territoriality principle in general and the active personality principle in the case of public employees. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected<sup>190</sup>. Special investigative techniques and anti-money laundering measures may be applied.

Canada has ratified the UNCAC on 2 October 2007.

#### **2.1.4.2.3 *Illegal/irregular gambling***

Concerning illegal gambling, the Canadian criminal legislation<sup>191</sup> applies the principle that betting, pool-selling and book-making are, in principle, illegal if they do not fall under the provisions on exemptions<sup>192</sup>, basically allowing permitted<sup>193</sup> and private<sup>194</sup> gambling but limited to pari-mutuel betting. Definition of bets explicitly extends to bets on sports competitions in the country or abroad<sup>195</sup>. Canadian provinces are permitted to operate “lottery schemes”, but the definition of this term does include some forms of betting operation. However, permitted “lottery schemes” do not include schemes involving bets made “...on any race or fight, or on a single sport event or athletic contest”<sup>196</sup>. This means that betting and taking bets on collective outcomes of events is permitted, but taking bets on any single game or match that could be tampered with, would be a crime whether or not there was any suggestion or act of “match fixing”, unless the activity was a private wager between individuals not in the business of gambling.

Jurisdiction for this criminal offence is subject to the territoriality principle in general and the active personality principle in the case of public employees,. Participatory acts and organized criminal activity in this area are subject to sanctions. Due to low sanctions for this basic form of a criminal offence provisions of the UNTOC cannot be applied. Legal persons can be held

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<sup>190</sup> Testifying of anonymous witnesses is not allowed.

<sup>191</sup> Section 202 cCC.

<sup>192</sup> As set in Section 204 cCC.

<sup>193</sup> “Permitted” equals “legal”.

<sup>194</sup> Up to 10 persons.

<sup>195</sup> A “horse-race, fight, match or sporting event that is to take place in or out of Canada”.

<sup>196</sup> cCC Section 207 (4)(b)).

liable. Whistleblowers and witnesses can be protected<sup>197</sup> and special investigative techniques can be applied<sup>198</sup>. Anti-money laundering measures can also be applied.

There is also a criminal offence which can be understood as the one covering irregular gambling: the offence of *cheating at play*<sup>199</sup>. Analysis of the wording in which the offence is defined allows the conclusion that this offence also covers betting on fixed matches, which – if the presumption is correct – might be extremely important in the fight against betting related match fixing in Canada. The main problem here is the question if activities of persons who are *betting, playing a game or holding the stakes for a game*<sup>200</sup>, knowing that they are doing it in relation to a fixed match, would be considered as “cheating” in the process of gambling; and whether this may also be the case when the actual outcome probabilities were not the same as they appeared to be to other bettors, or alternatively in misleading other players as to what the real probabilities actually were.

Jurisdiction for this criminal offence is subject to the territoriality principle in general and the active personality principle in the case of public employees. Participatory acts and organized criminal activity in this area are subject to sanctions. Due to low sanctions for this basic form of a criminal offence, the provisions of UNTOC cannot be applied. Legal persons can be held liable. Whistleblowers and witnesses can be protected<sup>201</sup>, but not all special investigative techniques can be applied<sup>202</sup>. Anti-money laundering measures related to this offence can also be applied.

### **2.1.4.3 Conclusion**

Despite not having a special offence incriminating match-fixing, Canada is covering some possible forms of this conduct.

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<sup>197</sup> But no testimonies of anonymous witnesses allowed.

<sup>198</sup> But for offences from Section 202 (1)(e) cCC only.

<sup>199</sup> Section 209 cCC.

<sup>200</sup> As described in Section 209 cCC.

<sup>201</sup> But no testimonies of anonymous witnesses are allowed.

<sup>202</sup> Electronic surveillance/interception cannot be applied.

Fraud<sup>203</sup> is a general criminal offence covering possible forms of match-fixing. In addition, there is a specific criminal offence of fraud in the public sector<sup>204</sup>, as well as, very importantly, a criminal offence of fraud<sup>205</sup> related to gambling<sup>206</sup>. A combination of all mentioned offences related to fraud does not leave too much room for possible perpetrators in the area of match-fixing. The only – but not very important - problem in this area is the low sanctioning for fraud in Section 380 CC in cases where the value of what is obtained or sought to be obtained does not exceed \$5,000 and for “cheating at play” from Section 209, which does not always allow for the application of the UNTOC.

Bribery offences, especially the private sector offences<sup>207</sup>, can also be applied in the cases of match-fixing, expanding the array of applicable criminal offences.

Other strengths of the Canadian criminal law system include the establishment of liability of legal persons, the existence of anti-money laundering measures and the use of special investigative techniques, as well as the availability of measures to protect witnesses and whistleblowers. There is no possibility for giving a testimony for an anonymous witness, but there is a possibility to enable the witness to testify outside of the court room or behind the screen<sup>208</sup>.

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<sup>203</sup> Section 380 cCC.

<sup>204</sup> Section 122 cCC.

<sup>205</sup> “Cheating at play”, Section 209 cCC.

<sup>206</sup> Under the presumption that it also covers intentional betting on a fixed match.

<sup>207</sup> Section 426 cCC.

<sup>208</sup> Section 486/2 cCC.

## 2.1.5 PEOPLE'S REPUBLIC OF CHINA

### 2.1.5.1 Criminal Law

The following analysis is based on the Criminal law of the People's Republic of China (hereinafter: chCL), effective as of 1<sup>st</sup> October 1997.

#### Fraud (Article 266 chCL)

- Offence: Under Article 266 chCL, it is an offence to *swindle public or private money or property*.
- Scope: The provision of Article 266 chCL criminalizes fraud (swindle) in general. It relates to both public or private sector.
- Area of applicability: Public and private sectors .
- Participatory acts and organized crime activity: Joint crime (Article 25 chCL); crime syndicate (a more or less permanent crime organization composed of three or more persons for the purpose of jointly committing crimes; the head who organizes or leads a crime syndicate shall bear criminal responsibility for all the crimes committed by the syndicate; Article 26 chCL); accomplice (Article 27 chCL); accomplice under duress (Article 28 chCL) and instigation (Article 29 chCL).
- Sanctions envisaged: The offence is punishable:
  - *if the amount is relatively large*:
    - *by a fixed-term imprisonment of not more than three years, or*
    - *by criminal detention or*
    - *by public surveillance,*
    - *and/or by a fine.*
  - *if the amount is huge or if there are other serious circumstances*,
    - *by a fixed-term imprisonment of not less than three years but not more than 10 years, and*
    - *by a fine;*
  - *if the amount is especially huge or if there are other especially serious circumstances*,
    - *by a fixed-term imprisonment of not less than 10 years or life imprisonment*
    - *and by a fine or confiscation of property.*

- Jurisdiction: The territoriality principle (Article 6 chCC), as well as the active (Article 7 chCL) and passive personality principles<sup>209</sup> (Article 8 chCL) apply.
- Liability of legal persons: The Chinese criminal law recognises in general criminal liability of legal person (see Articles 30 and 31 chCC). The application of these principles varies with regard to specific offences.<sup>210</sup> No specific provisions exist regarding this offence.
- Protection of witnesses and whistleblowers<sup>211</sup>: By virtue of Article 49 of the Criminal Procedure Law from 1996<sup>212</sup>, the People's Courts, the People's Procuratorates and the public security organs are under a duty to insure the safety of witnesses and their near relatives. Under Article 49 of the Criminal Procedure Law, anyone *who intimidates, humiliates, beats or retaliates against a witness or his near relatives, if his act constitutes a crime, shall be investigated for criminal responsibility according to law; if the case is not serious enough for criminal punishment, he shall be punished for violation of public security in accordance with law.*

Under Article 85 of the Criminal Procedure Law, the public security bodies, the People's Procuratorates and the People's Courts are also entrusted with the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential.

- Anti-money laundering measures: The offence is committed in a form of a crime syndicate, drug-related crime, crime of the underworld organization, terrorist crime, smuggling crime, embezzlement and bribery crime, crime disrupting the order of financial management, and financial fraud crime are all predicate offences to money laundering<sup>213</sup>. Article 312 chCL on concealment of illegally acquired goods may also apply. Seizure<sup>214</sup> and freezing of property are possible under Articles 114 and 117 of the Criminal Procedure Law. Temporary freezing of accounts is available under Article 26 of Anti-

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<sup>209</sup> This does not apply to a crime that is not punishable according to the laws of the place where it is committed.

<sup>210</sup> "Corporate culture' as a basis for the criminal liability of corporations", prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business, February 2008, p. 51 et seq.

<sup>211</sup> China has adopted several amendments to the CPL from 1996 on 14 March 2012 and they entered into force on 1st January 2013 but - as seen below in footnote 219 - changes don't refer to whistleblowers.

<sup>212</sup> Amendments of the CPL from 1st January 2013 introduced Articles 62 and 63 on additional protective measures for witnesses, victims, or their close relatives whose personal safety is at risk because of their testimony in cases involving, for example, crimes against state security, crimes of terrorism, or organized crime.

<sup>213</sup> Article 191 chCL, dealing with money laundering following drug-related crimes or crimes committed by organizations in nature of syndicate or smugglers or terrorist crimes.

<sup>214</sup> Seizure of material evidence and documentary evidence.

Money Laundering Law of the People's Republic of China<sup>215</sup>. Confiscation of proceeds of crime is applicable by virtue of Article 198 of the Criminal Procedure Law.

- Application of special investigative techniques: Yes, according to Article 116 of the Criminal Procedure Law 1996<sup>216</sup>, but only the seizure of mail or telegrams are explicitly mentioned and allowed by approval of the police department or people's procuratorate .

### **Gambling and crime of running gambling house (Article 303 chCL)**

- Offence: Under Article 303 chCL, it is an offence to, *for the purpose of profit*:
  - *gather people to engage in gambling,*
  - *run a gambling house or*
  - *make gambling a person's profession.*
- Scope: The offence is classified as a crime of disturbing public order.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Yes, see above in the part on fraud.
- Sanctions envisaged: The offence is punishable by:
  - *a fixed-term imprisonment of not more than three years, or*
  - *criminal detention, or*
  - *public surveillance,*
  - *and by a fine.*
- Jurisdiction: The territoriality principle (Article 6 cCC), as well as the active (Article 7 chCL) and passive personality principles<sup>217</sup> (Article 8 chCL) apply.
- Liability of legal persons: Yes, see above in the part on fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on fraud<sup>218</sup>.
- Anti-money laundering measures: Yes, see above in the part on fraud.
- Applicability of special investigative techniques: Yes, see above in the part on fraud. In addition, investigation authorities may conduct extraction, copying and fixing of the materials that can constitute criminal evidence demonstrating the actual way of the criminal gambling case operates including webpages, internet records, e-mails, electronic contracts, electronic transactions records, electronic books, etc.

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<sup>215</sup> Adopted 31st Oct 2006.

<sup>216</sup> *If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People's Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.*

<sup>217</sup> Under the condition of double criminality.

<sup>218</sup> Article 266 chCL.

It is worth mentioning that relevant Chinese institutions have adopted important explanatory documents on the application of this criminal offence<sup>219</sup>.

**Embezzlement (Arts 382-383 chCL) and Acceptance of gifts (Article 394 chCL)**

- Offence:
  - o Under Article 382 chCL, it is an offence for:
    - *any State functionary (Article 382/1), or*
    - *any person authorized by State organs, State-owned companies, enterprises, institutions or people's organizations to administer and manage State-owned property (Article 382/2),*
    - *to, by taking advantage of his office:*
      - *appropriate,*
      - *steal,*
      - *swindle*

*public money or property or by other means illegally take it into his own possession.*
  - o Under Article 394, it is an offence for any *State functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as is required by State regulations, if the amount involved is relatively large.* Rules on embezzlement apply.
- Scope: The offence of embezzlement relates to crimes against property, committed:
  - *either by a State functionary,*
  - *or by person, public or private, authorised to manage state-owned property.*
- Area of applicability: Public sector; for the offence of embezzlement, a nexus with the public sector is required, either on the side of the offender (state functionary) or on the side of the victim (state-owned property).
- Participatory acts and organized crime activity: Joint crime (Article 25 chCL); crime syndicate (a more or less permanent crime organization composed of three or more

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<sup>219</sup> The interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate regarding certain questions of specific application of law to illegal gambling cases and Observations of the Supreme Court, Supreme Prosecution's office, the Ministry of Public Security on certain questions relevant to the use law with regard to the cases of illegal online gambling.

persons for the purpose of jointly committing crimes; the head who organizes or leads a crime syndicate shall bear criminal responsibility for all the crimes committed by the syndicate; Article 26 chCL); accomplice (Article 27 chCL); instigation (Article 28 chCL). In addition, and by the virtue of Article 382/3 chCL, whoever conspires with the offender to engage in embezzlement will be regarded as joint offender in the crime and punished as such.

- Sanctions envisaged: The offence is punishable in the light of the seriousness of the circumstances and in accordance with the following provisions (Article 383 chCL):

*(a) if an individual embezzled not less than 100,000 yuan<sup>220</sup>:*

- *by fixed-term imprisonment of not less than 10 years or life imprisonment, and (optional) confiscation of property;*
- *if the circumstances are especially serious by death and by confiscation of property.*

*(b) if an individual embezzled not less than 50,000 yuan but less than 100,000 yuan*

- *by fixed-term imprisonment of not less than five years and (optional) confiscation of property;*
- *if the circumstances are especially serious, by life imprisonment and confiscation of property.*

*(c) if an individual embezzled not less than 5,000 yuan but less than 50,000 yuan:*

- *by fixed-term imprisonment of not less than one year but not more than seven years;*
- *if the circumstances are serious, by fixed-term imprisonment of not less than seven years but not more than 10 years<sup>221</sup>.*

*(d) if an individual embezzled less than 5,000 yuan,*

- *if the circumstances are relatively serious, by fixed-term imprisonment of not more than two years or by criminal detention;*

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<sup>220</sup> 1 Chinese Yuan Renminbi = 0,160436 USD (on 29 November 2012).

<sup>221</sup> “If an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.”

- *if the circumstances are relatively minor, by administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.*

Whoever repeatedly commits the crime of embezzlement and goes unpunished will be punished on the basis of the cumulative amount of money he has embezzled.

- Jurisdiction: The territoriality principle (Article 6 chCL), as well as the active (Article 7 chCL) and passive personality principles (Article 8 chCL) apply, with the exception of embezzlement amounting to less than 5,000 yuan (this exception is not applicable with regard to the active personality principle for State functionaries or servicemen, Article 7/2 chCL).
- Liability of legal persons: Yes, see in the part on fraud.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on fraud.
- Anti-money laundering measures: Yes, see above in the part on fraud.
- Applicability of special investigative techniques: Yes, see above in the part on fraud.

#### **Acceptance of a bribe (Article 385-388 chCL)**

- Offence:
  - Under Article 385/1, it is an offence for *any State functionary who, by taking advantage of his position (Article 385/1), to:*
    - *extort money or property from another person,*
    - *or illegally accept another person's money or property in return for securing benefits for the person.*
  - Under Article 385/2, it is an offence for *any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession.*
  - Under Article 388, it is an offence for *any State functionary who, by taking advantage of his own functions and powers or position secures illegitimate benefits for an entrusting person through another State functionary's performance of his duties and extorts from the entrusting person or accepts the entrusting person's money or property.*
  - Under Article 387, it is an offence for:
    - *a State body, State-owned company, enterprise, institution or people's organization, and*

- *the persons who are directly in charge and the other persons who are directly responsible for the offence,*

*to:*

- *extort from another person,*
- *or illegally accept another person's money or property,*  
*in return for securing benefits for the person, if the circumstances are serious.*

Similarly, it is an offence for any of the units mentioned (State body...) that, *in economic activities, secretly accept off-the-book rebates or service charges of various descriptions* (Article 387/2).

- Scope: The offence in Articles 385-388 chCL include various forms of passive corruption, including trading in influence. Persons committing the offence are not necessarily public officials, given that Article 387 applies to enterprises as well.
- Areas of applicability: Public and private sectors.
- Participatory acts and organized crime activity: Yes, see the part on fraud.
- Sanctions envisaged:
  - o As for the offences under Article 385/1,2 and Article 388, sentences, prescribed in Article 383 apply - see above, in the section on embezzlement. Extortion of a bribe from another person will be considered an aggravating circumstance.
  - o As for the offence under Article 387/1,2:
    - State body, State-owned company, enterprise, institution or people's organization, will be fined;  
the persons who are directly in charge and the other persons who are directly responsible for the offence, will be sentenced to fixed-term imprisonment of not more than five years or criminal detention.
- Jurisdiction: The territoriality principle (Article 6 cCC), as well as the active (Article 7 chCL) and passive personality principles (Article 8 chCL) apply.
- Liability of legal persons: The Chinese criminal law recognizes in general criminal liability of legal persons, see Article 30 and 31 cCC. The application of this principle

varies with regard to specific offences. Corporate liability for the acceptance of bribes is specifically provided for under Article 387 chCL<sup>222</sup>.

- Protection of witnesses and whistle-blowers: Yes, see above in the part on fraud.
- Anti-money laundering measures: Yes, see above in the part on fraud.
- Applicability of special investigative techniques: Yes, see above in the part on fraud.

### **Offering bribes (Article 389-393 chCL)**

- Offence:
  - Under Article 389, it is an offence for any person, to, *for the purpose of securing illegitimate benefits*:
    - *give money or property to a State functionary (Article 389/1 chCL);*
    - *in economic activities, violate State regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various descriptions (Article 389/2 chCL), or*
    - *introduce a bribe to a State functionary (Article 392).*
  - Under Article 391, it is an offence for:
    - *any person, or*
    - *a State organ, State-owned company, enterprise, institution or people's organization (Article 391/2),**to, for the purpose of securing illegitimate benefits*:
    - *give money or property to a State organ, State-owned company, enterprise, institution or people's organization, or*
    - *in economic activities, violate State regulations by giving rebates or service charges of various descriptions.*
- Scope: These offences include active corruption by offering or introducing bribes:
  - *to a State functionary; or*
  - *to a State organ, State-owned company, enterprise, institution or people's organization.*

Similarly to the offences of acceptance of bribes, they are not limited to public sector alone. Giving a bribe by an enterprise or other non-state institution is included as well. It is not

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<sup>222</sup> See the text on Article 387 above.

considered offering a bribe when a person offers money or property to a State functionary through extortion, but gains no illegitimate benefits (Article 389/3 chCL).

- Participatory acts and organized crime activity: Yes, see above in the part on fraud.
- Area of applicability: Private and public sectors.
- Sanctions envisaged: Offering bribes (Article 389) is punishable by (Article 390 chCL) :
  - *fixed-term imprisonment of not more than five years,*
  - *or criminal detention.*

In case when:

- *the circumstances are serious or if heavy losses are caused to the interests of the State, the offence is punishable by fixed-term imprisonment of not less than five years but not more than 10 years;*
- *the circumstances are especially serious, the offence is punishable by fixed-term imprisonment of not less than 10 years or life imprisonment and (optionally) by confiscation of property.*

*Any briber who, before he is investigated for criminal responsibility, voluntarily confesses his act of offering bribes may be given a mitigated punishment or exempted from punishment.*

Introducing bribes to a State functionary is punishable by *fixed-term imprisonment of not more than three years or criminal detention* (Article 392). Any person who introduces a bribe but voluntarily confesses the act before he/she is investigated for criminal responsibility may be given a mitigated punishment or exempted from punishment.

The offence under Article 391/1 is punishable by *fixed-term imprisonment of not more than three years or criminal detention*.

- Jurisdiction: See above, in the part on fraud.
- Liability of legal persons: The Chinese criminal law recognizes in general criminal liability of legal persons, see Article 30 and 31 cCC. The application of this principle varies with regard to specific offences<sup>223</sup>.

Criminal liability is specifically provided for:

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<sup>223</sup> "Corporate culture' as a basis for the criminal liability of corporations", prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business, February 2008, p. 51 et seq.

- with regard to offering bribes to State functionaries, in Article 393 chCL<sup>224</sup>;
- with regard to offering bribes to State body, State-owned company, enterprise, institution or people's organization, in Article 391/2 chCL<sup>225</sup>.
- Protection of witnesses and whistle-blowers: Yes, see above in the part on fraud.
- Anti-money laundering measures: Yes, see above in the part on fraud. In addition, any person who takes into his own possession the illegal gains derived from bribing is to be convicted and punished in accordance with the provisions of Articles 389 and 390 chCL (Article 393).
- Applicability of special investigative techniques: Yes, see above in the part on fraud.

### **2.1.5.2 Applicability of Chinese criminal law in the fight against match-fixing**

China does not have a special criminal offence on match-fixing, but the rest of the criminal law provisions are broad enough to ensure high level of protection against match-fixers.

#### **2.1.5.2.1 Fraud**

The description of fraud<sup>226</sup> covers instances of match-fixing for pecuniary gain (without bribery involved) in both the public and private sectors. Jurisdiction is subject to the territoriality, as well as active and passive personality principles. Participatory acts and forms of organized criminality are adequately incriminated. Sanctions provided for the basic form of the offence in the majority<sup>227</sup> of cases are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held criminally liable for related offences. Whistleblowers and witnesses can be protected. Anti-money laundering measures, including seizure, freezing and confiscation can be applied. Special investigative techniques can be applied, but to a limited extent (seizure of mail or telegrams of a criminal suspect are allowed).

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<sup>224</sup> *A legal person offering bribes to a State functionary, if the circumstances are serious, is to be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence are to be sentenced to fixed-term imprisonment of not more than five years (Article 393 chCL).*

<sup>225</sup> *State body, State-owned company, enterprise, institution or people's organization will be fined: the persons who are directly in charge and the other persons who are directly responsible for the offence, will be sentenced to fixed-term imprisonment of not more than three years or criminal detention (Article 391/2 chCL).*

<sup>226</sup> "Swindle" as called by Article 266 chCL.

<sup>227</sup> Only when the amount involved is "relatively large" UNTOC cannot apply.

#### **2.1.5.2.2 Bribery offences**

Provisions on corruption and bribery mainly extend to public but also to private sector bribery. In addition to “traditional” offences on acceptance and giving of bribes, there are specific provisions on embezzlement<sup>228</sup> related to state-owned property and acceptance of gifts<sup>229</sup> by public functionaries.

Jurisdiction is subject to the territoriality principle, as well as the active personality principle and the passive personality principle with one exception<sup>230</sup>. Participatory acts and forms of organized criminality are subject to adequate sanctions. The majority<sup>231</sup> of sanctions take into account the gravity of the offences. In some cases<sup>232</sup> of embezzlement or accepting bribes, capital punishment can also be applied. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected. Special investigative techniques, to a limited extent, and anti-money laundering measures can be applied.

China has ratified the UNCAC on 13 January 2006.

#### **2.1.5.2.3 Illegal/irregular gambling**

The Chinese legislation applies the principle that the organization of gambling is illegal<sup>233</sup>.

Jurisdiction is subject to the territoriality principle, as well as the active and passive personality principles. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for the basic form of this criminal offence are not high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held criminally liable for those offences. Whistleblowers and witnesses can be protected. Special investigative techniques, to a limited extent, and anti-money laundering measures can be applied.

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<sup>228</sup> Articles 382 and 383 chCL.

<sup>229</sup> Article 394 chCL.

<sup>230</sup> The exception applies in the cases of embezzlement amounting to less than 5,000 yuan, but this exception is not applicable with regard to active personality principle to State functionaries or servicemen.

<sup>231</sup> There are exceptions when the sum embezzled or taken in a form of a bribe is below 5,000 yuan and in the cases of articles 391/1 and 392 on offering bribes.

<sup>232</sup> If the amount involved is not less than 100,000 yuan and if the circumstances are especially serious.

<sup>233</sup> Article 303 chCL.

### 2.1.5.3 Conclusion

In China, there are no specific criminal law provisions on match-fixing per se, but a combination of other provisions may ensure decent law enforcement and judicial response against the phenomenon.

In the area of incriminations, the provisions on fraud<sup>234</sup> and bribery offences are comprehensive. However, in the area of gambling only its organization is specifically incriminated and there is a lot of room for further legislative improvement.

Lacunae and loopholes are encountered with regard to the criminal law provisions on investigative means in the area of match-fixing: Article 116 of the Criminal Procedure Law allows only for seizure of mail or telegrams of a criminal suspect and there is no provision on more modern investigative techniques (i.e. electronic surveillance, wiretapping). In addition, it seems that the amendments to the Criminal Procedure Law, which were adopted in March 2012, did not change much in this respect. Therefore, the possibility of Chinese law enforcement to detect and/or investigate cases of match-fixing is seriously hampered.

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<sup>234</sup> Article 266 chCL.

## 2.1.6 HONG KONG (Special Administrative Region of the People's Republic of China)

### 2.1.6.1 Theft Ordinance 1997

#### **Fraud (Section 16A)**

- **Offence**: Under Section 16A/1 of the Ordinance, it is an offence for *any person to, by any deceit (whether or not the deceit is the sole or main inducement) and with intent to defraud, induce another person to commit an act or make an omission, which results either:*
  - (a) *in benefit to any person other than the second-mentioned person; or*
  - (b) *in prejudice or a substantial risk of prejudice to any person other than the first-mentioned person.*
- **Scope**: This is a general provision on fraud.
- **Area of applicability**: Private sector.
- **Participatory acts, organized crime activity**: Any person who aids, abets, counsels or procures the commission by another person of any offence is to be guilty of the like offence, under Section 89 of the Criminal Procedure Ordinance 1997. Conspiracy to defraud is an offence at common law (Section 16A/4 of the Theft Ordinance). If the offence satisfies the conditions set forth by the Organized and Serious Crimes Ordinance 2003, the offender may be punished more severely (Section 27 of the Organized and Serious Crimes Ordinance), not exceeding the maximum penalty specified.
- **Sanctions envisaged**: The offence is punishable on conviction upon indictment by imprisonment for 14 years.
- **Jurisdiction**: In addition to the principle of territoriality, the Criminal Jurisdiction Ordinance (Section 4/1) has expanded the extra-territorial effect of the offence, so that person may be guilty of the offence:
  - (a) *whatever his citizenship or nationality, or whether or not he was a permanent resident of Hong Kong at any material time;*
  - (b) *whether or not he was in Hong Kong at any such time.*
- **Liability of legal persons**: In principle, a corporate body may be held liable for a criminal offence, provided that human conduct falls within the possible limits of corporate activity and that penalties imposed are not physical by nature<sup>235</sup>.

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<sup>235</sup> Jackson, M.: Criminal Law in Hong Kong, 2003, p. 395 et seq.

- Protection of witnesses and whistle-blowers: Yes, Hong Kong Witness Protection Ordinance 2000<sup>236</sup> may apply.
- Anti-money laundering measures: Seizure is applicable under Section 28 of the Theft Ordinance. Seizure, confiscation and restraining orders are also possible under the Organized and Serious Crimes Ordinance.
- Application of special investigative techniques: Yes, the offence is a “serious offence” under the Interception of Communications and Surveillance Ordinance.

**Obtaining property by deception (Section 17)**

- Offence: Under Section 17 of the Ordinance, it is an offence for *any person to, by any deception (whether or not such deception was the sole or main inducement) dishonestly obtain property belonging to another, with the intention of permanently depriving the other of it.*
- Scope: The offence relates to fraudulent obtaining of property by the offender himself.
- Area of applicability: Private sector.
- Participatory acts, organized crime activity: Any person who aids, abets, counsels or procures the commission by another person of any offence is to be guilty of the like offence, under Section 89 of the Criminal Procedure Ordinance. If the offence satisfies the conditions set forth by the Organized and Serious Crimes Ordinance, the offender may be punished more severely (Section 27 of the Organized and Serious Crimes Ordinance), not exceeding the maximum penalty specified.
- Sanctions envisaged: The offence is punishable on conviction upon indictment to imprisonment for 10 years.
- Jurisdiction: In addition to the principle of territoriality, the Criminal Jurisdiction Ordinance (Section 4/1) has expanded the extra-territorial effect of the offence, so that person may be guilty of the offence:
  - (a) *whatever his citizenship or nationality, or whether or not he was a permanent resident of Hong Kong at any material time;*
  - (b) *whether or not he was in Hong Kong at any such time.*

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<sup>236</sup> According to the Ordinance, witness is also a person who has provided a statement or other assistance to a public officer in relation to an offence (Section 2 of the Hong Kong Witness Protection Ordinance 2000).

- Liability of legal persons: In principle, a corporate body may be held liable for a criminal offence, provided that human conduct falls within the possible limits of corporate activity and that penalties imposed are not physical by nature<sup>237</sup>.
- Protection of witnesses and whistle-blowers: Yes, see in the part on fraud.
- Anti-money laundering measures: Seizure is applicable under Section 28 of Theft Ordinance. Seizure, confiscation and restraining orders are also possible under the Organized and Serious Crimes Ordinance.
- Application of special investigative techniques: Yes, the offence is a “serious offence” under the Interception of Communications and Surveillance Ordinance 2006.

### 2.1.6.2 Prevention of Bribery Ordinance 1997

#### Bribery (Section 4)

- Offence:
  - Under Section 4/1, it is an offence for *any person to, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offer any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's*:
    - (a) *performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;*
    - (b) *expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or*
    - (c) *assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.*
  - Under Section 4/2 of the Ordinance, it is an offence for *any public servant to, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicit or accept any advantage as an inducement to or reward for or otherwise on account of his*:

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<sup>237</sup> Jackson, M.: Criminal Law in Hong Kong, 2003, p. 395 et seq.

- (a) *performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;*
  - (b) *expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or*
  - (c) *assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.*
- **Scope:** Under Section 4/1, the offence covers active corruption of public officials and under Section 4/2, passive corruption of public officials. The term “public servant” includes members of legislative or judicial bodies, or other public bodies specified under Section 2 of the Ordinance.
  - **Area of applicability:** Public sector.
  - **Participatory acts and organized crime activity:** Any person who aids, abets, counsels or procures the commission by another person of any offence is to be guilty of the like offence, under Section 89 of the Criminal Procedure Ordinance. Conspiracy is a self-standing offence under Section 12A of the Ordinance. If the offence satisfies the conditions set forth by the Organized and Serious Crimes Ordinance, the offender may be punished more severely (Section 27 of the Organized and Serious Crimes Ordinance), not exceeding the maximum penalty specified.
  - **Sanctions envisaged:** The offence under Section 4 is punishable (Section 12 of the Ordinance):
    - *on conviction on indictment, by a fine of \$500.000 and by imprisonment for 7 years; and*
    - *on summary conviction, by a fine of \$100.000 and by imprisonment for 3 years.*

The offender will also be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.
  - **Jurisdiction:** The offence has extraterritorial effects: the active personality principle applies with respect to passive corruption (Section 4/2) and the passive personality principle applies with respect to active corruption (Section 4/1).

- Liability of legal persons: In principle, a corporate body may be held liable for a criminal offence, provided that human conduct falls within the possible limits of corporate activity and that penalties imposed are not physical by nature<sup>238</sup>.
- Protection of witnesses and whistle-blowers: Yes, protection of informers is provided for in Section 30 of the Ordinance. In addition, the Witness Protection Ordinance applies.
- Anti-money laundering measures: Confiscation and restraining orders are applicable under Section 12AA and Section 14C of the Ordinance. Seizure, confiscation and restraining orders are also possible under the Organized and Serious Crimes Ordinance.
- Application of special investigative techniques: Yes, offences of bribery are serious offences under Interception of Communications and Surveillance Ordinance.

### **Corrupt transactions with agents (Section 9)**

- Offence: it is an offence for
  - (1) *Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-*
    - a) *doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or*
    - b) *showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business.*
  - (2) *Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-*
    - a) *doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or*
    - b) *showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business.*
- Scope: This criminal offence covers passive and active corruption of »agents«, a term, including *public servants and any person employed by or acting for another*<sup>239</sup>. The Ordinance also introduces a possibility for a defence<sup>240</sup> of the agent and of the person

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<sup>238</sup> Jackson, M.: Criminal Law in Hong Kong, 2003, p. 395 et seq.

<sup>239</sup> Section 2 of the Prevention of Bribery Ordinance.

<sup>240</sup> Subsection 4 of the Section 9 of the Prevention of Bribery Ordinance.

bribing him – they will not be guilty for the offence, if the principal of the agent has agreed with the advantage under certain conditions<sup>241</sup>.

- Area of applicability: Public and private sectors.
- Participatory acts and organized crime activity: See above, in the part on Section 4.
- Sanctions envisaged: The offence under Section 9 is punishable (Section 12 of the Ordinance):
  - *on conviction on indictment, by a fine of \$500.000 and by imprisonment for 7 years; and*
  - *on summary conviction, by a fine of \$100.000 and by imprisonment for 3 years.*

The offender will also be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

- Jurisdiction: See above, in the part on fraud (Section 16a).
- Liability of legal persons: See above, in part on Bribery, Section 4.
- Protection of witnesses and whistle-blowers: Yes, protection of informers is provided for in Section 30 of the Ordinance. In addition, the Witness Protection Ordinance applies.
- Anti-money laundering measures: Confiscation and restraining orders are applicable under Section 12AA and Section 14C of the Ordinance. Seizure, confiscation and restraining orders are also possible under the Organized and Serious Crimes Ordinance.
- Application of special investigative techniques: Yes, offences of bribery are serious offences under the Interception of Communications and Surveillance Ordinance.

### **2.1.6.3 Gambling Ordinance 1997**

#### **Cheating at gambling (Section 16 of the Gambling Ordinance)**

- Offence: Under Section 16, it is an offence *for any person to*:
  - (a) *by any fraud, misleading device or false practice, before or after or in the course of or in connection with gambling or a lottery, win from another person, for himself or for any other person ascertained or unascertained, any money or other property; or*
  - (b) *fraudulently or by any deception whatsoever by words or conduct, including a deception relating to the past, the present or the future and a deception as to the*

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<sup>241</sup> Advance or immediate post-agreement of the principal – Subsection 5 of the Section 5.

*intentions or opinions of any person, directly or indirectly persuade, incite or induce another person to take part in gambling or a lottery.*

- Scope: By virtue of Section 2 of the Ordinance, gambling includes:
  - *gaming* (playing of or at any game for winnings in money or other property whether or not any person playing the game is at risk of losing any money or other property),
  - *betting*,
  - *bookmaking* (soliciting, receiving, negotiating or settling of a bet by way of trade or business whether personally or by letter, telephone, telegram or on-line medium (including the service commonly known as the Internet) or by any other means).
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Any person who aids, abets, counsels or procures the commission by another person of any offence is to be guilty of the like offence, under Section 89 of the Criminal Procedure Ordinance.
- Sanctions envisaged: The offence is punishable on conviction on indictment by:
  - *a fine of \$1 000 000*
  - *and to imprisonment for 10 years.*
- Jurisdiction: The territoriality principle applies.
- Liability of legal persons: In principle, a corporate body may be held liable for a criminal offence, provided that human conduct falls within the possible limits of corporate activity and that penalties imposed are not physical by nature<sup>242</sup>.
- Protection of witnesses and whistle-blowers: Yes, see in the part on fraud.
- Anti-money laundering measures: The Gambling Ordinance includes a special provision on forfeiture (Section 26).
- Application of special investigative techniques: Yes, the offence is a “serious offence” under the Interception of Communications and Surveillance Ordinance.

#### **2.1.6.4 Applicability of Hong Kong criminal law in the fight against match-fixing**

The Hong Kong legislation does not include a specific criminal offence on match-fixing per se, but it has some other provisions in place to fight this phenomenon.

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<sup>242</sup> Jackson, M.: Criminal Law in Hong Kong, 2003, p. 395 et seq.

#### **2.1.6.4.1 Fraud**

Two provisions<sup>243</sup> of the Hong Kong Theft Ordinance Act with the descriptions of fraud are broad enough to cover instances of match-fixing for pecuniary gain without bribery involved. What is extremely interesting is the fact that jurisdictional principle of territoriality for fraud is expanded to get the extra-territorial effects, since the person may be guilty of the offence being the Hong Kong citizen or permanent resident or not and whether or not the suspected person was in Hong Kong at any time<sup>244</sup>. Participatory acts and forms of organized criminality are adequately incriminated. Sanctions provided for the offences are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons can be held liable for these offences. Whistleblowers and witnesses can be protected. Anti-money laundering measures, including seizure, freezing and confiscation may be applied. The use of special investigative techniques is also possible.

#### **2.1.6.4.2 Bribery offences**

Provisions on corruption and bribery in the Prevention of Bribery Ordinance extend to public and private sector bribery. Jurisdiction for passive bribery is subject to the active personality principle and jurisdiction for active bribery to the passive personality principle. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons can be held liable for those offences. Whistleblowers<sup>245</sup> and witnesses can be protected. Special investigative techniques and anti-money laundering measures may be applied.

#### **2.1.6.4.3 Illegal/irregular gambling**

Section 16 of the Gambling Ordinance incriminates two forms of fraudulent gambling: first, fraud during gambling<sup>246</sup>, and second, fraudulent incitement to gambling. The first one is especially important since it is covering possible cases of match-fixing related betting. Participatory acts and forms of organized criminality in this area are properly incriminated. In the area of jurisdiction, the territoriality principle applies. The sanctions provided for the offence are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons can be held liable for these offences, and, further, whistleblowers and witnesses

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<sup>243</sup> Sections 16/1/A and 17.

<sup>244</sup> Ordinance is using the phrase “material time”.

<sup>245</sup> “Informers” as called by Section 30 of the Ordinance.

<sup>246</sup> Section 16/1.

can be protected. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. The use of special investigative techniques is also possible.

#### **2.1.6.5 Conclusion**

Although Hong Kong does not criminalize match-fixing as a specific criminal offence, the existing provisions offer credible assurances that this phenomenon can be legally addressed.

Not only the description and scope of application of the provision on fraud, but also the extra-territorial possibilities for the investigation and prosecution of related cases, open the door to almost universal action against the perpetrators in this area. Similar solutions on jurisdiction in the area of bribery offences have the same effect. There is a comprehensive definition of irregular gambling which covers almost fully the conduct of match-fixing related betting. However, limitations exist due to a narrow application of territorial jurisdiction. Nevertheless, the rest of available and important for combating match-fixing legal tools – sanctions for participation in the criminal offences, liability of legal persons, protection of whistleblowers and witnesses, application of anti-money laundering mechanisms and special investigative techniques – offer decent chances for Hong Kong law enforcement and judicial agencies in the fight against match-fixing.

## 2.1.7 JAPAN

### 2.1.7.1 Penal Code 2006

The Japanese Penal Code, first of all, prohibits gambling, habitual gambling and running a gambling place. In the context of match fixing, further provisions on fraud and bribery offences will also be presented. This overview is based on the English translation of the Japanese Penal Code (hereinafter: jPC), incorporating revisions up to Act. 36 of 2006, effective as of 28 May 2006.

#### **Gambling (Article 185 jPC)**

- Offence: Under Article 185 jPC it is an offence *to gamble*.
- Scope: The prohibition of gambling does not apply to a person *who bets a thing which is provided for momentary entertainment*.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Co-principals; accessory; inducement (Articles 60-62 jPC).
- Sanctions envisaged: A person who gambles will be punished by a fine of not more than 500,000 yen<sup>247</sup> or a petty fine.
- Jurisdiction: The territoriality principle applies (Article 1 jPC).
- Liability of legal persons: Japan does not recognize general liability of corporations for criminal offences<sup>248</sup>.
- Protection of witnesses and whistle-blowers: Yes, according to the Code of Criminal Procedure 1948, Article 157-3 and 157-4, and Whistleblower Protection Act 2004.
- Anti-money laundering measures: Search and seizure are applicable under Articles 99, 218 and 220 of Code of Criminal Procedure; confiscation under Article 19 jPC may apply.
- Applicability of special investigative techniques: No, as for communication interception. According to the Communications' Interceptions Act 1999 they can only be used for drugs trafficking, illicit firearms trade, organised murder and smuggling of illegal migrants into Japan. On the other hand, undercover investigation would be allowed under some conditions.

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<sup>247</sup> 1 yen = 0,0121761 USD (on 29 November 2012).

<sup>248</sup> "Corporate culture' as a basis for the criminal liability of corporations", prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business, February 2008, p. 43.

**Habitual Gambling; Running a Gambling Place for the Purpose of Gain (Article 186 jPC).**

- Offence: Under Article 186 jPC it is an offence:
  - *for a person to habitually gamble* (Article 186/1 jPC);
  - *for a person to, for the purpose of profit, run a place for gambling or organize a group of habitual gamblers* (Article 186/2 jPC).
- Scope: This is a general provision incriminating habitual gambling and running a place for gambling or organizing a group of habitual gamblers.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Yes, according to Articles 60-62 jPC. In addition, under Article 3 of the Act on punishment of organized crimes, control of crime proceeds and other matters 1999 (hereinafter: Anti-OC Act)<sup>249</sup>, both offences under Article 186 jPC, committed as an activity of a group, are punished more severely.
- Sanctions envisaged: Habitual gambling is punishable by imprisonment with work for not more than 3 years. If committed as an activity of a group, it is punishable by imprisonment with work for not more than five years.  
Running a gambling place is punishable by imprisonment with work for not less than 3 months but not more than 5 years; if committed as an activity of a group, by imprisonment with work for not less than three months nor more than seven years.
- Jurisdiction: The territoriality principle applies (Article 1 jPC).
- Liability of legal persons: Japan does not recognize general liability of corporations for criminal offences<sup>250</sup>.
- Protection of witnesses and whistle-blowers: Yes, according to the Code of Criminal Procedure, Article 157-3 and 157-4, and Whistleblower Protection Act 2004.
- Anti-money laundering measures: The offence is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Search and seizure are applicable under Articles 99, 218 and 220 of the Code of Criminal Procedure; confiscation under Article 19 jPC may apply.

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<sup>249</sup> Article 3/1 of the Act: *When an act constituting one or more of the offences provided for in the following items is done as an activity of a group (An “activity of a group” means an act based on the will decided by the group, which effects or profits gained through such act accrue to the group. The same shall apply hereinafter.) by an organization to perform the act, a person who commits the offence shall be punished as provided in each corresponding item./.../.*

<sup>250</sup> “Corporate culture as a basis for the criminal liability of corporations”, prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary-General on Human Rights and Business, February 2008, p. 43.

- Applicability of special investigative techniques: No, as for communication interception. On the other hand, undercover investigation would be allowed under some conditions.

### **Fraud (Article 246 jPC)**

- Offence: It is an offence:
  - *for a person to defraud another of property* (Article 246/1 jPC); or
  - *for a person to obtain or cause another to obtain a profit by the means proscribed under Article 246/1 jCP* (Article 246/2 jCP).
- Scope: This is a general provision on fraud.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, Article 60-62 jPC apply. In addition, fraud, committed as an activity of a group, is punished more severely (see Article 3 of the Anti-OC Act).
- Sanctions envisaged: Fraud is punishable by imprisonment with work for not more than 10 years. committed as an activity of a group, fraud is punishable by imprisonment with labour for a limited term of not less than one year.
- Jurisdiction: The territoriality principle (Article 1 jPC) and the active personality principle (Article 3 jPC) apply.
- Liability of legal persons: See above, in the part on gambling.
- Protection of witnesses and whistle-blowers: Yes, according to the Code of Criminal Procedure, Article 157-3 and 157-4, and Whistleblower Protection Act 2004.
- Anti-money laundering measures: The offence is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Code of Criminal Procedure allows for search and seizure (Article 99 et seq.), confiscation under Article 19 jPC may apply.
- Applicability of special investigative techniques: See above, in the part on Gambling.

### **Corruption offences**

Under jPC, crimes of corruption include:

- abuse of authority by public officers (Article 193 jPC);
- abuse of authority by special public officers (Article 194 jPC);
- assault and cruelty by special public officers (Article 195 jPC);
- abuse of authority causing death or injury by special public officers (Article 196 jPC);

- acceptance of bribes; acceptance upon request; acceptance in advance of assumption of office (Article 197 jPC);
- passing of bribes to a third party (Article 197-2 jPC);
- aggravated acceptance; acceptance after resignation of office (Article 197-3 jPC);
- acceptance for exertion of influence (Article 197-4 jPC); and
- giving of bribes (Article 198 jPC).

The focus of the present study is on offences under Article 197 jPC (and related offences) and 198 jPC.

### **Giving of a bribe (Article 198 jPC)**

- Offence: Under Article 198 jPC, it is a crime *for a person to give, offer or promise to give a bribe*, as provided for in Articles 197 through 197-4 jPC (see below).
- Scope: Provision of Article 198 jPC relates to active corruption of public officials.
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: See above, in the part on gambling.
- Sanctions envisaged: The offence is punishable:
  - *by imprisonment with work for not more than 3 years or*
  - *by a fine of not more than 2,500,000 yen.*
- Jurisdiction: The territoriality principle applies (Article 1 jPC).
- Liability of legal persons: No, see above, in the part on gambling.
- Protection of witnesses and whistle-blowers: Yes, according to the Code of Criminal Procedure, Article 157-3 and 157-4, and Whistleblower Protection Act 2004.
- Anti-money laundering measures: The offence is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Code of Criminal Procedure allows for search and seizure (Article 99 et seq.), confiscation under Article 19 jPC may apply.
- Applicability of special investigative techniques: See above, in the part on Gambling.

### **Acceptance of Bribes; Acceptance upon Request; Acceptance in Advance of Assumption of Office (Article 197 jPC) and related offences (Articles 197-2 et seq. jPC)**

- Offence: It is an offence when:

- *a public officer or arbitrator accepts, solicits or promises to accept a bribe in connection with his/her duties (Article 197/1);*
- *a person to be appointed a public officer accepts, solicits or promises to accept a bribe in connection with a duty to be assumed with agreement to perform an act in response to a request (Article 197/2);*
- Scope: Provision of Article 197 jPC relates to passive corruption of public officials. Articles 197-2 and 197-3 jPC include special provisions, relating to cases:
  - *when a public officer, agreeing to perform an act in response to a request, causes a bribe in connection with the official's duty to be given to a third party or solicits or promises such bribe to be given to a third party (Article 197-2 jPC);*
  - *when he consequently acts illegally or refrains from acting in the exercise of his or her duty (Article 197-3/1 jPC);*
  - *when a public officer accepts, solicits or promises to accept a bribe, or causes a bribe to be given to a third party or solicits or promises a bribe to be given to a third party, in connection with having acted illegally or having refrained from acting in the exercise of the official's duty (Article 197-3/2 jPC);*
  - *when a person who resigned from the position of a public officer accepts, solicits or promises to accept a bribe in connection with having acted illegally or having refrained from acting in the exercise of his or her duty with agreement thereof in response to a request (Article 197-3/3 jPC).*

In addition, it is an offence under Article 197-4 jPC (*Acceptance for exertion of influence*) for a public officer to accept, solicit or promise to accept a bribe as consideration for the influence which the official exerted or is to exert, in response to a request, upon another public officer so as to cause the other to act illegally or refrain from acting in the exercise of official duty.

- Area of applicability: Public sector.
- Participatory acts and organized crime activity: See above, Articles 60-62 jPC apply.
- Sanctions envisaged:
  - o Offence under Article 197/1 jPC is punishable by:
    - *imprisonment with work for not more than 5 years;*

- when the official agrees to perform an act in response to a request, *imprisonment with work for not more than 7 years.*
- Offence under Art 197/2 jPC is punishable *by imprisonment with work for not more than 5 years, in the event of appointment.*
- Offence under 197-2 jPC is punishable *by imprisonment with work for not more than 5 years.*

In case of:

- offence under Article 197-3/1 or Article 197-3/2, *the offence is punishable by imprisonment with work for a definite term of not less than 1 year;*
  - offence under Article 197-3/3, *the offence is punishable by imprisonment with work for not more than 5 years.*
  - Offence under Article 197-4 jPC is punishable *by imprisonment with work for not more than 5 years.*
- Jurisdiction: The territoriality principle (Article 1 jPC) and the active personality principle in the cases of Japanese public officials outside the country (Article 4 jPC) apply.
  - Liability of legal persons: No, see above in the part on gambling.
  - Protection of witnesses and whistle-blowers: Yes, in accordance to the Code of Criminal Procedure, Article 157-3 and 157-4, and Whistleblower Protection Act 2004.
  - Anti-money laundering measures: The offence is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Code of Criminal Procedure allows for search and seizure (Articles 99, 218, 220 et seq.), confiscation under Article 19 jPC may apply.
  - Applicability of special investigative techniques: See above, in the part on Gambling.

### **2.1.7.2 Companies Act 2005<sup>251</sup>**

There are two provisions on private-to-private bribery, from which the following one is the most important for possible cases of match-fixing:

#### **Crime of the Giving or Acceptance of a Bribe by a Director, etc (Article 967)**

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<sup>251</sup> Act No. 86 of July 26, 2005.

- Offence: Under Article 967(1) it is an offence *when any one of the following persons accepts, solicits or promises to accept property benefits in connection with such person's duties, in response to a wrongful request*,:
  - (i) *any one of the persons listed in the items of paragraphs 1 and 2 of Article 960<sup>252</sup>*;
  - (ii) *the person prescribed in Article 961<sup>253</sup>*; or
  - (iii) *an accounting auditor or a person who is temporarily to perform the duties of an accounting auditor appointed pursuant to the provisions of Article 346(4).*
- (2) *A person who has given, offered or promised to give the benefits set forth in the preceding paragraph...*
- Scope: Provision relates to passive and active corruption of certain categories of persons private companies.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on gambling.
- Sanctions envisaged: The offence is punishable:
  - in the case of passive corruption by imprisonment with work for not more than five years or a fine of not more than five million yen<sup>254</sup>.
  - in the case of active corruption by imprisonment with work for not more than three years or a fine of not more than three million yen.
- Jurisdiction: In principle, territorial jurisdiction applies (Article 1 jPC). In the case of Article 967/, the active personality principle also applies<sup>255</sup>.
- Liability of legal persons: See above, in the part on gambling.

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<sup>252</sup> Incorporator; director at incorporation or company auditor at incorporation; director, accounting advisor, company auditor or executive officer; person to perform duties on behalf of a director, company auditor or executive officer who has been appointed based on a provisional disposition order, a person who is temporarily to perform the duties of a director, accounting advisor, company auditor, Representative Director, committee member, executive officer or representative executive officer appointed pursuant to the provisions of Article 346(2), Article 351(2) or Article 401(3) (including the cases where it is applied mutatis mutandis pursuant to Article 403(3) and Article 420(3)); a manager; an employee to whom the authority of a certain kind of matter or a specific matter concerning business has been delegated; an inspector; a liquidator of the Liquidating Stock Company; a person to perform duties on behalf of a liquidator of the Liquidating Stock Company who has been appointed based on a provisional disposition order; a person who is temporarily to perform the duties of a liquidator or representative liquidator appointed pursuant to the provisions of Article 346(2) as applied mutatis mutandis pursuant to Article 479(4) or Article 351(2) as applied mutatis mutandis pursuant to Article 483(6); a liquidator's agent; a supervisor; or an investigator.

<sup>253</sup> A representative bondholder or a resolution administrator.

<sup>254</sup> Article 967/1 of Companies Act.

<sup>255</sup> Article 970 of Companies Act: *The crimes set forth in Article 967(1) ... shall also apply to persons who committed such crimes outside Japan.*

- Protection of witnesses and whistle-blowers: Yes, according to the Code of Criminal Procedure, Articles 157-3 and 157-4, and Whistleblower Protection Act 2004.
- Anti-money laundering measures: Yes, based on Articles 969 and 970 of the Companies Act.
- Applicability of special investigative techniques: No.

### **2.1.7.3 Sports Promotion Lottery Law**

In 2001, Sports Promotion Lottery Law of 1998 (hereinafter: Sports Law 1998), entered into force and is available on-line.<sup>256</sup> The Sports Law 1998 contains several criminal offences applicable to match-fixing. However, its scope is limited to soccer games as defined under Article 24 of the Act, that is: soccer games held *in a planned and stable manner between soccer teams owned by members of the Designated Organization; provided, however, that the teams should include players who are paid compensations for their services as players*, whereas "Designated Organization" is the legal person designated as such under Article 23 by the Minister of Education, Culture, Sports Science and Technology.

#### **Receipt of bribery (Articles 37, 38)**

- Offence: Under mentioned article, it is an offence should an officer or an employee of the Designated Organization or the person listed in subparagraphs 4 to 6 of Article 10 have *received, demanded for or been given a promise for a bribe in performing his or her duty related to the business stipulated in Article 24 or with regard to the designated game in which he or she was involved.*
- Scope: The offence applies to:
  - *officers or employees of the designated organisation, and*
  - *to any persons who is:*
    - *member of the Organization which owns the soccer team (officer of a legal person should the member be a legal person);*
    - *player, manager, coach and referee; or*
    - *person who has the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event.*

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<sup>256</sup> Sports Promotion Lottery Law: <http://jpnSPORT.go.jp/sinko//tabid/199/Default.aspx>. Retrieved on 28.10.2012.

Under Article 38 of the Sports Law 1998, the offence also applies to:

- *any person who is going to be an officer or an employee of the Designated Organization or the person involved in the games (Article 38/1), and*
- *any person who used to be an officer or an employee of the Designated Organization or the person involved in the games (Article 38/2).*

- Area of applicability: The offence applies both to private and public areas, depending on the status of the offender.
- Participatory acts and organized crime activity: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Articles 60-62 jPC apply (co-principals; accessories and inducement).
- Sentence provided: The offence is punishable by penal servitude for not exceeding three years.

If a person performed an unfair act or failed to perform a just act, the offence is punishable by a penal servitude for not exceeding five years.

In case of:

- a person who is going to be an officer or an employee of the Designated Organization or the person involved in the games (Article 38/1), the offence is punishable by a penal servitude not exceeding two years when he or she has become an officer or an employee of the Designated Organization or the person involved in the games;
  - any person who used to be an officer or an employee of the Designated Organization or the person involved in the games (Article 38/2), the offence is punishable by a penal servitude for not exceeding two years.
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.
  - Liability of legal persons: No, see above in the part on gambling.

- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected<sup>257</sup>.
- Anti-money laundering measures: The offence under Article 37 is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Anti-OC Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Code of Criminal Procedure allows for search and seizure (Articles 99, 218, 220 et seq.) and confiscation under Article 19 jPC applies.  
The bribe received is also to be confiscated under Article 39 of the Sports Law 1998; could all, or a part of such, bribe not be confiscated, the value equivalent to it shall be charged.
- Applicability of special investigative techniques: No.

#### **Giving of a bribe (Article 40)**

- Offence: It is an offence for any person who *gave, offered or gave a promise to give the bribe* to person stipulated in Articles 37 or 38 (see above).
- Scope: The offence incriminates active corruption within the scope of the Sports Act 1998.
- Area of applicability: See above, in the part on articles 37 and 38.
- Participatory acts and organized crime activity: Yes, Articles 60-62 jPC apply, by virtue of Article 8 jPC.
- Sanctions envisaged: The offence is punishable by:
  - *a penal servitude not exceeding three years or*
  - *a fine not exceeding three million yen.*
 Should the person have surrendered himself or herself to justice, the punishment may be reduced or exempted.
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations.  
Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.

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<sup>257</sup> Whistleblower Protection Act 2004 does not include Sports Promotion Lottery Law in the list of laws, where whistleblowers are protected after blowing the whistle.

- Liability of legal persons: No, see above in the part on gambling.
- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected<sup>258</sup>.
- Anti-money laundering measures: Search and seizure are applicable under Article 99 of Code of Criminal Procedure; confiscation under Article 19 jPC applies (regarding objects “produced or acquired by means of a criminal act or an object acquired as reward for a criminal act”) under Article 19 jPC).
- Application of special investigative techniques: No.

### **Prejudicing fairness of the designated game (Article 41)**

- Offence: It is an offence for any person to prejudice the fairness of the designated game:
  - *by using a deceptive scheme or*
  - *exercising his or her power.*
- Scope: This is a general provision on irregular influencing the soccer game.
- Area of applicability: Private and public sectors.
- Participatory acts and organized crime activity: Articles 60-62 jPC apply, by virtue of Article 8 jPC.
- Sanctions envisaged: The offence is punishable by:
  - *a penal servitude not exceeding three years or*
  - *a fine not exceeding two million yen.*
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.
- Liability of legal persons: No, see above in the part on gambling.
- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected.
- Anti-money laundering measures: Search and seizure are applicable under Article 99 of Code of Criminal Procedure; confiscation applies (regarding objects "produced or

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<sup>258</sup> Whistleblower Protection Act 2004 does not include Sports Promotion Lottery Law in the list of laws, where whistleblowers are protected after blowing the whistle.

acquired by means of a criminal act or an object acquired as reward for a criminal act") under Article 19 jPC.

- Application of special investigative techniques: No.

### **Conspiracy against the designated game (Article 42)**

- Offence: It is an offence for any person *to conspire against the designated game in a manner prejudicing its fairness.*
- Scope: This is a general prohibition of influencing the fairness of the soccer game.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Articles 60-62 jPC apply, by virtue of Article 8 jPC.
- Sanctions envisaged: The offence is punishable by:
  - *a penal servitude not exceeding two years or*
  - *a fine not exceeding one million yen.*
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.
- Liability of legal persons: No.
- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected.
- Anti-money laundering measures: Search and seizure are applicable under Article 99 of Code of Criminal Procedure; confiscation applies (regarding objects “produced or acquired by means of a criminal act or an object acquired as reward for a criminal act”) under Article 19 jPC.
- Applicability of special investigative techniques: No.

### **Unqualified sports promotion lottery (Article 32)**

- Offence: Under Article 32 of the Act, it is an offence for any person to:
  - *attempt to gain profits, inviting unspecified or many people to provide their property interests or to commit themselves to so doing*
  - *and to predict results of the designated games,*

- *and committing himself or herself to providing such people with property interests according to how much such results of the designated games and such prediction concur.*
- Scope: Under the Sports Law 1998, Article 3, the National Stadium and School Health Center of Japan alone may organize the Sports Promotion Lottery. The offence, in effect, prohibits book-making within the scope of the Sports Law 1998.
- Area of applicability: Private and public sectors.
- Participatory acts and organized crime activity: Articles 60-62 jPC apply, by virtue of Article 8 jPC.
- Sanctions envisaged: The offence under Article 32 is punishable by:
  - *penal servitude not exceeding five years or*
  - *a fine not exceeding five million yen,*
  - *or both.*
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.
- Liability of legal persons: Yes, by virtue of Article 36 of the Sports Law 1998, stating *Should a representative of a juridical person, or an agent or an employee of a natural person have violated the provisions of Articles 32 to 35 in conducting the business of such juridical person or of such natural person, the juridical person or the natural person shall be also subject to the fine stipulated in such Articles.*
- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected.
- Anti-money laundering measures: The offence under Article 32 of the Sports Law 1998 is a predicate offence to offence under Article 10 of the Anti-OC Act (concealment of crime proceeds or the like). The Anti-OC Act provides for freezing orders (Chapter IV) and confiscation (Chapter III). Code of Criminal Procedure allows for search and seizure (Article 99 et seq.), confiscation under Article 19 jPC also applies.
- Application of special investigative techniques: No.

### **Prohibition of betting (Articles 33-35)**

- Offences:
  - o Under Article 33, a person commits an offence if:
    - *the person is the other party to the offence under Article 32 of the Sports Law 1998 and that person is (as specified in Article 10):*
      - *government official who is involved in the Sports Promotion Lottery;*
      - *officer of the Center and employee thereof who is involved in the Sports Promotion Lottery;*
      - *officer and employee of the Organization;*
      - *member of the Organization which owns the soccer team (officer of a juridical person should the member be a juridical person);*
      - *player, manager, coach and referee registered;*
      - *person who has the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event.*
      - *the person who was entrusted with buying Sports Promotion Tickets as a business or who was entrusted with buying Sports Promotion Tickets by unspecified many people, attempting to gain property interests.*
  - o Under Article 34, it is an offence: - for persons, designated under Article 10, to violate prohibition of buying or obtaining Sports Promotion Tickets, as specified under Article 10 of the Sports Law 1998;
    - *for any person, acting as the other party of the act violating Article 32 other than the person listed in subparagraphs of Article 10.*
  - o Under Article 35, it is an offence to *act knowingly as the other party to the violation of the prohibition of buying or obtaining Sports Promotion Tickets, as specified in Articles 9 (relating to minors under the age of 19) or Article 10 (relating to the above specified persons).*
- Scope: The scope of the offences varies and depends on the category of persons under prohibition to buy or obtain Sports Promotion Lottery tickets.
- Area of applicability: It is applicable to both the public and private sphere, depending on the category of persons liable under a particular offence.

- Participatory acts and organized crime activity: Articles 60-62 jPC apply, by virtue of Article 8 jPC.
- Sanctions envisaged: Offence under Article 33 is punishable by:
  - *penal servitude not exceeding three years or*
  - *a fine not exceeding three million yen,*
  - *or both.*
 Offence under Article 34 is punishable by a fine not exceeding one million yen.  
 Offence under Article 35 is punishable by a fine not exceeding five hundred thousand yen.
- Jurisdiction: Under Article 8 of the jPC, the general provisions of Part I jPC also apply to crimes for which punishments are provided by other laws and regulations, except as otherwise provided in such laws and regulations. Lacking special provisions under Sports Law 1998, the territoriality principle applies under Article 1 jPC.
- Liability of legal persons: Yes, by virtue of Article 36 of the Sports Law 1998, stating *should a representative of a juridical person, or an agent or an employee of a natural person have violated the provisions of Articles 32 to 35 in conducting the business of such juridical person or of such natural person, the juridical person or the natural person shall be also subject to the fine stipulated in such Articles.*
- Protection of witnesses and whistle-blowers: Witnesses are protected according to Articles 157-3 and/or 157-4 of the Code of Criminal Procedure. Whistleblowers are not protected.
- Anti-money laundering measures: Search and seizure are applicable under Article 99 of Code of Criminal Procedure; confiscation under Article 19 jPC may apply.
- Application of special investigative techniques: No.

#### **2.1.7.4 Applicability of Japanese law in the fight against match-fixing**

Japan has established specific incrimination rules for match-fixing, but only in relation to professional soccer. For occurrences of match-fixing in other sports, there is a need to assess the usefulness of other, more general, provisions of the Japanese legislation.

##### ***2.1.7.4.1 Specific provisions on match-fixing in professional soccer***<sup>259</sup>

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<sup>259</sup> Sports Promotion Lottery Law of 1998.

The Sports Promotion Lottery Law has been adopted in 1998 and incriminates many of possible infringements against the spirit of sport in professional soccer.

Articles 37 and 38 incriminate passive corruption of officers and members of the sports organizations, owners of the soccer teams<sup>260</sup>, players, managers, coaches, referees, persons having the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event, but also of persons, who have acted or will be acting in any of the mentioned capacities – all for performing their duty/ies related to professional soccer in general or, more specifically, with regard to the designated game in which they were/will be involved. There is a distinction in sanctioning of the persons mentioned based on their activity following the acceptance of bribe: for pure acceptance of bribes without any further activities perpetrators might be sanctioned by a maximum penalty of three years imprisonment, in cases, where they have *performed an unfair act or failed to perform a just act* they might expect maximum penalty of 5 years imprisonment<sup>261</sup>.

Active corruption<sup>262</sup> of persons mentioned in the previous paragraph may be sanctioned by a maximum of 3 years imprisonment.

There are two articles on illicit influencing the spirit or “*fairness*”<sup>263</sup>, of the soccer game: the first one<sup>264</sup> focuses on concretely *prejudicing the fairness* of the soccer game by deception or by the use of entrusted powers, sanctioned by a maximum of three years imprisonment; the second one<sup>265</sup> refers to *conspiring* against the soccer game and its fairness, sanctioned by a maximum sentence of two years imprisonment.

The Sports Law 1998 also contains a set of provisions<sup>266</sup> establishing a very strict regime in relation to (illegal) betting on soccer games:

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<sup>260</sup> Including members of legal persons owing the soccer team.

<sup>261</sup> For persons who have had or will have the mentioned positions/capacities, the maximum sanction is 2 years imprisonment.

<sup>262</sup> Article 40 of the Sports Law 1998.

<sup>263</sup> Expression used in Sports Law 1998 in Articles 41 and 42.

<sup>264</sup> Article 41 of the Sports Law 1998.

<sup>265</sup> Article 42 of the Sports Law 1998.

<sup>266</sup> Articles 32-35 of the Sports Law 1998.

- organization of betting on the results of soccer matches outside of the legal “Sports Promotion Lottery<sup>267</sup>” is a criminal offence<sup>268</sup>, sanctioned by a maximum penalty of five years of imprisonment;
- betting in the framework of illegally organized betting, as prescribed in Article 32, is also a criminal offence, sanctioned on the basis of the capacity of persons who take part: for anyone, who is actively involved in a legal Sports Promotion Lottery, who is officer or member of the sports organizations, owner of the soccer team, player, manager, coach, referee or person having the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event, the applicable maximum sanction may be three years of imprisonment<sup>269</sup>; for anybody else<sup>270</sup>, the maximum sanction/fine may be 1 million Yen;
- the purchase of regular Sports Promotion tickets by anyone, who is actively involved in a legal Sports Promotion Lottery, who is officer or member of the sports organizations, owner of the soccer team, player, manager, coach, referee or person having the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event, may be sanctioned by a maximum fine of 1 million Yen<sup>271</sup>;
- knowingly selling of regular Sports Promotion tickets to persons under age of 19 or to anyone who is actively involved in a legal Sports Promotion Lottery, who is officer or member of the sports organizations, owner of the soccer team, player, manager, coach, referee or person having the authority to call off the applicable games or to be involved in deciding such call-off due to the bad weather or other inevitable event, may be sanctioned by a maximum fine of 500.000 Yen<sup>272</sup>.

Other important features of the above mentioned substantial special provisions on match-fixing in professional soccer are the following: jurisdiction is narrow (only territoriality principle applies); the participatory acts and organized criminality<sup>273</sup> are adequately incriminated; sanctions provided for some offences only – for accepting bribes and

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<sup>267</sup> Organized by the National Stadium and School Health Center of Japan.

<sup>268</sup> Article 32 of the Sports Law 1998.

<sup>269</sup> Article 33 of the Sports Law 1998.

<sup>270</sup> Article 34/2 of the Sports Law 1998.

<sup>271</sup> Article 34/1 of the Sports Law 1998.

<sup>272</sup> Article 35 of the Sports Law 1998.

<sup>273</sup> According to the Act on punishment of organized crimes, control of crime proceeds and other matters.

performing an unfair act or failing to perform a just act<sup>274</sup> and for organizing illegal betting<sup>275</sup> - are high enough to serve as basis for the application of the provisions of the UNTOC; legal persons can be held criminally liable for the offences listed in articles 32 – 35 of the Sports Law 1998<sup>276</sup>; witnesses can be protected, but this is not the case for whistleblowers since the Whistleblower Protection Act 2004 does not include Sports Promotion Lottery Law 1998 in the list of laws, through whistleblowers are protected in the case of blowing the whistle. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques are not available.

#### **2.1.7.4.2 Fraud<sup>277</sup>**

The description of fraud is broad enough to cover instances of match-fixing for pecuniary gain, without bribery involved, in other sports than professional soccer. In the area of jurisdiction, the territoriality principle and the active personality principle apply. Participatory acts and forms of organized criminality are adequately incriminated. Sanctions provided for the offence are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons cannot be held criminally liable for this offence. Whistleblowers and witnesses can be protected, whereas anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques - with the exception of undercover investigations – are not available.

#### **2.1.7.4.3 Bribery offences**

General provisions on bribery are important for cases of bribery related to any other sport than professional soccer and to any other category of persons than those mentioned in Article 10 of the Sports Law 1998.

There are several criminal offences<sup>278</sup> related to bribery in the Japanese Penal Code, which are limited to different categories of public officials only, bribery in the private sector is not criminalized by this law. There are different laws on private-to-private corruption, most

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<sup>274</sup> Article 37 of the Sports Law 1998.

<sup>275</sup> Article 32 of the Sports Law 1998.

<sup>276</sup> Article 36 of the Sports Law 1998.

<sup>277</sup> Article 246 of the jPC.

<sup>278</sup> Articles 193 – 198 of the jPC.

important being the Companies Act<sup>279</sup> (especially Article 967). Jurisdiction covers the territory of Japan and acceptance of bribes by domestic public officials and domestic managers<sup>280</sup> anywhere in the world. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offences of passive corruption in the public<sup>281</sup> and private sector<sup>282</sup> take into account their gravity. Legal persons cannot be held liable for those offences. Whistleblowers and witnesses can be protected and anti-money laundering measures may be applied. Special investigative techniques - with the exception of undercover investigations – are not available.

Japan has not ratified the UNCAC yet.

#### ***2.1.7.3.4 Illegal/irregular gambling***

The Japanese legislation applies the principle that running the place for gambling, organizing the group of habitual gamblers<sup>283</sup> and gambling itself<sup>284</sup> are illegal conducts.<sup>285</sup> Jurisdiction for those offences is territorial. Participatory acts<sup>286</sup> and organized criminality<sup>287</sup> in this area are covered by the legislation. In cases of running the place for gambling and habitual gambling by a group, the provisions of UNTOC, due to sanctions foreseen, can be applied. Legal persons cannot be held liable for those offences. Whistleblowers and witnesses can be protected and no special investigative techniques - with the exception of undercover investigations - can be applied. Anti-money laundering measures are foreseen in the legislation and may be applied.

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<sup>279</sup> Act No. 86 of July 26, 2005.

<sup>280</sup> As defined in articles 960/1,2 and 961 of Companies Act.

<sup>281</sup> But not the active one.

<sup>282</sup> Article 967/1 of Companies Act.

<sup>283</sup> Article 186 of the jPC.

<sup>284</sup> Article 185 of the jPC, whereby »habitual« gambling is sanctioned stricter (Article 186 of the jPC).

<sup>285</sup> However, betting “a thing which is provided for momentary entertainment” is not punishable (Article 185 of the jPC).

<sup>286</sup> Articles 60 – 62 of the jPC.

<sup>287</sup> According to the Act on punishment of organized crimes, control of crime proceeds and other matters from 1998.

#### 2.1.7.4 Conclusion

A coherent approach has been adopted in the Japanese legislation to incriminate all possible infringements concerning match-fixing in professional soccer: bribing of actors of matches, fixing the matches, organizing illegal betting on matches, legal betting on fixed matches by actors of those matches and illegal betting on fixed matches by everyone. A major problem is the fact that those, substantially very valid provisions, are limited to professional soccer only. In addition, these offences are punishable only if committed in the Japanese territory. Not many of the offences described are punished by sanctions high enough to allow for the application of the UNTOC<sup>288</sup>. Only in cases related to the provisions of Sports Act 1998 on gambling<sup>289</sup> legal persons can be held responsible. Whistleblowers in the area of sport are not protected. Under no circumstances Japanese law enforcement agencies can apply special investigative techniques while discovering and/or investigating those crimes.

Occurrences of match-fixing in other sports in Japan have to be addressed by other legal provisions, whereby incriminations in the areas of fraud, bribery and illegal gambling are representing a solid ground for the effectiveness in suppressing those phenomena – with one exception: irregularly influencing the course or the result of matches or competitions in other sports without pecuniary aims<sup>290</sup> is not covered. Another important issue and possibility for improvement is a lack of general responsibility of legal persons for criminal offences. Last but not least, most special investigative techniques<sup>291</sup> cannot be applied for detection and/or investigation of those offences either, which significantly decreases the effectiveness of Japanese law enforcement agencies in the fight against match-fixing.

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<sup>288</sup> Only accepting bribes and performing an unfair act or failing to perform a just act and organising illegal betting.

<sup>289</sup> Articles 32 – 35 of the Sports Act 1998.

<sup>290</sup> As is the case in professional soccer in accordance with Articles 41 and 42 of the Sports Act 1998.

<sup>291</sup> According to court practice undercover investigations are allowed.

## 2.1.8 MALAYSIA

### 2.1.8.1 Penal Code 2006

The following preview is based on the Penal Code of Malaysia (Act 574, hereinafter: mPC), incorporating amendments up to 1st January 2006. The Penal Code does not contain a provision specifically targetting match-fixing. The following provisions may, however, be applied:

#### Cheating (Section 415 mPC)

- Offence: Under Section 415 mPC, *whoever by deceiving any person, whether or not such deception was the sole or main inducement:*
  - (a) *fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property; or*
  - (b) *intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation, or property,*is said to “cheat”.
- Scope: The offence of cheating includes dishonest concealment of facts, whereby it is not necessary for the offender to make the fraudulent representation himself. A person will be considered an offender even when representation is made through any other person acting as an agent, or otherwise, for him.
- Area of applicability: General<sup>292</sup>.
- Participatory acts and organized crime activity: Under mPC, abetment (Section 107) includes:
  - *instigating,*
  - *conspiracy, and*
  - *aiding.*Section 120A mPC makes criminal conspiracy an offence as well.
- Sanctions envisaged: The offence of cheating is punishable by (Section 417 mPC):
  - *imprisonment for a term which may extend to five years;*
  - *fine,*

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<sup>292</sup> Public and private sectors.

*alternatively or cumulatively.*

- Jurisdiction: Territoriality principle applies (Section 2).
- Liability of legal persons: Yes. The term “person” is defined under Section 11 of Malaysian Penal Code, which includes “any company or association or body of persons, whether incorporated or not”. Also, the term ‘person’ is defined under Section 3 of the Interpretations Act 1948 & 1967 (Act 388) and includes “a body of persons, corporate or unincorporated”.
- Protection of witnesses and whistle-blowers: Yes, see Section 7 of Whistleblower Protection Act 2010 and Witness Protection Act 2009, and also Section 5 of Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613), Second Schedule.
- Anti-money laundering measures: Cheating is a predicate offence in relation to offence of dishonestly receiving stolen property (Section 410 and 411 mPC) and the offence of money laundering under Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613). Seizure, freezing and forfeiture are applicable under Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613).
- Application of special investigative techniques: No.

### **2.1.8.2 Betting Act 1953**

Under 1953 Betting Act, the Malaysian legislation introduced three offences relating to betting and gambling:

- offences relating to common betting houses and betting information centres (Section 4)
- advancing money for conducting a business of a common betting house (Section 5) and
- betting in a common betting house, and book-making (Section 6), and
- publication or announcement of result of horse race (Section 6a).

Under the Section 2 Betting Act 1953, “common betting house” is

- *any place kept or used for betting or wagering whether such betting or wagering, be in cash or on credit, on any event or contingency of or relating to any horse race or other sporting event or lottery to which the public or any class of the public has, or may have, access;*
- *any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has, or may have, access thereto or not; or*
- *any place used by a bookmaker for the purpose of receiving or negotiating bets or wagers on any such event or contingency as aforesaid, whether such bets or wagers*

*reach the bookmaker by the hand of the person placing the bet or his agent or the bookmaker's agent or through the telephone or the post or by telegram or by any other means.*

- interpretation of *sporting event* in the Betting Act 1953 includes *any race, fights, game, sport or exercise* as provided under the Section 2 of the Betting Act 1952.

The focus of the following analysis is on the offence of betting and bookmaking.

### **Betting in a common betting house, and bookmaking (Section 6)**

- **Offence:**
  - Under Section 6/1 of the Betting Act 1953, it is an offence for any person:
    - *to bet or wager in a common betting house, or with a bookmaker on any premises or by any means* (Section 6/1),
  - Under Section 6/3, it is an offence:
    - *to act as a bookmaker in any place;*
    - *to frequent or loiter, for the purpose of bookmaking or betting or wagering or settling bets, in any common betting house or in any place to which the public has or may have access; or*
    - *to assist, by giving warning or otherwise, any person committing an offence under this Act to evade arrest or detection.*
- **Scope:** The application of Section 6/3 extends to persons acting as “bookmakers”, that is any person who:
  - *whether on his own account or as penciller, runner, servant or agent for any other person, receives or negotiates bets or wagers, whether on a cash or credit basis and whether for money or money's worth; or*
  - *in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wagers.*
- **Area of applicability:** General.
- **Participatory acts and organized crime activity:** Assisting, under Section 6/3 of the Betting Act.
- **Sanctions envisaged:** Betting under Section 6/1 is punishable:
  - *a fine not exceeding five thousand ringgit*<sup>293</sup> or

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<sup>293</sup> 1 ringgit = 0,328337 USD (on 29 November 2012).

- *to imprisonment for a term not exceeding six months or to both.*
- Bookmaking under Section 6/3 is punishable by:
- *a fine of not less than twenty thousand ringgit and not more than two hundred thousand ringgit, and*
  - *imprisonment for a term not exceeding five years.*
- Jurisdiction: Betting Act 1953 contains no explicit provisions on the jurisdiction relating to the offences contained therein. Therefore, territoriality principle applies.
  - Liability of legal persons: Yes. The term of *any person* is used in Sections 4, 5, 6 and 6a of the Betting Act 1952. The term *person* defined under Section 11 of Malaysian Penal Code includes *any company or association or body of persons, whether incorporated or not*. *Person* is also defined under Section 3 of the Interpretations Act 1948 & 0967 (Act 388) which includes *a body of persons, corporate or unincorporated*.
  - Protection of witnesses and whistle-blowers: Yes, under Section 15 of the Betting Act; also under Whistleblower Protection Act 2010 and Witness Protection Act 2009.
  - Anti-money laundering measures: Bookmaking (under Section 6/3) is a predicate offence under AML Act, see above.
  - Application of special investigative techniques: No.

It is important to mention that the Betting Act 1952 provides some presumptions under Sections 4, 5, 6, which apply also in relation to Sections 9, 9a, 10 and 14a of the Betting Act 1953:

**Presumption against house and occupier (Section 9)**

*Where in any proceedings under this Act it is proved that*

- (a) any books, documents, telegrams, writings, circulars, cards or other articles used as a subject or means of betting or wagering, or in connection therewith, are found in any place entered under this Act, or upon any person found therein; or*
- (b) a police officer or any person having authority under this Act to enter or to go to such place is unlawfully prevented from or obstructed or delayed in entering or approaching the same or any part thereof; or*
- (c) any person is seen or heard to escape therefrom on the approach or entry of a Magistrate or Justice of the Peace or Senior Police Officer; or*

*(d) any person found in a place entered under this Act was erasing, tampering with or destroying any writing, sign, mark or symbol relating to bets or wagers on any horse race or other sporting event or lottery; or*

*(e) two or more telephone calls were received at any place entered under this Act and the calls relate to the receiving or negotiating of bets or wagers or to any results, commentary or dividends payable on any horse race or other sporting event or lottery, it shall be presumed, until the contrary is proved, that the place is a common betting house and that it is so kept, used or permitted to be used by the owner or occupier thereof, and that any other person found in such place in possession of any such articles referred to in paragraph (a) is assisting in the management of the common betting house.*

**Presumptions against betting information centre and occupier (Section 9a)**

*(1) Where in any proceedings under this Act it is proved that any place entered under this Act was provided with three or more telephones or telephone lines and*

*(a) was installed with any telecommunication system or equipment which was arranged in such a manner as to suggest that it is or was being used for the receiving or transmitting of any information relating to horse race or other sporting event notwithstanding that such telecommunication system or equipment has been disconnected or tampered with;*

*(b) any person found in a place so entered was erasing, tampering with or destroying any writing, sign, mark or symbol relating to the results or dividends payable on any horse race or other sporting event; or*

*(c) two or more telephone calls were received at any such place enquiring about the results, commentary or dividends payable on any horse race or other sporting event, it shall be presumed, until the contrary is proved, that the place is a betting information centre and that it is so kept, used or permitted to be used by the owner or occupier thereof, and that any other person found in such place is assisting in the business of the betting information centre.*

**Presumption against house, occupier, and owner (Section 10)**

*(1) If in the case of a place entered under this Act any passage or staircase or means of access to any part thereof is unusually narrow or steep or otherwise difficult to pass or any part of the premises is provided with unusual or unusually numerous means for preventing or obstructing an entry or with unusual contrivances for enabling persons*

*therein to see or ascertain the approach or entry of persons or for giving the alarm or for facilitating escape from the premises, it shall be presumed until the contrary is proved that the place is a common betting-house and that the same is so kept or used by the occupier thereof; and if notice as is next hereinafter provided shall have been served on the owner of the premises it shall further be presumed until the contrary is proved that the place is so kept with the permission of the owner thereof.*

- (2) Whenever it comes to the knowledge of the Commissioner of Police or the Chief Police Officer that any place is fitted or provided with any of the means or contrivances mentioned in this section in such a way as to lead to a presumption that the place is used or intended to be used for the purposes of a common betting-house, it shall be the duty of the Commissioner of Police or the Chief Police Officer to cause notice thereof to be served on the owner of such place as well as on the occupier thereof; and if any such notice cannot be personally served it may be served by being affixed to the principal outer door or any outer door or window or any conspicuous part of the place.*
- (3) Every tenant receiving notice under this section shall forthwith inform the owner or the person from whom he rents the premises of the fact of receipt of such notice, who shall in like manner inform the owner or the person from whom he rents the premises, and so on till the notice is brought to the knowledge of the owner, each tenant being responsible for bringing the notice to the knowledge of his immediate lessor; and any tenant refusing or omitting to make known to the owner or the person from whom he rents the premises the fact that such notice has been received shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit.*

**Evidence by police officer to be presumptive evidence (Section 14a)**

*In all proceedings under this Act any evidence given by a police officer not below the rank of Sergeant that any book, account, document, telegram, writing, circular, card or other article produced before the court had been used or intended to be used for betting or wagering shall, until the contrary is proved, be deemed to be sufficient evidence of the fact.*

**2.1.8.3 Malaysian Anti-Corruption Commission Act 2009**

The Malaysian Anti-Corruption Commission Act 2009 (hereinafter: MACC 2009) contains several provisions defining corruption, either active or passive, as the offence.

The following preview will focus on bribery of officers of public body. Namely, under MACC 2009, a “public body” includes “sports bodies”, registered under Section 17 of Sports Development Act 1997. Registration under Section 17 of Sports Development Act 1997 is required to (Section 15/2 and 25/1) *organize, conduct, sanction or participate in any activity, including ongoing competitions, events or forum for any sport, whether within or outside Malaysia.*

MACC 2009 also introduced the term of an “agent”<sup>294</sup>, who, among others, is *any person employed by or acting for another and includes an officer of a public body or an officer serving in or under any public body.*

Another important term is the term “officer of a public body”<sup>295</sup> who is *a member, an officer, an employee or a servant of a public body*, which, according to the finding above, includes sports bodies as well.

MACC contains several criminal offences which are of relevance for the fight against match-fixing. Especially important are the ones described in Sections 16, 17 and 25.

### **Offence of accepting gratification (Section 16 MACC 2009)**

- **Offence:** Under Section 16 MACC 2009, it is an offence if:

*Any person who by himself, or by or in conjunction with any other person—*

*(a) corruptly solicits or receives or agrees to receive for himself or for any other person; or*

*(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,*

*(c) any gratification as an inducement to or a reward for, or otherwise on account of—*

*A. any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or*

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<sup>294</sup> MACC 2009, Section 3.

<sup>295</sup> Ibid., Section 3.

- B. any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned.*

**Offence of giving or accepting gratification by agent (Section 17 MACC 2009)**

- Offence: Under Section 17 MACC 2009, it is an offence if a person:
  - (a) *being an agent, he corruptly accepts or obtains, or agrees to obtain or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or a reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, or*
  - (b) *he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.*

It is worth mentioning that the *officer* from Section 16 or the *agent* from Section 17 is held responsible for the offence from Section 16 or Section 17 respectively *if he solicited, accepted, obtained, agreed to accept or attempted to obtain any gratification related to his duties, even if he:*

- *did not have the right, the power or the opportunity to do what he was asked to do,*
- *he did not have the intention to do anything,*
- *he did not do anything,*
- *the act or omission required was not part of his principal's affairs or business.*

For both Sections – 16<sup>296</sup> and 17 – the following applies:

- Area of applicability: General.
- Participatory acts and organized crime activity: Abetting; criminal conspiracy (Section 28 MACC 2009).

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<sup>296</sup> Accompanied by Section 18, too.

- Sanctions envisaged: The offences are punishable by (Section 24 MACC 2009):
  - *imprisonment for a term not exceeding twenty years; and*
  - *fine of no less than five times the sum or value of the gratification, or ten thousand ringgit, whichever is higher.*
- Jurisdiction: Under MACC 2009, the territoriality and active personality principles apply (Section 66 MACC 2009).
- Liability of legal persons: Yes, MACC 2009 applies to *any person* as defined under section 11 of Malaysia Penal Code and Section 3 of the Interpretations Act 1948 & 1967.
- Protection of witnesses and whistle-blowers: Yes, see above, and in particular under Section 65 MACC 2009.
- Anti-money laundering measures: Yes; seizure, freezing, prohibition of dealing with property and forfeiture are applicable under Section 37 et seq. MACC 2009.
- Applicability of special investigative techniques: Yes, under Section 43 MACC 2009 (power to intercept communications) and under Section 52 MACC 2009 (use of agent provocateur)<sup>297</sup>.

In the same way as Betting Acts, Section 50 MACC 2009 also introduces some presumptions: for offences under Section 16 and Section 17 MACC 2009, which apply when it has been proven that any gratification was solicited or received:

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<sup>297</sup> Section 52 of MACC 2009: Evidence of accomplice and agent provocateur:

- (1) *Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act—*
  - (a) *no witness shall be regarded as an accomplice by reason only of such witness having—*
    - (i) *accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;*
    - (ii) *given, promised, offered or agreed to give any gratification; or*
    - (iii) *been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;*
  - (b) *no agent provocateur, whether he is an officer of the Commission or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and*
  - (c) *any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial.*
- (2) *Notwithstanding any written law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.*

**Presumption in certain offences (Section 50 MACC 2009):**

*Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.*

In addition, there is an extremely interesting part on a duty to report any corrupt approach in Section 25: it is an offence if the person to whom any gratification was given, promised or offered<sup>298</sup> or the person from whom gratification has been solicited or obtained or attempted to be obtained<sup>299</sup> do not report this fact to the nearest law enforcement officer. Sanctions are quite serious: for not reporting the offer, promise or acceptance of bribe the sentence<sup>300</sup> is maximum 100.000 ringgit or maximum 10 years of imprisonment or both and for not reporting the solicitation of bribe the sentence<sup>301</sup> is maximum 10.000 ringgit or maximum 2 years of imprisonment or both.

**2.1.8.4 Applicability of the Malaysian criminal law in the fight against match-fixing**

The Malaysian criminal law provisions in the area of match-fixing constitute a solid framework for the fight against this phenomenon.

**2.1.8.4.1 Fraud**

The description of fraud<sup>302</sup> is broad enough to cover instances of match-fixing for pecuniary gain without bribery involved. Jurisdiction is very narrow (only territorial principle applies). Participatory acts and forms of organized criminality are adequately incriminated. Sanctions

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<sup>298</sup> Subsection 1.

<sup>299</sup> Subsection 3.

<sup>300</sup> Subsection 2.

<sup>301</sup> Subsection 4.

<sup>302</sup> “Cheating” as called by Section 415 mPC.

provided for the basic form of the offence are high enough to serve as basis for the application of the provisions of UNTOC. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected, whereas anti-money laundering measures, including seizure, freezing and confiscation, might be applied. Special investigative techniques are not available.

#### **2.1.8.4.2 Bribery offences**

Following the adoption of the Malaysian Anti-Corruption Commission Act 2009, which extended the notion of “public bodies” to also cover sports organisations, Malaysia got a powerful tool to fight bribery related match-fixing.

The provisions on bribery cover players<sup>303</sup> and officials working in the sports organizations<sup>304</sup> and involved in bribery-related match-fixing. They are also punished even if they “only” ask for or accept a bribe and do not fix the match<sup>305</sup> and even if they do not report that they were approached to fix the match<sup>306</sup>. Jurisdiction is subject to the territoriality and active personality principles. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offences take into account their gravity<sup>307</sup>. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected, whereas special investigative techniques and anti-money laundering measures may be applied.

Malaysia ratified the UNCAC on 24 September 2008.

#### **2.1.8.4.3 Illegal/irregular gambling**

The Malaysian legislation applies the principle that the organization of betting or gambling and betting and gambling themselves are illegal.

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<sup>303</sup> “Agents” in Section 17 MACC 2009.

<sup>304</sup> Section 16 MACC 2009.

<sup>305</sup> According to Section 18 MACC 2009, they are sanctioned even if they did not have the right, the power or the opportunity to do what they were asked to do, they did not have the intention to do anything, they did not do anything, or the act or omission required was not part of their principal's affairs or business.

<sup>306</sup> Section 25 MACC 2009.

<sup>307</sup> Up to 20 years of imprisonment.

Interestingly, the Betting Act<sup>308</sup>, when defining the concept “common betting house”, also mentions gambling in sport as *betting related “to any horse race or other sporting event”*. Jurisdiction is based on the territoriality principle. From the participatory acts, only the assistance to the principal offender is subject to sanctions. Due to low sanctions for those criminal offences, the provisions of UNTOC cannot be applied. Legal persons can be held liable for those offences. Whistleblowers and witnesses can be protected and no special investigative techniques can be applied. Anti-money laundering measures can be applied.

### **2.1.8.5 Conclusion**

Without any doubt, Malaysia has put in place a robust legal framework for the fight against match-fixing.

Especially the Malaysian Anti-Corruption Commission Act 2009 has significantly improved the effectiveness of the Malaysian law enforcement agencies in the fight match-fixing, but only the one caused by, or linked to, bribery. Match-fixing for pecuniary purposes and not involving bribery is covered by the provision of the Penal Code on cheating. Since there is an absolute prohibition of betting in Malaysia, it is obvious that there are almost no loopholes for the perpetrators of match-fixing in the area of incriminations. Still, there are some possibilities for improvement: for the investigation of fraud,<sup>309</sup> special investigative techniques cannot be applied. The Malaysian legislation applies the very important feature of “presumptions” – in the case of betting<sup>310</sup> and in the case of bribery<sup>311</sup>, whereby certain offences are presumed to happen unless the “contrary is proved”. This shift of burden of proof represents a significant tool for effective work of law enforcement agencies and judiciary in the mentioned areas.

In Malaysia - as in the majority of other countries – match-fixing without direct pecuniary purposes<sup>312</sup> is not covered by the criminal law legislation.

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<sup>308</sup> Betting Act 1953.

<sup>309</sup> “Cheating”.

<sup>310</sup> See above, in 2.1.8.2.

<sup>311</sup> See above, in 2.1.8.3.

<sup>312</sup> For example: players fix the match to help other players to avoid relegation.

## 2.1.9. NEW ZEALAND

As to New Zealand, this study relies on a Reprint of the Crimes Act 1961, dated 18th April 2012, an act consolidating the Crimes Act 1908 and certain other enactments relating to crimes and other offences.

The 1961 Crimes Act does not contain any specific provision relating to match fixing or illegal gambling. It does, however, contain offences relating to fraud and public bribery that may apply as well.

### 2.1.9.1 Crimes Act 1961

#### 1. Obtaining by deception or causing loss by deception (Section 240 CA 1961)

- Offence: Under Section 240 of the CA 1961, it is an offence to *by any deception and without claim of right*:
  - *obtain ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or*
  - *in incurring any debt or liability, obtain credit; or*
  - *induce or cause any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or*
  - *causes loss to any other person.*
- Scope: Deceit, under Section 240(2) CA 1961, *involves a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and*:
  - *knows that it is false in a material particular; or*
  - *is reckless as to whether it is false in a material particular; or*
  - *an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or*
  - *a fraudulent device, trick, or stratagem used with intent to deceive any person.*

The offence applies to losses caused to private and public entities, given that the term “person” includes *Crown and any public body or local authority, and any board, society, or company, and any other body of persons, whether incorporated or not, and the inhabitants of the district of any local authority, in relation to such acts and things as it or they are capable of doing or owning*<sup>313</sup>.

- Area of applicability: Private and public sectors.
  - Participatory acts and organized crime activity: CA 1961 makes it an offence:
    - *aiding and abetting*<sup>314</sup>,
    - *incitement, counsel or procuring to commit an offence*<sup>315</sup>,
    - *accessory after the fact of crime*<sup>316</sup>,
    - *participation in organized criminal group*<sup>317</sup>.
  - Sanctions envisaged: The offence is punishable by:
    - *imprisonment for a term not exceeding 7 years, if the loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000;*
    - *imprisonment for a term not exceeding 1 year, if the loss caused or the value of what is obtained or sought to be obtained exceeds \$500 but does not exceed \$1,000, or*
    - *imprisonment for a term not exceeding 3 months, if the loss caused or the value of what is obtained or sought to be obtained does not exceed \$500.*
- Persons committing an offence and participating to an organized criminal group are punishable by imprisonment for a term not exceeding 10 years<sup>318</sup>.
- Jurisdiction: As to jurisdiction, the territoriality principle applies by virtue of Section 5(2) CA 1961. Extraterritorial jurisdiction does not apply to the offence under Section 243 (see Section 7A CA 1961). It does, however, apply in case of participation in an organized criminal group<sup>319</sup>.

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<sup>313</sup> Sec. 2 CA 1961.

<sup>314</sup> Sec. 66 CA 1961.

<sup>315</sup> Sec. 66 CA 1961.

<sup>316</sup> Sec. 71 and 312 CA 1961.

<sup>317</sup> Sec. 98A CA 1961.

<sup>318</sup> Sec. 98A CA 1961.

<sup>319</sup> Sec. 98A CA 1961.

- Liability of legal persons: Yes. Given that the term “person” under Interpretation Act 1999 applies to “a corporation sole, a corporate body, and an unincorporated body”, the criminal statutes in New Zealand are presumed to apply to a virtual bodies<sup>320</sup>.
- Protection of witnesses and whistle-blowers: Yes (Section 110, 112 of Evidence Act 2006).
- Anti-money laundering measures: Under Criminal Proceeds Recovery Act 2009, restraining orders and forfeiture orders are applicable in case of a “significant criminal activity” (Section 6):
  - (a) *that consists of, or includes, one or more offences punishable by a maximum term of imprisonment of 5 years or more; or*
  - (b) *from which property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or derived.*

Provisions on seizure under Search and Surveillance Act 2012 apply as well.

- Application of special investigative techniques (hereinafter:SITs): Under Section 45 of Search and Surveillance Act 2012, trespass surveillance and use of interception devices is authorised for offence punishable by a term of imprisonment of 7 years or more.

As such, special investigative techniques may be used when:

- loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000; and
- in case of participation in a organised criminal group.

### **Bribery and corruption offences (Part 6 of the CA 1961)**

CA 1961 provides several provisions making corruption and bribery an offence (Sections 100 et seq.), including:

- judicial corruption;
- bribery of judicial officer, etc.;
- corruption and bribery of Minister of the Crown;
- corruption and bribery of member of Parliament;
- corruption and bribery of law enforcement officer;

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<sup>320</sup> “New Zealand: review of implementation of the convention on combating bribery of foreign public officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions”, OECD, May 2002, p.11-12, (URL: <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/2088257.pdf>), Retrieved on 9th October 2012.

- corruption and bribery of official;
- corrupt use of official information;
- use or disclosure of personality information disclosed in breach of section 105A;
- bribery of foreign public official; and
- bribery outside New Zealand of foreign public official.

### **Corruption and bribery of official (Section 105 CA 1961)**

- Under Section 105 CA 1961, it is an offence:
  - *by an official, who – whether within New Zealand or elsewhere – corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or another person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity (Section 105(1));*
  - *by any person, who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity (Section 105(2)).*
- Scope: The offence is classified as a crime affecting the administration of law and justice.
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: See above, Chapter on Section 240 CA 1961.
- Sanctions envisaged: Offence under Section 105 CA 1961 (both active and passive bribery) is punishable by imprisonment for a term not exceeding 7 years.
- Jurisdiction: See above, Chapter on Section 240 CA 1961. In addition, Section 105 CA 1961 applies for receiving bribery outside of New Zealand as well.
- Liability of legal persons: Yes, see above.
- Protection of witnesses and whistle-blowers: Yes, see above.
- Anti-money laundering measures: Yes, see above.
- Applicability of special investigative techniques: Yes, see above.

### **2.1.9.2 Gambling Act 2004**

According to the Gambling Act 2004, gambling is defined as (Section 4):

- *paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and*
- *includes a sales promotion scheme; and*

- *includes bookmaking; and*
- *includes betting, paying, or staking consideration on the outcome of a sporting event.*

It does not include an act, behavior, or transaction that is declared not to be gambling by specific regulations.

In principle, gambling is prohibited and illegal under Section 9 of the Gambling Act 2004, unless it is:

- authorized by or under the Act and complies with the Act and any relevant license, game rules, and minimum standards; or
- authorized by or under the Racing Act 2003 and complies with that Act and any regulations made under it; or
- private gambling<sup>321</sup>.

However, bookmaking and remote interactive gambling are prohibited and illegal and are not authorized by and may not be authorized under the Gambling Act 2004.

### **Illegal gambling (Section 19)**

Under Section 19 of the Gambling Act, it is an offence for a person to:

- (a) participate in illegal gambling;*
- (b) to be, without reasonable excuse, at a place where illegal gambling is occurring;*
- (c) conduct illegal gambling;*
- (d) offer or provide credit if the person knows or ought to know that the credit may be used to commit an offence under paragraph (a) or paragraph (c); (e) accept credit from a person with the intention that it be used to commit an offence under paragraph (a) or paragraph (c);*

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<sup>321</sup> Under Sec. 4, private gambling means gambling by persons at a private residence in the following circumstances: (a) all the stakes placed are distributed as reward to the winners; and (b) the gambling is, primarily, a social event or entertainment; and (c) no remuneration, commission, or reward is paid to, or received by, a person for conducting the gambling; and (d) persons who do not live at the residence are not induced, formally or informally, to participate in the gambling by advertisement, notice, or other means; and (e) if the gambling involves playing or staking against a person who has the role of “bank”, that role passes from one person to another by chance or by regular rotation among all persons, without charge or other conditions; and (f) all participants have an equal chance of winning; and (g) no person other than a participant has a chance of winning; and (h) no one pays for admission, directly or indirectly; and (i) there are no deductions of any kind from a participant’s stakes or winnings.

- (e) *make a direct or indirect pecuniary gain from illegal gambling other than as a direct participant;*
- (f) *promotes illegal gambling or assists in doing so;*
- (g) *causes or permits a place to be used for illegal gambling;*
- (h) *advertises illegal gambling: to inform the public of places where illegal gambling takes place or will take place; or to invite the public to participate in illegal gambling or to seek information about opportunities to do so; or to invite the public to commit money for illegal gambling or to seek information about opportunities to commit money for illegal gambling;*
- (i) *provide or install gambling equipment if the person knows or ought to know that it is intended to be used for illegal gambling.*

- Scope: See above.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: By virtue of Section 11 of the Crimes Act 1961, same rules apply as stated therein. See section on Section 240 Ca 1961, above.
- Sanctions envisaged:
  - Offences under Section 19(a, b) are punishable by *a fine not exceeding \$1,000.*
  - Offences under Section 19 (c – j) are punishable:
    - *in the case of an individual, to imprisonment not exceeding 1 year or to a fine not exceeding \$20,000;*
    - *in the case of a body corporate, to a fine not exceeding \$50,000.*
- Jurisdiction: By virtue of Section 11 of the Crimes Act 1961, same rules apply as stated therein. See section on Section 240 Ca 1961, above.
- Liability of legal persons: Yes, under Section 19(3) of the Gambling Act 2004.
- Protection of witnesses and whistle-blowers: No. Section 110 and 112 of Evidence Act 2006 do not apply to offences punishable on summary.
- Anti-money laundering measures: Yes, provided conditions<sup>322</sup> under Criminal Proceeds Recovery Act 2009 are satisfied. See also above in Chapter 2.1.9.1.
- Applicability of special investigative techniques: No.

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<sup>322</sup> For one or more offences punishable by a maximum term of imprisonment of 5 years or more or if the property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or derived on the basis of this criminal offence.

### **2.1.9.3 Applicability of criminal law of New Zealand in the fight against match-fixing**

New Zealand does not have special criminal offence of match-fixing. Therefore, some other criminal offences offer alternative options to combat this phenomenon.

#### ***2.1.9.3.1 Fraud***

The description of fraud<sup>323</sup> is broad enough to cover instances of match-fixing. Jurisdiction is basically subject to the territoriality principle, but in cases of organized criminal groups it is also extraterritorial. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offences where the loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000<sup>324</sup> and in the cases of organized criminal groups are high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons can be held liable for those offences. Whistleblowers and witnesses are enjoying protection. Anti-money laundering measures can be applied in the cases of “significant criminal activity”<sup>325</sup>. Special investigative techniques may be applied if the loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000, as well as in the case of participation in an organized criminal group.

#### ***2.1.9.3.2 Corruption and bribery offences***

Provisions on corruption and bribery are limited to different categories of public officials only. Bribery in the private sector is not criminalized. Jurisdiction is established for acts committed in the territory of New Zealand and for acceptance of bribes by domestic or foreign public official outside the national territory. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offences take into account their gravity. Legal persons can be held liable for those offences. Protective measures for whistleblowers and witnesses area available. Special investigative techniques and anti-money laundering measures may be applied.

New Zealand has not ratified the UNCAC yet.

#### ***2.1.9.3.3 Illegal/irregular gambling***

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<sup>323</sup> New Zealand legislation uses the term of “deception”.

<sup>324</sup> Which in majority of cases is the fact with match-fixing.

<sup>325</sup> See above, part on Section 240 CA 1961.

New Zealand's legislation applies the principle that gambling is illegal, if not otherwise provided by the law or if it is not a private gambling. Bookmaking and remote interactive gambling are always prohibited and illegal.

Interestingly, the Gambling Act, when defining "gambling", also mentions gambling in sport as "*betting, paying, or staking consideration on the outcome<sup>326</sup> of a sporting event*". Jurisdiction is basically territorial, but in cases of organized criminal groups it is also extraterritorial. Participatory acts and organized criminal activity in this area are subject to sanctions. Due to low sanctions for this criminal offence, the provisions of UNTOC cannot be applied. Legal persons can be held liable, whistleblowers and witnesses cannot be protected<sup>327</sup> and no special investigative techniques can be applied<sup>328</sup>. Anti-money laundering measures may be applied conditionally<sup>329</sup>.

#### **2.1.9.4 Conclusion**

The legislation of New Zealand enables the fight against match-fixing only to a certain extent. There are also no provisions on irregular gambling and the main driving force is the criminal offence of fraud, although it has to be mentioned that many of the necessary features – application of the UNTOC, anti-money laundering measures, special investigative techniques - for the effective fight against match-fixing apply only conditionally. Anti-money laundering measures may be applied in the cases of "significant criminal activity"<sup>330</sup>. Special investigative techniques may be applied if loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000 and in case of participation in organized criminal group. Fortunately, both conditions are quite regularly met in match-fixing cases.

Bribery of public officials is adequately incriminated, but there are no provisions on private sector bribery. The latter can cause serious problems in the absence of a specific criminal offence dealing with match-fixing.

Illegal gambling is sanctioned, nonetheless, not to the extent which would completely satisfy the need for the effective fight against match-fixing through illegal betting. Due to low sanctions, the UNTOC provisions cannot be applied. Whistleblowers and witnesses can be

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<sup>326</sup> Obviously, only bets on the final outcome of a sporting event are allowed.

<sup>327</sup> Sanctions foreseen are too low.

<sup>328</sup> Sanctions are also too low.

<sup>329</sup> See above, part on Section 240 CA 1961.

<sup>330</sup> See above, part on Section 240 CA 1961.

protected in general, but not in relation to gambling. Special investigative techniques are authorized under certain conditions, but none of them can be applied in illegal/irregular gambling cases. Anti-money laundering measures may be applied only conditionally<sup>331</sup>.

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<sup>331</sup> See above, part on Section 240 CA 1961.

## 2.1.10 NIGERIA

The following preview is based on the Nigerian Criminal Code Act (Chapter 77 of Law of Federation Nigeria 1990), the Corrupt Practices and other Related Offences Act 2000, as well as the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and related acts.

### 2.1.10.1 Criminal Code Act 1990

The following are common provisions relating to relevant offences under the Nigerian Criminal Code Act (hereinafter: nCC).

- Participatory acts and organized crime activity: nCC recognises the following participatory acts (Chapter 2 nCC):
  - *enabling or aiding another person to commit the offence*
  - *aiding in committing the offence;*
  - *counseling or procuring another person to commit the offence;*
  - *and accessory after the offence.*
- Jurisdiction: Under the Federal Law, the territoriality principle applies (Section 12 nCC).
- Liability of legal persons: There are no special provisions pertaining to offences by legal persons in the Criminal Code Act.
- Protection of witnesses and whistle-blowers: Under Section 89 of the Criminal Evidence Act 2011, an informant is to be named in any affidavit. However:
  - under Section 166 of Criminal Evidence Act, *no magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no officer employed in or about the business of any branch of the public revenue shall be compelled to say whence the got any information as to the commission of any offence against the public revenue;*
  - and under Section 168 of the same act, *no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.*
- Anti-money laundering measures: Seizure, forfeiture and confiscation of property are applicable under Part 30 (Sections 263 et seq.) of Criminal Procedure Act. Under Money

Laundrying (Prohibition) Act 2004 any crime or illegal activity is a predicate offence to money laundering offence under Section 14 of the 2004 Act.

- Application of special investigative techniques: As of 7 March 2012, two draft bills are pending before the National Assembly, the Interception and Monitoring Bill 2009 and the Telecommunications Facilities (Lawful Interception of Information) Bill 2010. These would establish a legal framework for legal interception and monitoring of telecommunications<sup>332</sup>.

### **Obtaining property by false pretences (Section 419 nCC)**

- Offence: Under Section 419 nCC, it is an offence (a felony) for *any person to, by any false pretence, and with intent to defraud:*
  - *obtain from any other person anything capable of being stolen,*
  - *or induce any other person to deliver to any person anything capable of being stolen.*

It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence.

- Scope: “False pretence” is *any representation made by words, writing, or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true.*
- Area of application: Under Section 2 nCC, the term “person”, when used with reference to property, includes corporations and any other associations of persons capable of owning property, as well as it includes the State. Therefore, the offence may be used in both public and private sectors.
- Sanctions envisaged: The offence is punishable by imprisonment of three years. If the value of the thing obtained is of one thousand naira<sup>333</sup> or upwards, the offence is punishable by imprisonment of seven years.

### **Offences related to gambling and lotteries (Sections 236-240E nCC)**

nCC contains several provisions prohibiting:

- keeping a common gaming house (Section 236 nCC);

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<sup>332</sup> Lambo, J.: “Intercepting private communications”, URL:<http://www.internationallawoffice.com/newsletters/Detail.aspx?g=b24e48af-d424-4bd4-b526-52278a2e6d34>. Retrieved on 1st Nov 2012.

<sup>333</sup> 1 Naira = 0.00636943 USD (on 2 December 2012).

- keeping a common betting house (Section 239 nCC);
- organising a public lottery (Section 240-240A ncc).

With regard to match-fixing, keeping a common betting house appears to be most relevant.

**Keeping a common betting house (Section 239 nCC)**

- Offence: Under Section 239 nCC, it is an offence for a person to, *being the owner or occupier of any house, room, or place, knowingly and wilfully*:
  - *permits it to be opened, kept, or used, as a common betting house by another person,*
  - *or who has the use or management, or assists in conducting the business of a common betting house.*
- Scope: A common betting house is (Section 239 nCC) any house, room, or place, which is used for any of the following purposes:
  - (1) *for the purpose of bets being made therein between persons resorting to the place and*
    - (a) *the owner, occupier, or keeper of the place, or any person using the place; or*
    - (b) *any person procured or employed by or acting for or on behalf of any such owner, occupier, or keeper, or person using the place; or*
    - (c) *any person having the care or management, or in any manner conducting the business, of the place; or*
  - (2) *for the purpose of any money or other property, being paid or received therein by or on behalf of any such, owner, occupier, or keeper, or person using the place as, or for the consideration*:
    - (a) *for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise; or*
    - (b) *for securing the paying or giving by some other person of any money or other property on any such event or contingency.*
- Area of applicability: Private sector.
- Sanctions envisaged: The offence is a misdemeanour and is punishable:
  - *by imprisonment for one year,*
  - *and by a fine of one thousand naira.*

### 2.1.10.2 Advance Fee Fraud and Other Fraud Related Offences Act 2006

In 2006, the Act introduced several offences related to fraud, both general and specific in their nature. Interestingly enough, the act re-introduced the offence of obtaining property by false pretence (Section 1), while not explicitly repealing the relevant sections of the Criminal Code Act.

#### **Obtaining property by false pretences (Section 1)**

- **Offence:**
  - Under Section 1/1 of the Act, and notwithstanding anything contained in any other enactment or law, *any person will be guilty of an offence, who by any false pretence, and with intent to defraud:*
    - (a) *obtains, from any other person, in Nigeria or in any other country, for himself or any other person;*
    - (b) *induces any other person, in Nigeria or in any other country, to deliver to any person; or*
    - (c) *obtains any property,*
    - (d) *whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence.*
  - Under Section 1/2 of the Act, a person is guilty of an offence, *who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid.*
- **Scope:** The offence is general in nature. The Act does not specify the nature (public or private) of the property fraudulently obtained. False pretence under this Act means *a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true* (Section 20).
- **Area of applicability:** Public and private sectors.
- **Participatory acts and organized crime activity:** Under Section 8 of the Act, it is an offence to:
  - *conspire with, aid, abet, or counsel any other person to commit an offence; or*
  - *be an accessory to an act or offence; or*

- *incite, procure or induce any other person by any means whatsoever to commit an offence.*
- **Jurisdiction:** The Act contains no specific provisions concerning jurisdiction. However, the provision allows for punishment of acts taking place in Nigeria or in any other country. It is reasonable to deem that both the territoriality and active personality principles apply.
- **Sanctions envisaged:** The offence is punishable by imprisonment for a term of not more than 20 years and not less than seven years, and without the option of a fine.
- **Liability of legal persons:** Yes, by the virtue of Section 10 of the Act.
- **Protection of witnesses and whistle-blowers:** There are no special provisions under this Act. See above, rules set forth by the Criminal Evidence Act in Chapter 2.1.10.1.
- **Anti-money laundering measures:** The offence under Section 1 is a predicate offence to the offence of laundering of fund obtained through unlawful activity, etc. (Section 7 of the Act).  
An equivalent to a freezing order is applicable under Section 16 of the Act, in addition to the above-specified measures available under the Criminal Procedure Act. Forfeiture is applicable under Section 17 of the Act.
- **Application of special investigative techniques:** No special provisions apply; see above, section on offences under the Criminal Code Act.

### **2.1.10.3 Corrupt Practices and other Related Offences Act 2000**

The Nigerian Corrupt Practices and other Related Offences Act 2000 (hereinafter: CPROA 2000) contains several offences relating to bribery and other acts of corruption, including the most important ones for match-fixing:

- offence of accepting gratification (Section 8);
- offence of giving or accepting gratification through agent (Section 9);
- offence of accepting gratification for the in/action, which took place already (Section 10);
- offence of accepting and giving gratification in a private sector (Section 17); and
- using office or position for gratification (Section 19).
- **Participatory acts:** Under Section 26, it is an offence *to abet or engage in a conspiracy to commit an offence under this Act*. Counseling offences relating to corruption is a separate offence under Section 11 of the Act.

- Jurisdiction: By virtue of Section 66, the provisions concerning offences under the Act apply also to offences, committed outside Nigeria by citizens or persons granted permanent residence in Nigeria (active personality principle).
- Sanctions envisaged: For offences described in sections 8, 9 and 10, a sanction of 7 years imprisonment is provided and for offences described in sections 17 and 19 a sanction of 5 years imprisonment is foreseen.

In addition and by virtue of Section 20 and without prejudice to any sentence of imprisonment imposed under the Act, *a public officer or other person found guilty of soliciting, offering or receiving gratification will:*

- *have the gratification forfeited*
- *and pay a fine:*
  - o *of not less than five times the sum or value of the gratification*
  - o *or ten thousand Naira, whichever is the higher.*
- Liability of legal persons: Given that the term “person” under Section 2 of the Act includes *a natural person, a juristic person or any body of persons corporate or incorporate*, legal persons are criminally liable under CPROA 2000.
- Protection of witnesses and whistle-blowers: Yes; under Section 64, the identity of persons providing information regarding offences under the Act, is to be kept secret from others, with the exception of the trial judge and the defence lawyer.
- Anti-money laundering measures: Under Section 24, dealing with property acquired through gratification is a provision introducing special money-laundering offence with relation to corruption offence under the Act. Seizure of property is applicable under Sections 37 and 45; freezing of assets is applicable by virtue of Section 38; prohibition of dealing with property outside Nigeria under Section 46; forfeiture under sections 20, 47 and 48. Money laundering (Prohibition) Act 2004 also applies (see above).
- Application of special investigative techniques: No special provisions apply; see above, section on offences under the Criminal Code Act.

#### **2.1.10.4 Applicability of Nigerian criminal law in the fight against match-fixing**

There are no special provisions on match-fixing in Nigeria. However there are two offences related to fraud which could be considered for possible incrimination of match-fixing.

#### **2.1.10.4.1 Fraud**

As mentioned above, there are two distinct acts dealing with fraud in Nigeria. The first one is the Criminal Code Act (Section 419), and the second is the Advance Fee Fraud and Other Fraud Related Offences Act 2006 (Section 1). Despite the fact that Section 1 in the Advance Fee Fraud and Other Fraud Related Offences Act 2006 only repeats and expands the text of Section 419 of the Criminal Code Act, it does not provide clarifications about the validity of fraud provisions in the Criminal Code Act. But there is an extremely important development: Section 1 in the Advance Fee Fraud and Other Fraud Related Offences Act 2006 protects the victims of fraud not only in Nigeria but also abroad<sup>334</sup>. This is a response to the so-called “Nigerian letters fraud”<sup>335</sup> which brought along important means for fighting match-fixing as well.

The description of fraud<sup>336</sup> is broad enough to cover instances of match-fixing for pecuniary gain (without bribery involved) not only in Nigeria, but also – following the wording of Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 - anywhere in the world<sup>337</sup>. Jurisdiction, therefore, is subject to the territoriality and active personality principles. Participatory acts and forms of organized criminality are adequately incriminated. Sanctions provided for the basic form of the offences are practically<sup>338</sup> high enough to serve as basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for fraud by virtue of Section 419 of the Criminal Code Act, but can be held responsible for fraud through Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006<sup>339</sup>. The identity of whistleblowers can be protected, but there are no other measures available to protect such whistleblowers or witnesses from any retaliatory measures. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques cannot be applied yet<sup>340</sup>.

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<sup>334</sup> Section 1 refers to obtaining (a property) from and inducing any other person, in Nigeria or in any other country.

<sup>335</sup> Thousands of letters were sent from Nigeria to other countries asking (under different excuses) for money.

<sup>336</sup> As prescribed in both acts.

<sup>337</sup> On the understanding that links to Nigeria justifying the expansion of jurisdiction exist.

<sup>338</sup> Only fraud below 1000 Naira (6,37 USD) is not covered.

<sup>339</sup> According to Section 10.

<sup>340</sup> Two bills are pending before the National Assembly, the Interception and Monitoring Bill 2009 and the Telecommunications Facilities (Lawful Interception of Information) Bill 2010.

#### **2.1.10.4.2 Bribery offences<sup>341</sup>**

Provisions on bribery extensively cover both public and private sector bribery. Jurisdiction is subject to the active personality principle. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons can be held liable for those offences. Identity of whistleblowers can be protected, but there are no other available measures to protect such whistleblowers or witnesses from any retaliatory measures. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques cannot be applied yet.

Nigeria has acceded to the UNCAC on 11 August 2008.

#### **2.1.10.4.3 Illegal/irregular gambling**

In Nigeria, the organization of gambling and betting<sup>342</sup> is absolutely prohibited. It is interesting that the prohibition explicitly refers to sports bets<sup>343</sup>. Jurisdiction for the investigation of the offence is subject to the territoriality principle. Participatory acts and forms of organized criminality are covered. Sanctions<sup>344</sup> provided cannot serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for the related offence. The identity of whistleblowers can be protected, but there are no other available measures to protect such whistleblowers or witnesses from any retaliatory measures. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques cannot be applied yet.

#### **2.1.10.5 Conclusion**

Through a general prohibition on gambling and betting for pecuniary purposes, the Nigerian legislation has limited the possibilities and options of potential match-fixers to achieve large gains through different forms of gambling and betting. Given the lack of a specific provision on match-fixing, fixing the matches for pecuniary purposes in Nigeria can be addressed through criminal provisions on fraud, especially the new ones from 2006, which cover

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<sup>341</sup> Corrupt Practices and other Related Offences Act 2000.

<sup>342</sup> Section 239 nCC.

<sup>343</sup> It is prohibited to accept bets *on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise.. – section 239/2a nCC.*

<sup>344</sup> 1 year of imprisonment.

instances of match-fixing for pecuniary gain (without bribery involved) not only in Nigeria, but also – following the wording of Section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 - worldwide. Exhaustive provisions on public and private sector bribery add their parts to the possibilities of Nigerian authorities to fight match-fixing. The only issue, which – as in so many other countries - remains substantially unsolved is fixing matches for non-pecuniary gain<sup>345</sup>.

Criminal law provisions on liability of legal persons for criminal offences differ from one law to another, since there is no general provision in the Criminal Code Act, however there are appropriate provisions in the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and in the Corrupt Practices and other Related Offences Act 2000.

Whistleblowers' identities are protected, yet there are no other protective measures in place for whistleblowers or witnesses. Anti-money laundering measures, including seizure, freezing, and confiscation may be applied. Special investigative techniques cannot be applied.

As a consequence, especially due to lack of proper protection of whistleblowers and witnesses and due to lack of special investigative techniques, Nigerian law enforcement agencies may practically face serious difficulties in discovering, investigating, and proving match-fixing.

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<sup>345</sup> For example, to help a club against relegation.

## 2.1.11 QATAR

The following overview is based on the Penal Code (hereinafter: qPC), declared in force by virtue of the Law No. 11 (2004).

### 2.1.11.1 Penal Code 2004

#### Gambling (Article 275 qPC)

- Offence: Under Article 275 qPC, it is an offence *to gamble*.
- Scope: Gambling is considered to be *any game, in which the probability of gain and loss depends on the luck and not on the controlled factor and each party agrees to give the amount of money, in case of loss, to the winning party*<sup>346</sup>.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity:

qPC (Article 38, 39) distinguishes between:

- *a perpetrator of the offence, and*
- *a participant in the offence.*

Participating in the offence includes:

- *co-perpetrating,*
- *instigating, and*
- *assisting the perpetrators.*

The provision on gambling does not include a provision on organized crime activity.

- Sanctions envisaged: Gambling is punishable by:
  - *an imprisonment of no more than three months,*
  - *a fine of no more than 3000 riyals*<sup>347</sup>,  
*either cumulatively or alternatively.*

If, however, gambling:

- *occurs in a public place,*
  - *is performed openly or*
  - *in a place or house made for the purpose,*
- the offence is punishable by*

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<sup>346</sup> Art. 274 qPC.

<sup>347</sup> 1 Riyal = 0,274907 USD (on 2 December 2012).

- *imprisonment of no more than six months,*
- *a fine of no more than 6000 riyals,*  
*cumulatively or alternatively.*
- Jurisdiction: For the offence, the following principles apply:
  - territoriality principle (Article 13, 14, 16/1 qPC);
  - active personality principle (Article 18 qPC), provided double criminality and the *ne bis in idem* (Article 19 qPC) conditions are satisfied and the offender returns to Qatar;
  - universality principle, i.e. making provisions of qPC and jurisdiction of Qatar applicable, if a person is considered a perpetrator or an accomplice to a crime occurring at least in part outside Qatar, provided double criminality (Article 16/2 qPC) and *ne bis in idem* principles are satisfied (Article 19/1 qPC).
- Liability of legal persons: Yes (Article 37 qPC).
- Protection of witnesses and whistle-blowers: No.<sup>348</sup>
- Anti-money laundering measures: Yes, according to Article 2 of the Law No. 4 of Year 2010 on Combating Money Laundering and Terrorism Financing.
- Applicability of special investigative techniques: Yes (Article 77 of the Qatari Code of Criminal Procedure).

### **Organization of gambling games (Article 276 qPC)**

Under Article 276 qPC, it is an offence to:

- *open or run a place for gambling,*
- *organize any gambling games in a public place, openly or in any place or house made for this purpose.*
- Scope: See above, in the section on Article 275 qPC.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the section on Article 275 qPC.
- Sanctions envisaged: The offence is punishable:
  - *by no more than a year in prison;*
  - *to a fine of no more than five thousand riyals,*

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<sup>348</sup> Qatar: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism", IMF, 2008, p. 193.

*cumulatively or alternatively.*

- Jurisdiction: See above, in the section on Article 275 qPC.
- Liability of legal persons: Yes (Article 37 qPC).
- Protection of witnesses and whistle-blowers: No.
- Anti-money laundering measures: Yes, according to Article 2 of the Law No. 4 of Year 2010 on Combating Money Laundering and Terrorism Financing.
- Applicability of special investigative techniques: Yes, see above, in the section on Article 275 qPC.

### **Fraud (Article 354 et seq. qPC)**

- Under Article 354 qPC, it is an offence to *seize, for themselves or others, movable properties, debt or quittance bond, or canceling, spoiling or modifying this bond by using:*
  - *fraud means,*
  - *assuming a false name or*
  - *a fake character,**in a way to delude the victim.*
- Scope: The offence is general in nature. The qPC includes several additional special provisions that criminalize fraud.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the Section on Article 275.
- Sanctions envisaged: Fraud is punishable by imprisonment of no more than three years.
- Jurisdiction: See above, in the Section on Article 275.
- Liability of legal persons: Yes (Article 37 qPC).
- Protection of witnesses and whistle-blowers: No.
- Anti-money laundering measures: Yes, according to Article 2 of the Law No. 4 of Year 2010 on Combating Money Laundering and Terrorism Financing.
- Applicability of special investigative techniques: Yes (Article 77 of the Qatari Code of Criminal Procedure).

### **Bribery (Articles 140 et seq. qPC)**

Bribery is criminalized in several articles of qPC. The following provisions apply to most typical forms of corruption:

- Article 140 qPC, making it an offence by a public official to ask or accept a bribe;
- Article 141 qPC making it an offence to offer a bribe to a public official; and

- Article 142 qPC making it an offence to intentionally accept a bribe ex post without prior agreement.
- Scope: Offences of bribery are classified as offences against public office. The offences criminalize active and passive bribery of public officials. A bribe is defined as *money, benefit or a simple promise of something* for undertaking or abstaining from any act performed in the line of official's duty, or any act for which the official falsely believes or pretends to be in the line of his duty (Article 140 qPC).  
On the active side, it includes punishment of any person offering or promising a bribe, as well as punishment of intermediaries between the giver and the receiver of the bribe (Article 141 qPC).
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: See above, in the section on Article 275 qPC.
- Sanctions envisaged:  
Offence under:
  - Articles 140 and 141 qPC are punishable by: *imprisonment for a period not exceeding ten years and a fine not exceeding what he was given or promised to be given, provided that it shall not be less than five thousand Riyal*;
  - Article 142 qPC is punishable by: *imprisonment for a period not exceeding seven years and a fine not exceeding fifteen thousand Riyal*.
- Jurisdiction: See above, in the section on Article 275 qPC.
- Liability of legal persons: Yes (Article 37 qPC).
- Protection of witnesses and whistle-blowers: No.
- Anti-money laundering measures: Yes, according to Article 2 of the Law No. 4 of Year 2010 on Combating Money Laundering and Terrorism Financing.
- Applicability of special investigative techniques: Yes, see above, in the section on Article 275 qPC.

### **2.1.11.2 Applicability of Qatari criminal law in the fight against match-fixing**

There is no special provision in the Qatari Penal Code on match-fixing, but provisions of the Qatari Penal Code on fraud and bribery ensure at least partial response to possible problems in this area. Due to the fact that gambling is absolutely prohibited in Qatar, even in cases of

fixed matches, there are no possibilities to legally (mis)use such occurrence(s), at least not in the country.

#### **2.1.11.2.1 Fraud**

The description of fraud is broad enough to cover instances of match-fixing. Jurisdiction is basically subject to the territoriality principle, but also to active and passive personality and universality principles. Whereas participatory acts are covered by the legislation, forms of organized criminality are not. Sanctions provided cannot serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for the offence of fraud. Protective measures for whistleblowers and witnesses are not available. Anti-money laundering measures can be applied and special investigative techniques may be used.

#### **2.1.11.2.2 Bribery**

Provisions on bribery<sup>349</sup> are limited to different categories of public officials only, whereas bribery in the private sector is not criminalized. Jurisdiction for the investigation of bribery offences is based on the territoriality principle, but it is also subject to the active personality and universality principles. Participatory acts are subject to adequate sanctions, but this is not the case for the forms of organized criminality in this area. Legal persons can be held criminally liable for those offences. Protection for whistleblowers and witnesses is not available. Anti-money laundering measures can be applied. In addition, special investigative techniques may be used.

Qatar has ratified the UNCAC on 30 January 2007.

#### **2.1.11.2.3 Illegal/irregular gambling**

In Qatar, gambling<sup>350</sup> and its organization<sup>351</sup> are absolutely prohibited. Jurisdiction for the investigation of both offences is basically territorial, but it is also based on their personality and universality principles. Participatory acts are covered by the legislation, but this is not the case for the forms of organized criminality. Sanctions provided cannot serve as a basis for the

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<sup>349</sup> Articles 140, 141, 142 qPC.

<sup>350</sup> Article 275 qPC.

<sup>351</sup> Article 276 qPC.

application of the provisions of the UNTOC. Legal persons can be held liable for the offences in the area of gambling. Protective measures for whistleblowers and witnesses are not available. Anti-money laundering measures may be applied and special investigative techniques may be used.

### **2.1.11.3 Conclusion**

In Qatar, measures against match-fixing are in place, but there are limitations which render their efficiency possible only to a certain extent.

Although there are no special provisions on match-fixing, the criminal offence of fraud may be used to combat at least the basic forms of match-fixing. Bribery offences can be applied, although only in the public sector, which, in turn, has an impact on their effectiveness in the area of sports. There are no provisions on organized criminality which would enable the use of the UNTOC. The latter applies only in the area of bribery offences, where the sanctions foreseen provided are high enough. In addition, for both fraud and bribery offences, protection for whistleblowers and witnesses is lacking. In both cases, anti-money-laundering measures can be applied. The use of special investigative measures is possible and legal persons can be held responsible for relevant offences.

The most important feature of the Qatari Penal Code is the existence of an absolute prohibition of gambling. This prohibition does not make match-fixing a very lucrative activity in the country, but due to the fact that sports competitions organized in Qatar may be offered for bets in other countries, further improvements in the legal framework may be very useful to ensure the effectiveness in the fight against match-fixing.

## 2.1.12 REPUBLIC OF KOREA

### 2.1.12.1 Criminal Act 2005

This preview is based on the Korean Criminal Act (hereinafter: kCA), incorporating amendments up to Act No. 7623, 29th July 2005.

The following characteristics are common to the offences that will be presented below.

- Participatory acts and organized crime activity: As participatory acts, kCA recognises:
  - co-principals (Article 30);
  - instigation (Article 31); and
  - accessory (Article 32).

In addition, Article 114 kCA makes the organization of a criminal group an offence:

- *organisation of a group for the purpose of committing a crime is punishable as specified for the crime;*
- *if a person commits the crime, for which the group has been organised, provided that the crime is punishable by imprisonment or imprisonment without prison labor for a definite term or fine, may concurrently be punished by suspension of qualifications for not more than ten years, may concurrently be punished by suspension of qualifications for not more than ten years.*
- Jurisdiction: By virtue of Article 2 and 3 kCA, territoriality and active personality principles apply.
- Liability of legal persons: The Korean criminal law does not establish general liability of legal persons for criminal offences<sup>352</sup>.
- Protection of witnesses and whistle-blowers: Untill 2011, Korea did not have a comprehensive system of protecting witnesses, informants or whistle-blowers<sup>353</sup>. Instead, specific statutory provisions may apply; see below.

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<sup>352</sup> “Corporate culture” as a basis for the criminal liability of corporations, prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary- General on Human Rights and Business, February 2008, p. 56.

<sup>353</sup> “Protecting the Whistleblowers–Asian and European Perspectives”, Inje Park, Secretary General Anti-Corruption and Civil Rights Commission (ACRC), Republic of Korea, 2008, p. 3.

In 2011, the Act on the Protection of Public Interest Whistleblowers entered into force. It applies to *any person who reports a violation of the public interest*<sup>354</sup>.

In addition, under Article 294-3 of Criminal Procedure Act 1954, the court may, when it examines a victim of a crime as a witness, decide by a ruling to proceed the examination behind closed doors, if it is deemed necessary for the victim's privacy and personality safety. The provision has limited application, especially in case of victimless crimes - specifically bribery offences.

- Anti-money laundering measures: In all cases, seizure and confiscation are applicable under Article 106 of the Criminal Procedure Law and Article 48 of the kCA. For the applicability of the Proceeds of Crime Act (2002), see below.
- Application of special investigative techniques: Although no specific reference is made, undercover operations may be used under Article 199 of the Criminal Procedure Act. During investigations of money laundering and predicate offences and based on a court order, telecommunications interception in accordance with the Protection of Communication Secrets Act (1993) may also be applied.

Criminal offences, important for the area of match-fixing are the following ones:

### **Fraud (Article 347 kCA)**

- Offence: Under Article 347 kCA, it is an offence for a person :
  - *to defraud another, thereby taking property or obtaining pecuniary advantage from another (Article 347/1); or*
  - *to, by the methods of the preceding paragraph, causes a third person to take property or to obtain pecuniary advantage from the latter.*
- Scope: This is a general provision on fraud.
- Area of applicability: Private and public sectors; the provision also applies to a public official, who commits fraud (or any other offence) by taking advantage of his official authority (Article 135 kCA).
- Sanctions envisaged: Offence under Article 347/1 and 2 kCA is punishable by:
  - *by imprisonment for not more than ten years;*

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<sup>354</sup> Article 2 of this Act defines a "violation of the public interest" as an act that *infringes on the health and safety of the public, the environment, consumer interests and fair competition.*

- *or by a fine not exceeding twenty million won<sup>355</sup>.*

Under Article 135 kCA, a public official who, taking advantage of his official authority, commits fraud, is to be punished by increasing one half of the penalty specified.

**Acceptance of bribe and advance acceptance (Article 129kCA); Bribe to a third person (Article 130); Improper action after acceptance of bribe and subsequent bribery (Article 131); Acceptance of bribe through good offices (Article 132 kCA)**

- Offence:

- Under Article 129/1 kCA, it is an offence for *a public official or an arbitrator to receive, demand or promise to accept a bribe in connection with his duties.*
- Under Article 129/2 kCA, it is an offence for *a person who is to become a public official or an arbitrator to receive, demand or promise to accept a bribe in response to a solicitation, in connection with the duty which he is to perform and he actually becomes a public official or arbitrator.*
- Under Article 130 kCA, it is a offence for *a public official or an arbitrator to cause, demand or promise a bribe to be given to a third party.*
- Under Article 132 kCA, it is an offence for *a public official to, by taking advantage of his post, receive, demand or agree to receive a bribe concerning the use of the good offices in connection with the affairs which belong to the functions of another public official.*

- Scope: All of the above offences cover forms of passive bribery of public officials.

- Area of applicability: Public sector.

- Sanctions envisaged:

- Offence under Article 129 kCA is punishable by:
  - *imprisonment for not more than five years*
  - *or suspension of qualifications for not more than ten years.*
- Offence under Article 129/2 kCA is punishable by:
  - *imprisonment for not more than three years*
  - *or suspension of qualifications for not more than seven years.*
- Offence under Article 130 kCA is punishable by:
  - *imprisonment for not more than five years;*

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<sup>355</sup> 1 Won = 0.000923489 USD (on 2 December 2012).

- *or suspension of qualifications for no more than ten years.*

In addition:

- it is an offence for a public official or an arbitrator who takes an improper action after committing the offence under Articles 129 or 130, punishable by imprisonment for a limited term of not less than one year (Article 131/1 and 2) and (optional) suspension of qualifications for not more than ten years (Article 131/4 kCA);
- if a person who was a public official or an arbitrator receives a bribe or demands or agrees to receive a bribe after taking an improper action in the course of performing his duties on acceptance of a solicitation made during his incumbency, the offence is punishable by imprisonment for not more than five years or suspension of qualifications for not more than ten years (Article 131/3 kCA).

Offence under Article 132 kCA is punishable by imprisonment for not more than three years or suspension of qualifications for not more than seven years.

- Protection of witnesses and whistle-blowers: Protection of whistle-blowers and informants is provided for by the Act on Anti-Corruption and the Act No. 9402 of 2008 on the Foundation of the Anti-Corruption & Civil Rights Commission (Article 62 et seq.).
- Anti-money laundering measures: Article 134 kCA contains specific provision regarding confiscation and subsequent collection of:
  - a bribe received,
  - or money or goods to be received as a bribeby an offender or by a third party having knowledge of its nature.

If confiscation is impossible, the value thereof is to be collected.

Offences under Articles 129-132 are classified as serious crimes under Article 2/1 Proceeds of Crime Act and therefore predicate offences to the offence of Concealing and Disguising Criminal Proceeds (Article 3) and subsequent offence under the Proceeds of Crime Act. Article 8 of the same Act prescribes confiscation of the crime proceeds.

### **Offer, etc. of bribe (Article 133 kCA)**

- **Offence:** It is an offence for a person:
  - *to promise, deliver or manifest a will to deliver a bribe as stated in Articles 129 through 132 kCA (Article 133/1 kCA); or*
  - *to, for the purpose of committing the crime specified in the preceding paragraph, deliver money or goods to a third party, or receive such delivery with the knowledge of its nature (Article 133/2 kCA).*
- **Scope:** The offence covers active corruption of public officials.
- **Area of application:** Public sector.
- **Sanctions envisaged:** The offence is punishable:
  - *by imprisonment for not more than five years or*
  - *by a fine not exceeding twenty million won.*
- **Protection of witnesses and whistle-blowers:** Protection of whistle-blowers and informants is provided for by the Act on Anti-Corruption and the Foundation of the Anti-Corruption & Civil Rights Commission (Articles 62 et seq.).
- **Anti-money laundering measures:** Article 134 kCA contains specific provision regarding confiscation and subsequent collection of:
  - *a bribe received,*
  - *or money or goods to be received as a bribe**by an offender or by a third party having knowledge of its nature.*  
If confiscation is impossible, the value thereof is to be collected.

### **Receiving or giving bribe by breach of trust (Article 357 kCA)**

- **Offence:** It is an offence if a person:
  - *administering another's business, receives property or obtains pecuniary advantage from a third person in response to an illegal solicitation concerning his duty, (Paragraph 1);*
  - *gives a property or pecuniary advantage as specified in Paragraph 1 (Paragraph 2).*
- **Scope:** This offence covers passive and active bribery in the private sector.
- **Area of applicability:** Private sector.
- **Sanctions envisaged:** Offender will be punished:
  - *for passive corruption with imprisonment for not more than 5 years or a fine not exceeding 10 million won,*

- *for active corruption with imprisonment for not more than 2 years or a fine not exceeding 5 million won.*
- Anti-money laundering measures: Yes, according to Paragraph 3 of the same Article confiscation is mandatory. Proceeds of Crime Act also applies.

**Gambling, habitual gambling (Article 246 kCA)**

- Offence: It is an offence for *a person to gamble or bet for the purpose of gaining property.*
- Scope: Gambling which is just for momentary pleasure is exempted.
- Area of applicability: Private and public sectors; the provision also applies to a public official who commits this offence by taking advantage of his official authority (Article 135 kCA; see below).
- Sanctions envisaged: The offence under Article 246/1 kCA is punishable by a fine of not more than five million won or a minor fine.

A person who commits the crime referred to in Article 246/1 kCA as a habitual practice (habitual gambling) is to be punished by (Article 246/2):

- *imprisonment for not more than three years and (optional) by a fine not exceeding five million won (Article 249)*
- *or by a fine not exceeding twenty million won.*

Under Article 135 kCA, a public official who, taking advantage of his official authority commits this offence, is to be punished by increasing one half of the penalty specified.

- Anti-money laundering measures: Habitual gambling (Article 246/2) is classified as serious crime under Article 2/1 of the Proceeds of Crime Act and therefore predicate offence to the offence of Concealing and Disguising Criminal Proceeds (Article 3) and subsequent offences under the Proceeds of Crime Act. Article 8 of the same Act prescribes confiscation of the crime proceeds.

**Selling Lottery Tickets (Article 248 kCA)**

- Offence: It is an offence for:
  - *a person to sell lottery tickets unauthorized by law (Article 248/1 kCA);*

- *a person to act as a go-between in the sale of lottery tickets (Article 248/2 kCA);*
- *a person to acquire a lottery ticket, as specified above (Article 248/3 kCA).*
- **Sentence envisaged:** The offence under Article 248/1 kCA) is punishable by:
  - *imprisonment for not more than three years and (optional) by a fine not exceeding five million won (Article 249);*
  - *or by a fine not exceeding twenty million won.*

The offence under Article 248/2 kCA is punishable by:

- *by imprisonment for not more than one year*
- *or by a fine not exceeding five million won.*

The offence under Article 248/3 kCA is punishable *by a fine of not more than five million won or a minor fine.*

#### **2.1.12.2 National Sports Promotion Act (NSPA) 2007**

##### **Crimes by player, coach, umpire (hereinafter: players) (Articles 48/iv and 26/3, 4)**

Offence: Under Article 48/iv and Article 26/ 3, 4, it is an offence if players

- *receive, or promise to receive, or request property or pecuniary advantage from a third person;*
- *or let a third person give, or request a third person to give, or let a third person promise to give property or pecuniary advantage to another person;*

*in response to an illegal solicitation concerning the sports game that can be betted legally by the Act. i.e. professional soccer, baseball, basketball, volleyball.*

*Illegal solicitation* means the request for match-fixing such as intentional mistake of players.

Scope: As a specific provision of the Korean Criminal Act, Article 357 Paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers passive bribery in sports.

Area of applicability: Private sector.

Sanctions envisaged: Offender will be punished:

- *by imprisonment for not more than 5 years;*
- *or/and by a fine not exceeding 50 million won.*
- **Anti-money laundering measures:** According to Article 51, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

**Crime by people other than 'players' (Articles 48/iii and 26/3,4)**

- Offence: Under 48/iii, 26/3, 4, it is an offence for a person other than »players« who gives, or promise to give, or express the will to give property or pecuniary advantage to 'players' or a third person in response to an illegal solicitation concerning the sports game that can be betted legally by the Act. i.e. professional soccer, baseball, basketball, volleyball.
- Scope: As a specific provision of the Korean Criminal Act Article 357 paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers active bribery in some sports.
- Area of applicability: Private sector.
- Sanctions envisaged: Offender will be punished:
  - by imprisonment for not more than 2 years;
  - or/and by a fine not exceeding 10 million won.
- Anti-money laundering measures: According to Article 51, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

**Crime by non-licensed lottery issuer (Articles 47/i, 26/1, 48/ii, 26/2/i)**

- Offence: Under 47/i, 26/1, it is an offence for a person:
  - to issue a paper ticket of sports lottery without license(Article 47/i, Article 26/1);
  - to issue an electronic ticket of sports lottery without license by internet or similar information network(Article 48/ii, Article 26/2/i);
  - to acquire a paper of electronic tickets, as specified above(Article 48/ii, Article 26/1).
- Sanctions envisaged:
  - The offence under Article 47/i, Article 26/1 is punished by imprisonment for not more than 7 years or by a fine not exceeding 70 million won.
  - The offence under Article 48/ii, Article 26/2/i and Article 48/ii, Article 26/1 is punishable by imprisonment for not more than 5 years or/and by a fine for not more than 50 million won.
- Anti-money laundering measures: According to Article 51, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

**2.1.12.3 Bicycle and Motor Boat Racing Act 2007**

**Crimes by players and umpires (Articles 29/1, 2 and 30/3, 4)**

- Offence: Under 29/1, 30/ 3, 4, it is an offence if *the players, umpires*

- *receive, or promise to receive, or request property or pecuniary advantage from a third person;*
- *or let a third person give, or request a third person to give, or let a third person promise to give property or pecuniary advantage to another person;*

*in response to an illegal solicitation concerning bicycle and motor boat racing.*

Illegal solicitation means the request for match-fixing such as intentional mistake of players or umpires.

- Scope: As a specific provision of the Korean Criminal Act Article 357 paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers passive bribery in bicycle and motor boat racing.
- Area of applicability: Private sector.
- Sanctions envisaged: Offender will be punished:
  - *by imprisonment for not more than 5 years;*
  - *or/and by a fine not exceeding 15 million won.*
- Anti-money laundering measures: According to Article 32, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

**Crimes by person other than players and umpires (Article 31, Article 26/i)**

- Offence: Under 31, 26/i, it is an offence for a *person other than players and umpires who*
  - *gives, or promise to give, or express the will to give property or pecuniary advantage to players and umpires or a third person*

*in response to an illegal solicitation concerning bicycle and motor boat racing.*

The meaning of *illegal solicitation* is same as above.

- Scope: As a specific provision of the Korean Criminal Act Article 357 paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers active bribery in bicycle and motor boat racing.
- Area of applicability: Private sector.
- Sanctions envisaged: Offender will be punished:
  - *by imprisonment for not more than 2 years;*
  - *or by a fine not exceeding 5 million won.*
- Anti-money laundering measures: According to Article 32, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

### **Crimes by non-licensed lottery issuer (Article 24)**

- Offence: Under 24, it is an offence for a person :
  - *to issue a paper ticket or similar one of sports lottery without license.*
- Sanctions envisaged: The offence under Article 24 is punished by:
  - *imprisonment for not more than 3 years;*
  - *or by a fine not exceeding 10 million won.*
- Anti-money laundering measures: Confiscation is applicable under Article 48 kCA.

### **2.1.12.4 Korean Horse Affairs Association Act**

#### **Crimes by horse rider and horse trainer (Article 53/1, Article 54, Article 51/ii)**

- Offence: It is an offence :
  - *for horse rider and horse trainer to receive property or obtain pecuniary advantage from a third person or let a third person give, or request a third person to give, or let a third person promise to give property or pecuniary advantage to another person in response to an illegal solicitation concerning his duty(Article 53/1, Article 54);*
  - *for horse rider to lessen the ability of horse to have property or pecuniary advantage or to let another person have property or pecuniary advantage (Article 51/ii).*
- Scope: As a specific provision of the Korean Criminal Act Article 357 paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers passive bribery in the horse riding competitions.
- Area of applicability: Private sector.
- Sanctions envisaged: Offender in all case will be punished:
  - *by imprisonment for not more than 5 years or by a fine not exceeding 30 million won (Article 53/1).*
- Anti-money laundering measures: Yes.
  - In case of the offence under Article 53/1 and Article 54, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected (Article 56);
  - In case of the offence under Article 51/ii, confiscation is applicable under general provisions of kCA.

#### **Crimes by People other than horse trainer and horse rider (Article 55)**

- Offence: Under 31, 26/i, it is an offence for a *person other than horse trainer and horse rider who*

- *gives, or promise to give, or express the will to give property or pecuniary advantage to horse trainers and horse riders or a third person*

*in response to an illegal solicitation.*

The meaning of illegal solicitation is same as above.

- Scope: As a specific provision of the Korean Criminal Act Article 357 paragraph 1 (Receiving Bribe by Breach of Trust) this offence covers active bribery in the horse riding competitions.
- Area of applicability: Private sector.
- Sanctions envisaged: Offender will be punished:
  - *by imprisonment for not more than 2 years;*
  - *or by a fine not exceeding 2 million won.*
- Anti-money laundering measures: According to Article 56, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

#### ***Crimes by non-licensed lottery issuer (Article 50, Article 48)***

- Offence: Under 50, Article 48, it is an offence for a person:
  - *to issue a paper ticket or similar one of horse riding lottery without license.*
- Sanctions envisaged: The offence under Articles above is punished by:
  - *imprisonment for not more than 5 years;*
  - *or/and by a fine not exceeding 50 million won.*
- Anti-money laundering measures: According to Article 56, confiscation is mandatory and if confiscation is impossible, the value thereof is to be collected.

#### **2.1.12.5 Applicability of Korean criminal law in the fight against match-fixing**

In the Republic of Korea, there are several specific criminal offences on match-fixing, which - in combination with other criminal law provisions - ensure effective fight against this phenomenon.

##### ***2.1.12.5.1 Fraud***

The description of fraud is broad enough to cover instances of match-fixing for pecuniary purposes. Jurisdiction is based on the territoriality and active personality principles. Participatory acts and forms of organized criminality are subject to adequate sanctions.

Sanctions provided for the basic forms of criminal offences<sup>356</sup> are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence. Under the presumption that fraud violates the public interest, whistleblowers can be protected<sup>357</sup>. Witnesses can be protected only in a form of a closed interrogation and if they are in the same time victims of a criminal offence. Both special investigative techniques and anti-money laundering measures may be applied.

#### ***2.1.12.5.2 Bribery offences***

Bribery provisions are directed against bribery of different categories of public officials and future public officials and against bribery in the private sector. Jurisdiction is subject to the territoriality and active personality principles. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for those offences. Protective measures for whistleblowers and witnesses are available. Special investigative techniques and anti-money laundering measures may be applied.

The Republic of Korea has ratified the UNCAC on 27 March 2008.

#### ***2.1.12.5.3 Illegal/irregular gambling***

In Korea, gambling and betting for pecuniary purposes, unauthorized selling of lottery tickets and acquiring such tickets is prohibited. Jurisdiction for the investigation of both<sup>358</sup> offences is based on the territoriality and active personality principles. Participatory acts and forms of organized criminality are covered. Sanctions provided generally cannot serve as a basis for the application of the provisions of the UNTOC. Only in cases of public officials involved in habitual gambling<sup>359</sup> sanctions provided are high enough to serve as a basis for the application of the UNTOC. Legal persons cannot be held liable for those offences. Under the presumption that gambling is breaching the public interest, whistleblowers can be protected<sup>360</sup>. Witnesses can be protected only in a form of a closed interrogation and if they are in the same time

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<sup>356</sup> Covering private persons but also public officials.

<sup>357</sup> By the virtue of the Act on the Protection of Public Interest Whistleblowers from 2011, which applies to any person who reports a violation of the public interest.

<sup>358</sup> Articles 246 and 248 of the kCA.

<sup>359</sup> Articles 246/2 and 135 of the kCA.

<sup>360</sup> By virtue of the Act on the Protection of Public Interest Whistleblowers from 2011, which applies to any person who reports a violation of the public interest.

victims of a criminal offence. Anti-money laundering measures can be applied against habitual gambling. Special investigative techniques may be used in all cases.

#### ***2.1.12.5.4 Specific sports legislation***

In Korea, there are three laws dealing with match-fixing related to bribery and illegal betting: the National Sports Promotion Act, the Bicycle and Motor Boat Racing Act and the Korean Horse Affairs Association Act. These acts incriminate active and passive bribery for the purposes of match-fixing in the sports game that can be betted legally by the Act (i.e. professional soccer, baseball, basketball, volleyball), in the bicycle and motor boat racing and in the horse riding competitions. In addition, they all incriminate non-licensed issuance of lottery tickets.

Other features of those criminal offences follow general rules from the kCA, but there are some differences in the area of sanctioning. Sanctions provided for passive bribery offences related to match-fixing in all three cases of legislation mentioned above, as well as sanctions for illegal betting incriminated in National Sports Promotion Act and Korean Horse Affairs Association Act are high enough to serve as basis for the application of the provisions of the UNTOC. This is not the case, however, for the sanctions against active bribery offences and illegal betting from Bicycle and Motor Boat Racing Act.

#### **2.1.12.6 Conclusion**

Through its wide prohibition on gambling and betting for pecuniary purposes, the Korean legislation has limited the possibilities and options of potential match-fixers to achieve large gains through different forms of gambling and betting on its grounds. Specific provisions on match-fixing related bribery in three specialized sports laws, in combination with general criminal provisions on fraud and bribery enable effective fight against match-fixing for pecuniary purposes and the only issue, which remains substantially unsolved is fixing matches for non-pecuniary (direct) gain<sup>361</sup>.

There are no criminal law provisions on the liability of legal persons for criminal offences. Whistleblowers are protected only if they report on a violation of the public interest, whereas

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<sup>361</sup> For example, to help a club against relegation.

witnesses enjoy a very limited form of protection<sup>362</sup>. Despite the fact that anti-money laundering measures and special investigative techniques can be applied in almost all cases, loopholes identified could possibly make the work of the Korean law enforcement and judicial officials in their efforts to fight match-fixing more difficult.

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<sup>362</sup> If they are also victims of a crime, the court can hold hearings behind closed doors.

## 2.1.13 RUSSIAN FEDERATION

### 2.1.13.1 Criminal Code

The Criminal Code of the Russian Federation (hereinafter: rusCC) was adopted by the State Duma and approved by the Federation Council in May and June 1996 respectively. It was subsequently amended at various occasions. The Russian Criminal Code has a specific criminal offence dealing with illegal manipulations of the results of official sports competitions – match-fixing.

#### **Bribery of participants and organizers of professional sports and entertainment profit-making competitions (Article 184 rusCC)**

- Under Article 184 rusCC, the following acts are declared as an offence:
  - *bribery of athletes, referees, coaches, team leaders, and other participants or organizers of professional sport competitions, and also organizers or jurymen of profit-making entertainment competitions, with the purpose of exerting influence on the results of these competitions or contests (Article 184/1 rusCC);*
  - *illegal receipt by athletes of money, securities, or any other property transferred to them for the purpose of exerting influence on the results of said competitions, and also the illegal use by athletes of property-related services granted to them for the same purposes (Article 184/3 rusCC); and*
  - *illegal receipt of money, securities, or any other property, illegal use of property-related services by referees, coaches, team leaders, and other participants or organizers of professional sports competitions, and also by organizers or jurymen of profit-making entertainment competitions for the purposes referred to in the third part of this Article (Article 184/4 rusCC).*
- Scope:
  - o Article 184 rusCC declares an offence to bribe (active corruption) or accept a bribe (passive corruption) for the purpose of exerting influence on the results of professional sport competitions and/or profit-making entertainment competitions.
  - o Article 184/1 rusCC incriminates:
    - active bribery of athletes, referees, coaches etc., in short, participants and organizers of professional sport competitions, and active bribery of organizers or jurymen of profit-making entertainment competitions.

- Article 184/3 rusCC incriminates passive corruption of athletes, either as receipt of money, securities or other property, or use of property-related services.
- Article 184/4 rusCC incriminates passive corruption, that is receipt of money, securities or property or as use of property-related service, of referees, coaches, team leaders etc.
- Area of applicability: Private sector: the offence incriminates bribery in order to influence the final result of a professional sport competition and/or other profit-making entertainment contests.
- Participatory acts and organized crime activity: In addition to perpetrators and co-perpetrators, Articles 33 and 34 rusCC declare as criminally responsible three categories of accomplices:
  - *organizer, that is a person who has organized the commission of a crime or has directed its commission, and also a person who has created an organized group or a criminal community (criminal organization) or has guided them;*
  - *instigator, that is a person who has abetted another person in committing a crime by persuasion, bribery, threat, or by any other method, and*
  - *accessory, a person who has assisted in the commission of a crime by advice, instructions or providing information, means or instruments for committing the crime, or removal obstacles to it, and also a person who has promised beforehand to conceal the criminal, means and instruments of commission of the crime, traces of the crime, or objects obtained criminally, and equally a person who has promised beforehand to acquire such objects.*

Commission of offence by an organised group is punishable under conditions set forth by Article 35 rusCC, and is considered an aggravating circumstance (Article 63 rusCC).

Article 184/2 rusCC provides for harsher punishment in case of bribery under Article 184/1 rusCC, committed by an organized group.

- Sanctions envisaged:
  - Offence under Article 184/1 rusCC is punishable by:

- *a fine in the amount of up to 200 thousand rubles<sup>363</sup> or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or*
  - *compulsory works for a term of up to 360 hours, or*
  - *by corrective labor for a term of up to twelve months, or*
  - *by arrest for a term of up to three months.*
- If committed by an organized group (Article 184/2 rusCC), the offence is punishable by:
  - *a fine in the amount of 100 thousand to 300 thousand rubles or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two years, or*
  - *compulsory works for a term up to 5 years, or*
  - *or by deprivation of liberty for a term of up to five years.*
- Offence under Article 184/3 rusCC is punishable by:
  - *a fine in the amount up to 300 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period up to two years, or*
  - *by disqualification to hold specified offices or to engage in specified activities for a term up to three years, or*
  - *by arrest for a term of four to six months.*
- Offence under Article 184/4 rusCC is punishable by:
  - *a fine in the amount of 100 thousand to 300 thousand rubles or in the amount of the wage or salary or other income of the convicted person for a period of one year to two years, or*
  - *compulsory works for a term up to 2 years with a disqualification to hold specified offices or to engage in specified activities for a term up to 3 years, or*
  - *by deprivation of liberty for a term of up to two years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.*
- Jurisdiction: In theory, the territoriality principle applies, namely the Russian criminal law applies insofar as the offence has been committed in the territory of the Russian

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<sup>363</sup> 1 ruble = 0,0324000 USD (on 2 December 2012).

Federation (Article 11 rusCC). The active personality principle may apply, if double criminality and *ne bis in idem* requirements are satisfied (Article 12/1 rusCC).

- Liability of legal persons: No.<sup>364</sup>
- Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure 2001 and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).
- Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. Confiscation of assets (under Chapter 15.1. rusCC ) is applicable for criminal offences described in Paragraphs 3 and 4.
- Application of special investigative techniques: Yes, according to the Federal Law No. 144-FZ on Operational - Search Activities (1995, last amended in 2013).

### **Swindling (Article 159 rusCC)**

- Offence: Swindling is described as *stealing of other people's property or the acquisition of the right to other people's property by:*
  - *fraud or*
  - *breach of trust.*
- Scope: Swindling is a general offence against property involving fraud or deceit.
- Area of applicability: Private and public sectors (unless special provisions apply).
- Participatory acts and organized crime activity: The same as above, in part on Article 184 rusCC<sup>365</sup>.
- Sanctions envisaged:
  - o Offence under Article 159/1 rusCC is punishable by:
    - *a fine in the amount up to 120 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one year, or*
    - *by compulsory works for a term of up to 360 hours, or*
    - *by corrective labor for a term of up to one year, or*
    - *compulsory works for a term up to 2 years, or*
    - *restriction of liberty for a term up to 2 years, or*
    - *by arrest for a term of two to four months, or*

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<sup>364</sup> "Russian Federation: Report on the Observance of Standards and Codes - FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism", IMF, 2009, p. 4.

<sup>365</sup> Referring to Sec. 33 and 34 rusCC.

- *by deprivation of liberty for a term of up to two years.*
- Offence under Article 159/2 rusCC):
  - committed by a group of persons in a preliminary conspiracy, or with the infliction of considerable damage on an individual is punishable by:
    - *a fine in the amount up 300 thousand roubles, or in an amount of the wage or salary, or any other income of the convicted person for a period up to two years, or*
    - *by compulsory works for a term of up to 480 hours, or*
    - *by corrective labor for a term of one year to two years, or*
    - *compulsory works for a term of up to 5 years with deprivation of liberty for a term of up to 1 year or without such, or*
    - *by deprivation of liberty for a term up to five years, with restriction of liberty for a term of up to 1 year or without such,*
  - committed by a person through his official position, as well as on a large scale (Article 159/3 rusCC), is punishable by:
    - *a fine in an amount of 100 thousand to 500 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of one year to three years, or*
    - *compulsory works for a term up to 5 years with restriction of liberty for a term of up to 2 years or without such, or*
    - *by deprivation of liberty for a term of up to six years, with or without a fine in an amount of up to 80 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 6 months and with restriction of liberty for a term of up to 18 month or without such.*
  - committed by an organized group or on an especially large scale or entailing a deprivation of a person of the right of property to the living space (Article 159/4 rusCC) is punishable *by deprivation of liberty for a term of five to ten years with or without a fine in the amount of up to one million roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three years and with restriction of liberty for a term of up to 2 years or without such.*
- Jurisdiction: General rules apply; see above, part on Article 185 rusCC.

- Liability of legal persons: No<sup>366</sup>.
- Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure 2001 and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).
- Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. According to Chapter 15.1, Article 104.1 rusCC confiscation of proceeds of this offence is not possible.
- Application of special investigative techniques: Yes, according to the Federal Law No. 144-FZ on Operational - Search Activities.

**Unlawful organisation and conducting of gambling (Article 171.2 rusCC)**<sup>367</sup>

- Offence: Article 171.2 rusCC makes it an offence to :
  - *organise and/or conduct gambling with the use of gaming equipment outside of the gaming zone, or with the use of information and telecommunication networks, including the Internet, as well as of the means of communication, including mobile communication, or*
  - *performe activities involved in gambling in the gaming zone,, which are connected to getting a large income, without a permit obtained in accordance with the established procedure.*
- Scope: RusCC with this provision explicitly prohibits organization and/or conducting of illegal gambling.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in part on Article 184 rusCC.
- Sanctions envisaged:
  - o The offence is punishable by:
    - *a fine in the amount up to 500 thousand roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period from one to three years,*
    - *or by compulsory works for a term of 180 to 240 hours, or*
    - *by restriction of freedom for a term of up to four years or*
    - *by deprivation of freedom for a term of up to three years.*

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<sup>366</sup> "Russian Federation: Report on the Observance of Standards and Codes - FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism", IMF, 2009, p. 4.

<sup>367</sup> Introduced by the Federal Law No. 250-FZ on 20 July 2011.

- If the offence is (Article 171/2 rusCC) committed by an organized group, or attended by profit-making on an especially large scale, it is punishable by:
  - *a fine in the amount of up to one million roubles roubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to five years years, or*
  - *by deprivation of freedom for a term of up to six years, with a fine in the amount of up to 500 thousand roubles,*
  - *or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three years, or without such and with the deprivation of the right to hold certain posts or to engage in a certain activity for a term of up to five years or without such.*
- Jurisdiction: General rules apply; see above, Section on Article 185 rusCC.
- Liability of legal persons: No<sup>368</sup>.
- Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).
- Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. Confiscation applies according to Chapter 15.1., Article 104.1 rusCC.
- Applicability of special investigative techniques: Yes, according to the Federal Law No. 144-FZ on Operational - Search Activities (1995, lastly amended 2013).

### **Bribery in a Profit-making Organization (Article 204 rusCC)**

- Offence: It is an offence under Article 204 rusCC:
  - *to illegally transfer of money, securities, or any other assets to a person who discharges the managerial functions in a profit-making or any other organization, and likewise the unlawful rendering of property-related services to him, the accordance to him of property rights for the commission of actions (inaction) in the interests of the giver, in connection with the official position held by this person (Article 204/1 rusCC); and*

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<sup>368</sup> "Russian Federation: Report on the Observance of Standards and Codes - FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism", IMF, 2009, p. 4.

- *to illegally receive of money, securities, or any other assets by a person who discharges the managerial functions in a profit-making or any other organization, and likewise the illegal use of property-related services or other property rights for the commission of actions (inaction) in the interests of the giver, in connection with the official position held by this person (Article 204/3 rusCC).*
- Scope: The offence is categorized as a crime against the “interests of service in profit-making and other organizations.” It applies to the private sector, making it an offence:
  - to illegally give (active corruption) and to receive (passive corruption) money or other assets or
  - to illegally use or to render the use of property-related services or other property rights,
 for action or inaction of the person in connection with his or her official position.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on Article 184 rusCC. In addition, Articles 204/2,4 rusCC provide for harsher sanctions in case of offence committed by a group of persons in preliminary conspiracy or by an organized group.
- Sanctions envisaged:
  - Offence under Article 204/1 rusCC is punishable by:
    - *a fine in the amount of 10 to 50 sums of the profit making bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to two years, or*
    - *by restriction of liberty for a term of up to two years, or*
    - *compulsory works for a term of up to 3 years, or*
    - *by deprivation of liberty for a term of up to two years.*
  - If the offence under Article 204/1 rusCC is committed by a group of persons in a preliminary conspiracy, or by an organized group, it is punishable by:
    - *a fine in the amount of 40 to 70 sums of the profit making bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
    - *compulsory works for a term of up to four years,*
    - *arrest for a term of three to six months, or*  
*deprivation of liberty for a term of up to four years.*
  - The receipt of bribery under Article 204/3 rusCC is punishable by:

- *a fine in the amount of 15 to 70 sums of the profit making bribe, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
- *restraint of liberty for a term of up to seven years, with a fine in the amount of up to 40 sums of the profit making bribe*
- o If the offence is committed by a group of persons in a preliminary conspiracy, or by an organized group, as well as if it deals with a blackmail of the subject of bribery or is committed for certainly illegal actions (inaction) it is punishable by:
  - *a fine in the amount of 50 to 90 sums of the profit making bribe, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
  - *deprivation of liberty for a term of up to 12 years with a fine in the amount of up to 50 sums of the profit making bribe.*
- Jurisdiction: See above, in the Section on Article 184 rusCC.
- Liability of legal persons: No<sup>369</sup>.
- Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).
- Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. Confiscation applies in accordance to Chapter 15.1., Article 104.1 rusCC only for criminal offences described in Paragraphs 3 and 4.
- Applicability of special investigative techniques: Yes, according to the Federal Law No. 144-FZ on Operational - Search Activities.

### **Bribe-taking (Article 290 rusCC)**

- Under Article 290 rusCC, it an offence:
  - *by a functionary, a foreign functionary or a functionary in a public international organization to take a bribe, in person or through an intermediary, in the form of money, securities, or other assets or illegal rendering of property-related services to him, or accordance to him of other rights or property benefits, for actions (inaction) in favour of a bribe-giver or the persons he represents, if the functionary then takes actions (inaction) which are part and parcel of the functionary's official*

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<sup>369</sup> Ibid.

- powers, or if the latter, by virtue of his official position may further such actions (inaction), and also for overall patronage or connivance in the civil service (Article 290/1 rusCC);*
- *by a functionary, a foreign functionary or a functionary in a public international organization to take a bribe in large amounts (Article 290/2, rusCC);*
  - *by a functionary, a foreign functionary or a functionary in a public international organization to take a bribe for illegal action or inaction (Article 290/3 rusCC).*
- Scope: The offence is categorized as a crime against “state power and the interests of the civil service and the service in local self-government bodies” and covers passive corruption of “public functionaries”.
  - Area of applicability: Public sector.
  - Participatory acts and organized crime activity: See above, in the part on Article 184 rusCC.
  - Sanctions envisaged:
    - Offence under Article 290/1 rusCC is punishable by:
      - *a fine in the amount of 25 to 50 sums of the bribe, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
      - *compulsory works for a term of up to five years with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
      - *deprivation of liberty for a term of up to three years, with a fine in the amount of 20 sums of the bribe.*
    - Offence under Article 290/2 rusCC is punishable by *a fine in the amount of 30 to 60 sums of the bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
      - *deprivation of liberty for a term of up to six years, with a fine in the amount of 30 sums of the bribe*
    - Offences under Article 290/3 rusCC are punishable by
      - *a fine in the amount of 40 to 70 sums of the bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
      - *deprivation of liberty for a term of 3 to 7 years, with a fine in the amount of 40 sums of the bribe.*

- Offence under Articles 290/1,2,3 rusCC committed by a person who holds a government post of the Russian Federation or a government post of a subject of the Russian Federation, or by the head of a local self-government body, is punishable by
  - *a fine in the amount of 60 to 80 sums of the bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
  - *deprivation of liberty for a term of five to ten years with a fine in the amount of 50 sums of the bribe.*

Any of the offences under Articles 290/1,3,4 committed by a group of persons in a preliminary conspiracy, or by an organized group as well as with a blackmail of a bribe in large amounts (Article 290/5 rusCC), is punishable by:

- *a fine in the amount of 70 to 90 sums of the bribe, or*
- *deprivation of liberty for a term of seven to twelve years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years and with a fine in the amount of 60 sums of the bribe.*

Any of the offences under articles 290/1,3,4 and 5 paragraphs “a” and “b” rusCC, committed on a large scale (Article 290/6 rusCC) is punishable by:

- *a fine in the amount of 80 to 100 sums of the bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
- *deprivation of liberty for a term of 8 to 15 years with a fine in the amount of 70 sums of the bribe.*

- Jurisdiction: See above, Section on Article 184 rusCC.
- Liability of legal persons: No<sup>370</sup>.
- Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).

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<sup>370</sup> Ibid.

- Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. Confiscation is possible in accordance with Article 104.1 rusCC.
- Applicability of special investigative techniques: Yes.

### **Bribe-giving (Article 291 rusCC)**

- Offence: Under Article 291 rusCC, it is an offence:
  - *to give a bribe to a functionary, a foreign functionary or a functionary in a public international organization in person or through a mediator (Article 291/1 rusCC);*
  - *to give a bribe to a functionary, a foreign functionary or a functionary in a public international organization in person or through a mediator in large amounts (Article 291/2 rusCC);*
  - *to give a bribe to a functionary, a foreign functionary or a functionary in a public international organization for the commission of known illegal actions or inaction (Article 291/3 rusCC);*
- Scope: Article 291 rusCC relates to active bribery of (public) functionaries.
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: See above, Section on Article 184 rusCC.
- Sanctions envisaged:
  - o Offence under Article 291/1 rusCC is punishable by:
    - *a fine in the amount of 15 to 30 sums of the bribe, or*
    - *compulsory works for a term of up to 3 years, or*
    - *deprivation of liberty for a term of up to two years with a fine in the amount of 10 sums of the bribe.*
  - o Offence under Article 291/2 rusCC is punishable by:
    - *a fine in the amount of 20 to 40 sums of the bribe, or*
    - *deprivation of liberty for a term of up to three years with a fine in the amount 15 sums of the bribe.*
  - o Offence under Article 291/3 rusCC is punishable by:
    - *a fine in the amount of 30 to 60 sums of the bribe, or*
    - *deprivation of liberty for a term of up to eight years with a fine in the amount of 30 sums of the bribe.*

If the offence under Articles 291/1-3 rusCC is committed by a group of persons in a preliminary conspiracy, or by an organized group, as well as in a large amount (Article 291/4 rusCC), it is punishable by:

- *a fine in the amount of 60 to 80 sums of the bribe with disqualification to hold specified offices or to engage in specified activities for a term of up to three years, or*
- *deprivation of liberty for a term of 5 to 10 years with a fine in the amount of 60 sums of the bribe.*

If the offence under Articles 291/1-4 rusCC is committed on an extra large scale (Article 291/5 rusCC), it is punishable by:

- *a fine in the amount of 70 to 90 sums of the bribe, or*
  - *deprivation of liberty for a term of 7 to 12 years with a fine in the amount of 70 sums of the bribe.*
- Jurisdiction: General rules apply, see above in the section on Article 184 rusCC.
  - Liability of legal persons: No<sup>371</sup>.
  - Protection of witnesses and whistle-blowers: Yes, by virtue of Article 11 of the Russian Federation Code of Criminal Procedure and related provisions (Articles 166, 186/2, 193/8, 241/2(4) and 278/5).
  - Anti-money laundering measures: Offence is a predicate offence under Articles 174, 174.1 and 175 rusCC. Confiscation of proceeds of this crime is not possible in accordance with Chapter 15.1., Article 104.1 rusCC.
  - Applicability of special investigative techniques: Yes.

### **2.1.13.2 Applicability of criminal law of Russian Federation in the fight against match-fixing**

There is a specific criminal offence of match-fixing in the legislation of the Russian Federation: *Bribery of Participants and Organizers of Professional Sports and Entertainment Profit-making Competitions*. In addition, provisions on fraud and corruption in the public and private sectors and on illegal gambling also form the set of rules, which are important in the fight against match-fixing.

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<sup>371</sup> Ibid.

It should be noted that since January 2013 the draft Law No. 200769-6 on “Amendments to the “Federal Law on Physical Culture and Sport in the Russian Federation” and certain legislative acts of the Russian Federation in order to prevent any unlawful impact on the results of official sporting event” have been submitted to Duma, the Parliament of the Russian Federation.

The draft law prohibits any unlawful influence on the results of the official sports competition at different levels, which is defined as one of the following acts *made in order to achieve a predetermined result or outcome of the competition*:

- *bribery of athletes, sports referees, coaches, managers of sports teams, other participants or organisers of official sports competition, as well as forcing or inducing persons to exercise such influence or conspiring with them;*
- *receipt of money, securities and other property, use of the services of property nature, obtaining other benefits and advantages by the said persons or conspiring with them.*

The draft law requires from sports federations to suspend, to exclude from participation in sports competition any person suspected or accused of the unlawful influence and, if convicted, to impose sports sanctions on such a person, including sports disqualification of athletes. In addition, sports federations have to inform relevant public authorities and local self – government bodies, as well as law enforcement agencies in the case of their detection of such occurrences.

The draft law also prohibits participation of athletes, coaches, judges, managers of sports teams or other participants in the official sports competition in gambling by placing bets with bookmakers and on totalizers on these competition taken in the particular sports. Sports federations are required to sanction such behaviour.

If all-Russian and regional sports federations will fail to fulfil their obligations in the prevention of unlawful influence on the results of official sports competitions, they will be excluded from the Register of All-Russian and Accredited Regional Sports Federations.

In order to prevent athletes, coaches, judges, managers of sports teams or other participants in the official sports competitions from betting, amendments have also been proposed to the “Federal Law on the State Regulation of Activities for Organizing and Conducting Gambling

and on Amending Several Legislative Acts of the Russian Federation”. According to these amendments, the acceptance of bets placed with bookmakers or on totalizators and payout of the relative gains shall be carried out only upon the presentation of the identity document of the gambler. The organizers of the games of chance in the mentioned gambling establishments will have to inform all-Russian sports federations in charge of the related sports and the tax authorities about any gains paid or payable in relation to the results of betting on the official sports competitions, which ended with the least likely result. The organizers of gambling will also have to keep the records of the gamblers placing bets on the results of official sports competitions and to provide accounting data to the tax authorities. Administrative responsibility, notably entailing the imposition of an administrative fine, is foreseen for the non-fulfillment of the abovementioned obligations.

It is also foreseen that the organizers of the games of chance will execute the function of a tax agent for calculation and payment of income taxes of the recipient of the gain.

#### ***2.1.13.2.1 Specific offence of match-fixing***

The Russian Federation is one of the few countries whose legislation provides explicitly for the incrimination of match-fixing in the form of a criminal offence of *Bribery of Participants and Organizers of Professional Sports and Entertainment Profit-making Competitions*. The definition of the criminal offence, which extends to both areas of sport and entertainment competitions, besides various good solutions it also has some lacunae as follows:

- It incriminates match-fixing on the basis of given or received bribes only;
- It is limited to professional sport competitions only;
- The bribe exists only in the form of a pecuniary gain<sup>372</sup>;
- The aim of match-fixing is to influence the result only and not also other elements of the competition;
- The active corruption of participants or organizers of competitions is limited to the fact of concluded bribery only and not also to offering or promising the bribe;
- The passive corruption of participants or organizers of competitions is limited to the fact of illicit receipt of bribery only and not also to accepting the offer or the promise of the bribe; and

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<sup>372</sup> International conventions use the term of “undue advantage”, covering both - pecuniary and non-pecuniary - gains.

- There is no incrimination of intermediaries.

In the area of jurisdiction, in principle, the territoriality principle applies, namely the Russian criminal law applies insofar as the offence has been committed in the territory of the Russian Federation. The active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. The sanction provided for active bribery committed in an organized manner<sup>373</sup> is the only one high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence. Whistleblowers and witnesses can be protected and anti-money laundering measures may be applied. Special investigative techniques can be applied.

#### **2.1.13.2.2 Fraud<sup>374</sup>**

The description of fraud is broad enough to cover instances of match-fixing, which are not covered by the special offence of Article 184. The question is whether in those cases any prosecution would take place at all, having in mind the *lex specialis* from Article 184 and the clear intention of the national legislator to incriminate only occurrences of match-fixing, as described in Article 184.

In the area of jurisdiction for fraud, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offence, as described in paragraphs 2, 3 and 4<sup>375</sup> of article 184, are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for related offences. Whistleblowers and witnesses can be protected. Seizure, freezing and confiscation cannot be applied, whereas special investigative techniques may be used.

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<sup>373</sup> Article 184/2 rusCC.

<sup>374</sup> “Swindling” in Article 159 rusCC.

<sup>375</sup> But not in Paragraph 1.

### **2.1.13.2.3 *Illegal/irregular gambling***

The Criminal Code of Russian Federation has a specific provision on illegal gambling (Article 171.2).

In the area of jurisdiction, the principle of territoriality applies and the active personality principle may also apply under certain conditions<sup>376</sup>. Participatory acts and forms of organized criminality are subject to adequate sanctions. The sanction provided for the aggravated form of criminal offence as described in paragraph 2, is high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence. Protective measures for whistleblowers and witnesses are in place. Anti-money laundering measures, including seizure, freezing and confiscation, can be applied. Special investigative measures may also be applied.

### **2.1.13.2.4 *Bribery offences***

There are three bribery offences in the Criminal Code of Russian Federation: one on private bribery<sup>377</sup> and two on public bribery<sup>378</sup>.

In the area of bribery in the private sector, Article 204 applies and its provisions cover only pecuniary advantage<sup>379</sup> for the instances of bribery in the private sector. In the area of jurisdiction, the territoriality principle applies and the active personality principle may also apply under certain conditions<sup>380</sup>. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for this offence. Whistleblowers and witnesses can be protected and anti-money laundering measures, including seizure, freezing and confiscation, can be applied. Special investigative techniques may also be applied.

In the area of passive bribery in the public sector, Article 290 applies and its provisions also cover only pecuniary advantage for the instances of passive bribery in the public sector. Jurisdiction is based on the territoriality principle and on the active personality principle

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<sup>376</sup> See above, in the Chapter on Article 184 and Article 159 rusCC.

<sup>377</sup> Article 204 rusCC for active and passive bribery.

<sup>378</sup> Article 190 rusCC on passive bribery and article 191 rusCC on active bribery.

<sup>379</sup> Any kind of undue advantage – pecuniary and non-pecuniary one – would have to be covered.

<sup>380</sup> See above, in the Chapter on Article 184 and Article 159 rusCC.

under certain conditions<sup>381</sup>. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for this offence, whistleblowers and witnesses can be protected and anti-money laundering measures, including seizure, freezing and confiscation, can be applied. Special investigative techniques can be applied.

In the area of active bribery in the public sector, Article 291 applies and addresses only a “bribe”. Therefore, the description of a bribe contained in Article 290 rusCC has to be applied, which, again, covers only pecuniary advantage for the instances of active bribery in the public sector. In the area of jurisdiction, general rules apply (territoriality principle and active personality principle under certain conditions)<sup>382</sup>. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for this offence. Protection is available for whistleblowers and witnesses and anti-money laundering measures, including seizure, freezing and confiscation, can be applied. Special investigative techniques may also be applied .

The Russian Federation has ratified the UNCAC on 9 May 2006.

### **2.1.13.3 Conclusion**

The legislation of the Russian Federation, although it contains a specific criminal offence of match-fixing, does not still ensure the best possible response to this phenomenon.

The specific criminal offence of match-fixing only incriminates the most dangerous forms of match-fixing, which are linked to bribes and professional sport competitions in a way that may still create loopholes in terms of non- corresponding sanctions<sup>383</sup> Other forms of match-fixing are not covered by this offence, but they can be conditionally covered by the criminal offence of *swindling*<sup>384</sup> or by a prohibition of illegal gambling and the application of bribery offences.

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<sup>381</sup> Ibid.

<sup>382</sup> Ibid.

<sup>383</sup> See above, Chapter 2.1.13.2.1.

<sup>384</sup> Article 159 rusCC.

Sanctions provided for the offences related to match-fixing, at least for the aggravated forms, are high enough to ensure effective application of both the UNCAC and the UNTOC. Whistleblowers and witnesses are protected and anti-money laundering measures are in place. There is no liability of legal persons involved in match-fixing cases.

## 2.1.14 SOUTH AFRICA

The analysis of the legislation of South Africa is based on the Prevention and Combating of Corrupt Activities Act 2004 (hereinafter: PCCAA 2004), which incriminates the most important offences in the area under analysis.

### 2.1.14.1 Prevention and combating of corrupt activities act 2004

#### **Offences in respect of corrupt activities relating to sporting events**

- **Offence:** Under Section 15 PCCAA 2004, it is an offence for *any person who, directly or indirectly:*
  - (a) *accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
  - (b) *gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-*
    - (i) *in return for-*
      - *(aa) engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, including, in any way influencing the run of play or the outcome of a sporting event; or*
      - *(bb) not reporting the act contemplated in this Section to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station; or*
    - (ii) *as a reward for acting as contemplated in subparagraph (i): or*
  - (c) *carries into effect any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event,*  
*is guilty of the offence of corrupt activities relating to sporting events.*
- **Scope:** The offence under Section 15 PCCAA 2004 relates directly to bribery, either on the active (Section 15(b)) or on the passive (Section 15(a)) side, for the purpose of threatening or undermining the integrity of any sporting event. “Sporting event”, under Chapter 1 PCCAA 2004, is *any event or contest in any sport between individuals or teams*

*or in which an animal competes, and which is usually attended by the public and is governed by rules which include the constitution, rules or code of conduct of any sporting body which stages any sporting event or of any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted.*

- Area of applicability: Private sector.
- Participatory acts and organized crime activity: Accessory (to or after the offence), conspiracy and inducing a person to an offences, are all deemed an offence under Sections 20 and 21 PCCAA 2004.
- Sanctions envisaged: Offences of corruption relating to sporting events are punishable (Section 26 PCCAA 2004):
  - *in the case of a sentence to be imposed by a High Court, by a fine or to imprisonment up to a period for imprisonment for life;*
  - *in the case of a sentence to be imposed by a regional court, by a fine or to imprisonment for a period not exceeding 18 years; or*
  - *in the case of a sentence to be imposed by a magistrate's court, by a fine or to imprisonment for a period not exceeding five years.*
- Jurisdiction: The territoriality and active personality principles apply, under Section 110A Criminal Procedure Act 1977. The active personality principle is subject to the following restrictions:
  - South Africa citizen cannot be prosecuted by courts of the country where the offence was committed;
  - No immunity arising from international law applies;
  - The person is found in the area under jurisdiction of the South African courts;
  - The double criminality principle is satisfied, and
  - The National Director of Public Prosecutions instructs that prosecution be instituted against that person.
- Liability of legal persons: Yes, under Section 332 of Criminal Procedure Act 1977.
- Protection of witnesses and whistle-blowers: Yes, under Witness Protection Act 1998.
- Anti-money laundering measures: The offence is a predicate offence to money laundering under Section 4 of Prevention of Organised Crime Act 1998, given that “unlawful activity” to which Section 4 POCA 1998 applies, is considered *conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or*

elsewhere. POCA 1998 allows for restraining orders, seizure and confiscation orders, as well as for civil recovery of property.

- Applicability of special investigative techniques: Yes. The offence is considered a serious offence under the Schedule to Regulation of Interception of Communications and Provision of Communication-related Information Act 2002.

**Offences in respect of corrupt activities relating to gambling games or games of chance (Section 16 PCCAA 2004)**

- Offence : Under Section 16 PCCAA 2004, it is an offence for *any person who, directly or indirectly-*
  - (a) *accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
  - (b) *gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person-*
    - (i) *in return for engaging in any conduct which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance; or*
    - (ii) *as a reward for acting as contemplated in subparagraph (i): or*
  - (c) *carries into effect any scheme which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance.*
- Scope: Section 16 relates to bribery, either active or passive, threatening or undermining the integrity of gambling games or games. “Gambling game”, under PCCAA 2004, is considered any gambling game, as defined in Section 1 of the National Gambling Act, 1996, while a “game of chance” includes a lottery, lotto, numbers game, scratch game, sweepstake, or sports pool.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on corrupt activities relating to sporting events.
- Sanctions envisaged: See above, in the part on corrupt activities relating to sporting events.

- Jurisdiction: See above, in the part on corrupt activities relating to sporting events.
- Liability of legal persons: Yes, see above, in the part on corrupt activities relating to sporting events.
- Protection of witnesses and whistle-blowers: Yes, see above, in the part on corrupt activities relating to sporting events.
- Anti-money laundering measures: Yes, see above, in the part on corrupt activities relating to sporting events.
- Applicability of special investigative techniques: Yes, see above, in the part on corrupt activities relating to sporting events.

In order to ensure proper understanding of activities at active and passive side of the bribery, an explanatory provision of Section 2(3) was introduced to the PCAA 2004 and has to be mentioned here, too:

*“(a) A reference in this Act to accept or agree or offer to accept any gratification, includes to—*

*(i) demand, ask for, seek, request, solicit, receive or obtain;*

*(ii) agree to demand, ask for, seek, request, solicit, receive or obtain; or*

*(iii) offer to demand, ask for, seek, request, solicit, receive or obtain any gratification.*

*(b) A reference in this Act to give or agree or offer to give any gratification, includes to—*

*(i) promise, lend, grant, confer or procure;*

*(ii) agree to lend, grant, confer or procure; or*

*(iii) offer to lend, grant, confer or procure, such gratification.”.*

#### **2.1.14.2 Applicability of criminal law of South Africa in the fight against match-fixing**

In addition to specific features of the South African Criminal Law, it should be noted that there is a possibility for the Sports Confederation of South Africa to start investigations into any alleged malpractice in sport by itself. Namely, according to Section 13(4) of the National Sport and Recreation Act 110 of 1998:

*The Sports Confederation may, at any time, of its own accord, cause an investigation to be undertaken to ascertain the truth within a sport or recreation body, where allegations of-*

- (a) any malpractice of any kind, including corruption, in the administration;*
- (b) any serious or disruptive divisions between factions of the membership of the sport or recreation body; or*
- (c) continuation or maintenance of any institutionalised system or practice of discrimination based on gender, race, religion or creed, or violation of the rights and freedoms of individuals or any law, have been made, and may ask the Minister to approach the President of the Republic to appoint a commission of inquiry referred to in section 84 (2) of the Constitution...*

In order to protect the autonomy of sport, the relevant Minister is not allowed to<sup>385</sup>:

- (i) intervene if the dispute or mismanagement in question has been referred to the Sports Confederation for resolution, unless the Sports Confederation fails to resolve such dispute within a reasonable time; and*
- (ii) interfere in matters relating to the selection of teams, administration of sport and appointment of, or termination of the service of, the executive members of the sport or recreation body.*

#### **2.1.14.2.1 Specific offence of match-fixing**

Although the specific offence of match-fixing is part of South African anti-corruption law<sup>386</sup>, it does not cover only bribery-related match fixing. Passive and active bribery for the purpose of match-fixing are described in the first two paragraphs of Section 15<sup>387</sup>, but there are also some other extremely important provisions in the Section. Match-fixing is defined as *threatening or undermining the integrity of any sporting event, including, in any way influencing the run of play or the outcome of a sporting event, whereby the »sporting event« is any event or contest in any sport between individuals or teams or in which an animal competes, and which is usually attended by the public and is governed by rules which include the constitution, rules or code of conduct of any sporting body which stages any sporting event or of any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted*<sup>388</sup>.

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<sup>385</sup> Section 13(5b) of the National Sport and Recreation Act 110 of 1998.

<sup>386</sup> Prevention and Combating of Corrupt Activities Act 2004.

<sup>387</sup> Paragraphs a and b of Section 15 PCCAA 2004.

<sup>388</sup> Chapter 1 PCCAA 2004.

The protected value of the mentioned provisions is the “integrity of sport” and influencing the course and the outcome of the sporting event are just examples of how this integrity may be endangered. In other words, there is no closed list of possible forms of match-fixing, which enables very effective protection of sport and its values. Moreover, even match-fixing without bribery involved and accepting rewards for match-fixing without previous agreement represent criminal offences<sup>389</sup>. In addition, it is also a criminal offence if the whistle for the actual match-fixing related bribery is not blown by someone aware of it. It also has to be mentioned that there is no explicit definition of the “integrity of sport” in the PCCAA 2004.

In the area of jurisdiction for the criminal offence mentioned above, the territoriality principle applies and the active personality principle may also apply, if some additional requirements<sup>390</sup> are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offence are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for this offence. Protective measures for whistleblowers and witnesses are in place. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied and special investigative measures can also be used.

South Africa has ratified the UNCAC on 22 November 2004.

#### ***2.1.14.2.2 Illegal/irregular gambling***

PCCAA 2004 incriminates irregular gambling in two forms, related to bribery<sup>391</sup> and not related<sup>392</sup> to it. PCCAA describes “irregular” as threatening or undermining *the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance*. In addition, acceptance of gifts for such kind of behaviour is also a criminal offence<sup>393</sup>. The intention of the PCAA 2004 is very clear, namely

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<sup>389</sup> According to Paragraph c and Sub-Paragraph II of Paragraph b Section 15 PCCAA 2004.

<sup>390</sup> That South Africa citizen cannot be prosecuted by courts of the country where the offence was committed; there is no immunity arising from international law; the person is found in the area under jurisdiction of the South African courts; double criminality principle is satisfied and the National Director of Public Prosecutions instructs that prosecution be instituted against that person.

<sup>391</sup> Paragraphs a and b Section 6 PCCAA 2004.

<sup>392</sup> Paragraph c Section 16 PCCAA 2004.

<sup>393</sup> Sub-paragraph ii of Paragraph b Section 16 PCCAA 2004.

not to allow any irregular influence on the outcome of the gambling game<sup>394</sup> or a game of chance<sup>395</sup>. The term “integrity of any gambling game or a game of chance” is not defined in the PCCAA 2004.

In the area of jurisdiction for the criminal offence mentioned above, the territoriality principle applies and the active personality principle may also apply, if some additional requirements are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for basic forms of criminal offence are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for this offence. Protective measures for whistleblowers and witnesses are available. Anti-money laundering measures, including seizure, freezing and confiscation, can be applied and special investigative measures may also be used.

#### **2.1.14.3 Conclusion**

The South African criminal law enables through provisions of the Prevention and Combating of Corrupt Activities Act 2004 effective protection against any form of match-fixing and irregular betting. Fixing matches with or without bribery involved and accepting gifts after matches are being fixed are incriminated as criminal offences. Fixing the gambling game or a game of chance with or without bribery involved and accepting gifts after the fix is also incriminated as a criminal offence. However, the concepts of “integrity of sport” and “integrity of gambling game or a game of chance” are not explicitly defined in the PCCAA 2004. If they are not defined elsewhere in the South African legislation, this may cause some problems in the understanding of the terms. However, this problem may be addressed through court practice.

Having also in mind that the criminal justice and law enforcement authorities have at their disposal all other necessary tools for the fight against match-fixing (jurisdiction is broad enough; participatory acts and forms of organized criminality are subject to adequate sanctions; sanctions provided are effective and dissuasive; legal persons can be held liable;

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<sup>394</sup> Any gambling game as defined in section 1 of the National Gambling Act, 1996 (Act 33 of 1996) – Chapter 1 PCCAA 2004.

<sup>395</sup> The term includes a lottery, lotto, numbers game, scratch game, sweepstake, or sports pool – Chapter 1 PCCAA 2004.

whistleblowers and witnesses can be protected; anti-money laundering measures, including seizure, freezing and confiscation can be applied; and special investigative measures may also be used) it can be argued that the rule-of-law system is well-equipped to combat match-fixing.

## 2.1.15 THAILAND

There are several pieces of legislation dealing with bribery offences in Thailand, whereby the most general provisions can be found in the Penal Code 1956. Therefore, the information on the penal provisions of Thailand's legislation related to match-fixing is based on the Thai Penal Code (hereinafter: tPC), as available on-line.

### 2.1.15.1 Penal Code

#### Common characteristics:

- Participatory acts and organized crime activity: Under the tPC, the following participatory acts are punishable:
  - instigation (Section 83 tPC; whether by employment, compulsion, threat, hire, asking as favor or instigation, or by any other means);
  - propagating or publishing to the general public to commit an offence and such offence being punishable with imprisonment of not less than six months (Section 84 tPC); and
  - assisting or facilitating to any other person committing an offence (Section 85 tPC).
- Jurisdiction: Under tPC, the territoriality principle applies (Section 4 tPC), as well as:
  - The active personality principle (Section 8(a), given a request for punishment by the Government of the country where the offence has occurred or by the injured person; and - regardless of such a request - applicable to offences committed by Thai Government officials); and
  - The passive personality principle for selected offences (as specified below).
- Liability of legal persons: tPC is silent on the issue. General principles of corporate criminal liability are still in dispute under Thai criminal law. In some cases, special statutory provisions introduced corporate criminal liability. Thai case-law, however, has opted in favour of criminal liability of legal persons, even in cases, where no special provision exists<sup>396</sup>.

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<sup>396</sup> Bhornthip Sudti-autasilp, Corporate Crime and the Criminal Liability of Corporate Entities in Thailand, Resource Material Series No. 76, p. 95-96.

- Applicability of special investigative techniques: Under Section 105 of the Criminal Procedure Code 1934, an official may apply for a judicial order demanding a post official to furnish him with the document required, that is any letter, postcard, telegraph, printing or other document to be sent through a postal or telegraphic service by or to an accused or defendant.

Surveillance of communication and assuming of false identity are applicable under Sections 25-27 of the Special Investigation Act (2004), provided that the offence is considered a “special case” under Section 21 of the said Act<sup>397</sup>.

### **Cheating and fraud (Section 341-343 tPC)**

- Offence: Under Section 341, it is an offence *for a person*:
  - *to dishonestly deceive a person with the assertion of a falsehood or the concealment of the facts which should be revealed,*
  - *and, by such deception,*
  - *obtain a property from the person so deceived or a third person,*
  - *or cause the person so deceived or a third person to execute, revoke or destroy a document of right.*
- Scope: This is a general offence on fraud.
- Area of applicability: Private sector.
- Sanctions envisaged: The offence is punishable by:
  - *imprisonment not exceeding three years*
  - *or by a fine not exceeding six thousand Baht<sup>398</sup>,*
  - or both.*

If the offence was committed:

- *by the assertion of a falsehood to the public*
- *or by the concealment of the facts which should be revealed to the public,*
- *the offence is punishable by:*
  - o *imprisonment not exceeding five years*

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<sup>397</sup> A case is considered “special” under the Act, if any of the following circumstances apply: (a) It is a complex criminal case that requires special inquiry, investigation and special collection of evidence. (b) It is a criminal case which has or might have a serious effect upon public order and moral, national security, international relations or the country’s economy or finance. (c) It is a criminal case which is a serious transnational crime or committed by organized criminal group ; or (d) It is a criminal case in which influential person being a principal, instigator or supporter.

<sup>398</sup> 1 Baht = 0.0326052 USD (on 9 November 2012).

- *or fine not exceeding ten thousand Baht, or both.*
- Jurisdiction: The active and passive personality principles apply as well (Section 8 tPC).
- Protection of witnesses and whistle-blowers: According to Section 62 of the Thai Constitution from 2007, whistleblowers are protected<sup>399</sup>. For witnesses the Witness Protection Act 2003 may apply.
- Anti-money laundering measures: The offence of *Cheating and fraud* is a predicate offence to offence of receiving stolen property (Section 357 tPC) and under the Anti-Money Laundering Act (1999). Section 33 of the tPC allows for forfeiture of property used or possessed for use in the commission of an offence by a person or property acquired by a person through the commission of an offence. Seizure, restraining orders and forfeiture are available under the AML Act (1999).

Thai Penal Code contains several provisions pertaining to corruption of public officials, in particular Sections 143, 144, 149 and 150.

#### **Offences under Sections 143 and 144**

- Offence:
  - Under Section 143, it is an offence for *any person to*:
    - *demand, accept or agree to accept*
    - *a property or any other benefit*
    - *for himself or the other person*
    - *as a return for inducing or having induced, by dishonest or unlawful means, or by using his influence:*
      - *any official, member of the State Legislative Assembly, member of the Changwat Assembly or member of the Municipal Assembly*
      - *to exercise or not to exercise any of his functions, which is advantageous or disadvantageous to any person.*
  - Under Section 144, it is an offence for *any person to*:
    - *give, offer or agree to give*
    - *the property or any other benefit*

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<sup>399</sup> Constitution of the Kingdom of Thailand 2007, Section 62: *A person who provides information related to the performance of duties of a person holding political position, State agency and State officials to the organisation examining the misuse of State power or State agency shall be protected.*

- *to the official, member of State Legislative Assembly, member of Provincial Assembly or member of Municipal Assembly*
- *so as to induce such person to do or not to do any act, or to delay the doing of any act contrary to one's own duty.*
- Scope: The offences cover active corruption, offence under Section 143 relating to unlawful exertion of influence.
- Area of applicability: Public sector.
- Sanctions envisaged: Offences under Sections 143 and 144 are both punishable:
  - *by imprisonment not exceeding five years*
  - *or fine not exceeding ten thousand Baht,*
  - *or both.*
- Jurisdiction: The active personality principle applies, if the offender is a Thai Government official (Section 9 tPC).
- Protection of witnesses and whistle-blowers: See above, in the part on fraud.
- Anti-money laundering measures: The offences are predicate offences under the Anti-Money Laundering Act (1999). Seizure, restraining orders and forfeiture are also available under the same Act.

### **Offences under Sections 149 and 150**

- Offence:
  - o Under Section 149, it is an offence for *a person, being an official, member of the State legislative Assembly, member of the Changwat Assembly or member of the Municipal Assembly, to:*
    - *wrongfully demand, accept or agree to accept*
    - *for himself or the other person*
    - *a property or any other benefit*
    - *for exercising or not exercising any of his functions, whether such exercise or non-exercise of his functions is wrongful or not.*
  - o Under Section 150, it is an offence *for the official to perform or not perform any act in one's own function, in consideration of the property or any other benefit demanded, accepted or agreed to accept by oneself, before to be appointed as official in that post.*
- Scope: The offences cover passive corruption.
- Area of application: Public sector.

- Sanctions envisaged:
  - The offence under Section 149 tPC is punishable by:
    - *imprisonment of five to twenty years or imprisonment for life,*
    - *and fine of two thousand to forty thousand Baht,*
    - *or death.*
  - The offence under Section 150 is punishable by:
    - *imprisonment from five to twenty years or life imprisonment,*
    - *and fine from two thousand to forty thousand Baht.*
- Jurisdiction: The active personality principle applies (Section 9 tPC).
- Protection of witnesses and whistle-blowers: See above, in the part on fraud.
- Anti-money laundering measures: The offences are predicate offences under the Anti-Money Laundering Act (1999). Seizure, restraining orders and forfeiture are available under the AML Act (1999).

### **2.1.15.2 Applicability of criminal law of Thailand in the fight against match-fixing**

Thailand does not have a special criminal offence on match-fixing, but there are some other provisions, which might serve the purpose in the fight against match-fixing.

#### **2.1.15.2.1 Fraud**

The description of fraud<sup>400</sup> is broad enough to cover instances of match-fixing. In the area of jurisdiction for fraud generally, the territoriality principle applies. In addition<sup>401</sup>, in some cases the active and passive personality principles may also apply. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for the basic form of the criminal offence are not high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for this offence. Protective measures for whistleblowers and witnesses are foreseen in the legislation. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied. Special investigative techniques may also be used.

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<sup>400</sup> “Cheating and fraud”, according to Section 341 tPC.

<sup>401</sup> Section 8a tPC.

### **2.1.15.2.2 Bribery offences**

Provisions on bribery are mainly applicable in the public sector. Private sector bribery is not criminalized in Thailand. Jurisdiction is subject to the active personality principle. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons can be held liable for those offences. Protection for whistleblowers and witnesses is available, Special investigative techniques and anti-money laundering measures can be applied.

Thailand has ratified the UNCAC on 1 March 2011.

### **2.1.15.3 Conclusion**

In Thailand, there are only limited criminal law measures to combat match-fixing.

There are neither special criminal law provisions on match-fixing nor criminal law provisions on private-to-private bribery. Criminal law provisions on gambling are also lacking. However, provisions on fraud are broad enough to cover at least the basic forms of match-fixing. Unfortunately, sanctions provided for basic forms of fraud do not allow for the application of the UNTOC, which, in turn, has a serious impact on the promotion of international cooperation to combat match-fixing. On the other hand, extended jurisdiction in a form of the active personality principle improves the situation significantly in some cases<sup>402</sup>, at least concerning match-fixing of Thai citizens. Provisions on bribery in the public sector are not matched with similar incrimination of bribery in the private sector.

The establishment of liability of legal persons, the protection of whistleblowers and witnesses, as well as the application of anti-money laundering measures and the use of special investigative techniques enable law enforcement and judicial authorities to combat at least the existing criminal offences in the area of match-fixing.

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<sup>402</sup> When a request for punishment comes by the Government of the country where the offence has occurred or by the injured person; and - regardless of such a request - when the offences were committed by Thai Government officials.

## 2.1.16 TRINIDAD AND TOBAGO

The common characteristics of the criminal legislation of Trinidad and Tobago are the following:

- Participatory acts; organized crime activity: Under Section 2 of Accessories to and Abettors of Offences Act, any person who:
  - aids,
  - abets,
  - counsels, or
  - procuresthe commission of any indictable offence may be indicted, tried and punished as a principal offender.
- Jurisdiction: Universal, under Section 3 of the Indictable Offences (Preliminary Enquiry) Act 1917, any magistrate may issue summons or warrant *to compel the appearance before him, for the preliminary examination, of any person accused of having committed in any place, whether within or outside of Trinidad and Tobago any indictable offence triable, according to the law for the time being in force, in Trinidad and Tobago.*
- Liability of legal persons: Yes; see Criminal Procedure (Corporations) Act 1961.
- Protection of witnesses and whistle-blowers: Yes, provided by the virtue of Justice Protection Act.
- Anti-money laundering measures: Any indictable offence committed in Trinidad and Tobago is a “specified offence” under the Proceeds of Crime Act 2000. Any property obtained as a result of a specified offence is subject to confiscation. The Act provides for seizure and restraining orders as well.

### 2.1.16.1 Criminal Offences Act 2006

#### Cheat or fraud (Section 7)

- Offence: It is an offence under Section 7 - *inter alia - for any person*:
  - *to cheat or to commit fraud, punishable at common law, or*
  - *any conspiracy to cheat or defraud.*
- Scope: This is a general provision on fraud.
- Area of applicability: Private sector.

- Sanctions envisaged: The offence is punishable by:
  - *imprisonment for any term warranted by law (with no specified time limits), and*
  - *hard labour during the whole or any part of term of imprisonment.*
- Special investigative techniques: Interception of communications is applicable under the Interception of Communications Act 2010 (applicable to offences punishable by imprisonment of five year or more).

#### **2.1.16.2 Prevention of Corruption Act 1987**

##### **Common characteristics:**

- Scope: For the purposes of this Act, the terms below are specified as follows (Section 2):
  - “agent” includes any person employed by or acting for another and any person serving under the State or other public body or holding a public office;
  - “public body” includes the Cabinet, the House of Representatives, the Senate, the Tobago House of Assembly, local, statutory and public authorities of all descriptions and all State Enterprises and the Boards thereof; and
  - “public office” means any office or employment of a person as a member, officer or servant of a public body.
- Sanctions envisaged:
  - Offences under Sections 3-5 of the Acts are punishable by (Section 6):
    - *a fine of five hundred thousand dollars*
    - *and by imprisonment for ten years.*
  - Additionally, the offender:
    - *will be ordered to pay to such public body the amount or value of any gift, loan, fee, or reward received by him;*
    - *will be adjudged forever incapable of being elected or appointed as a member of a public body or of holding any other public office,*
    - *and will forfeit any such office held by him at the time of his conviction.*
- Special investigative techniques: Interception of communications is applicable under the Interception of Communications Act 2010 (applicable to offences punishable by imprisonment of five year or more).

### **Corruption in office (Section 3)**

- **Offence:**

- It is an offence under Section 3(1) of the Act for *any person who (1) by himself or by or in conjunction with any other person, (2) corruptly solicits or receives, or agrees to receive, (3) for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, (4) as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned.*
- It is an offence under Section 3(2) for *any person who, (1) by himself or by or in conjunction with any other person, (2) corruptly gives, promises or offers any gift, loan, fee, reward, or advantage whatsoever, (3) to any person, whether for the benefit of that person or of another person, (4) as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned.*

- **Scope:** Offence under Section 3(1) relates to passive bribery of public officials, whereas offence under Section 3(2) relates to active bribery.

- **Area of applicability:** Public sector.

### **Punishment of corrupt transactions with agents (Section 4)**

- **Offence:** It is an offence for *any person who:*

- (a) *being an agent, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;*
- (b) *corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or*

*(b) knowingly gives to an agent, or being an agent knowingly uses, with intent to deceive his principal, any receipt, account, or other document, in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal.*

- Scope: The term “principal” includes an employer (Section 2 of the Act). The offence does not relate solely to public sector, given that the term “agent” includes any person employed by another and the term “principal” includes (any) employer. Offence under Section 4(a) relates to passive bribery in public or commercial sector. Offence under Section 4(b) relates to active bribery in public or commercial sector. Offence under Section 4(c) relates to any knowingly performed act of deceit of agent’s principal, without any specific requirement of obtaining or intent to obtain pecuniary advantage.
- Area of application: Public and private sectors.

#### **Offence to corruptly use or communicate official information (Section 5)**

- Offence: It is an offence for *any person who, being an agent:*
  - (a) corruptly uses official information for the purpose of obtaining any gift, loan, fee, reward or advantage whatsoever for himself or any other person; or*
  - (b) corruptly communicates official information to any other person with a view of enabling any person to obtain any gift, loan, fee, reward or advantage whatsoever.*
- Scope: For the purposes of this offence, the “official information” means *any fact or document which comes to a person’s knowledge or into his possession by virtue of his position as a person serving under the State or being a member of a public body or holding any other public office.*
- Area of applicability: Public sector.

#### **2.1.16.3 Applicability of the criminal law of Trinidad and Tobago in the fight against match-fixing**

Since there is no ad hoc criminal offence of match-fixing in Trinidad and Tobago, general provisions on fraud and corruption are to be analyzed.

### **2.1.16.3.1 Fraud**

The description of fraud<sup>403</sup>, as contained in the Criminal Offences Act, is a typical provision on fraud, which covers general forms of deception and may also cover different occurrences of fraud in sport (match-fixing) and in gambling. In the area of jurisdiction, the universality principle applies. Trinidad and Tobago may go after *any person accused of having committed in any place, whether within or outside of Trinidad and Tobago, any indictable offence triable, according to the law for the time being in force, in Trinidad and Tobago*<sup>404</sup>. Participatory acts are subject to adequate sanctions. Sanctions provided for the criminal offence are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for this offence. Protective measures can be applied for whistleblowers and witnesses. Anti-money laundering measures and special investigative techniques can be applied.

### **2.1.16.3.2 Bribery offences**

The Prevention of Corruption Act 1987 incriminates active and passive bribery in the public and private sector<sup>405</sup>. In addition, two more offences are incriminated, specific form of fraud<sup>406</sup> as deception of a principal through a materially forged document and corrupt use or communication of official information<sup>407</sup>.

In the area of jurisdiction, the universality principle applies<sup>408</sup>. Participatory acts are subject to adequate sanctions. Legal persons can be held liable for these offences. Protective measure are in place for whistleblowers and witnesses. Anti-money laundering measures and special investigative techniques may be applied.

Trinidad and Tobago has ratified the UNCAC on 31 May 2006.

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<sup>403</sup> “Cheat” or “Fraud”, Section 7 Criminal Offences Act.

<sup>404</sup> Section 3 of the Indictable Offences (Preliminary Enquiry) Act.

<sup>405</sup> Sections 3 and 4 Prevention of Corruption Act.

<sup>406</sup> Section 4 c Prevention of Corruption Act.

<sup>407</sup> Section 5 Prevention of Corruption Act.

<sup>408</sup> Section 3 of the Indictable Offences (Preliminary Enquiry) Act.

#### **2.1.16.4 Conclusion**

The legislation of Trinidad and Tobago provides for several criminal law measures against match-fixing.

Although there are no ad hoc criminal law provisions on match-fixing, provisions on fraud are broad enough to cover at least the basic forms of match-fixing and irregular betting. Sanctions provided for fraud and bribery offences allow for the application of the UNTOC. The jurisdictional principle of universality enables prosecution in cases of indictable offences according to Trinidad and Tobago law committed anywhere in the world.

Participatory acts are subject to adequate sanctions. It is not clear whether this is the case with organized crime as well. The establishment of liability of legal persons, the protection of whistleblowers and witnesses, as well as the application of anti-money laundering measures and special investigative techniques enable law enforcement and judicial authorities in Trinidad and Tobago to combat existing criminal offences in the area of match-fixing to a relatively significant extent.

## 2.1.17 UKRAINE

### 2.1.17.1 Criminal Code, Law No. 3207-VI On amendments to several legislative acts concerning liability for corruption offences and Law on Amendments to the Certain Legislative Acts on the Humanization of Liability for Offences in the Sphere of Economics<sup>409</sup>

The Criminal Code of Ukraine (ukrCC) came into force on 1 September 2001. The corruption-related provisions were subject to several legal amendments, lately introduced by the Law No. 3207-VI “On amendments to several legislative acts concerning liability for corruption offences”, adopted on 7 April 2011 and by the Law on Amendments to the Certain Legislative Acts on the Humanization of Liability for Offences in the Sphere of Economics of 15 November 2011. The ukrCC does not contain any offence specifically targeting match-fixing. It does, however, contain several provisions that may apply.

#### **Fraud (Article 190 ukrCC)**

- Fraud is considered as *taking possession of somebody else's property or obtaining the property title by deceit or breach of confidence* (Article 190/1 ukrCC).
- Scope: Fraud is classified as an offence against property. It is general in nature and should, even though lacking specific provisions in the statute, be applicable to all cases of fraud.
- Area of applicability: Given that no special provisions govern fraud in the public sector, the applicability of Article 190 ukrCC extends to private and public sector.
- Participatory acts and organized crime activity: Articles 26-31 ukrCC govern criminal complicity. Specifically, Article 27 ukrCC provides for criminal liability of:
  - the principal and co-principal, i.e. the person who, in association with other criminal offenders, has committed a criminal offence;
  - the organizer, i.e. person who has organized a criminal offence (or criminal offences) or supervised its (their) preparation or commission, or a person who has created an organized group or criminal organization, supervised, financed, or organized the covering up of the criminal activity of an organized group or criminal organization;

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<sup>409</sup> All acts are dealt with together since they heavily rely on each other.

- the abettor, i.e. a person who has induced any other accomplice to a criminal offence, by way of persuasion, subornation, threat, coercion or otherwise; and
- the accessory, i.e. a person who has facilitated the commission of a criminal offence by other accomplices, by way of advice, or instructions, or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offence.

Article 28 ukrCC governs modes of committing an offence:

- by a group of persons – without prior conspiracy;
  - upon prior conspiracy;
  - by an organized group; and
  - by a criminal organization.
- Sanctions envisaged:
- Fraud under Article 190/1 ukrCC is punishable by:
    - *a fine up to 50 tax-free minimum incomes<sup>410</sup>, or community service for a term up to 240 hours, or*
    - *correctional labor for a term up to two years, or*
    - *restraint of liberty for a term up to three years.*
  - Fraud is punishable (Article 190/2 ukrCC):
    - *if repeated, or committed by a group of persons upon their prior conspiracy, or where it caused a significant damages to the victim:*
    - *by a fine of 50 to 100 tax-free minimum incomes, or*
    - *correctional labor for a term of one to two years, or*
    - *restraint of liberty for a term up to five years, or*
    - *imprisonment for a term up to three years;*
  - If the offence is committed:
    - in respect of a gross amount or by unlawful operations involving computerized equipment (Article 190/3 ukrCC), by imprisonment for a term of three to eight years;

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<sup>410</sup> Sanction of one tax-free minimum income corresponds to 17 UAH (1,5 EUR).

- in respect of an especially gross amount, or by an organized group (Article 190/4 ukrCC), by imprisonment for a term of five to twelve years with forfeiture of property.
- Jurisdiction: For this offence:
  - territoriality principle (Article 6 ukrCC),
  - active personality principle<sup>411</sup> (Article 7/1 ukrCC) applies, if no international treaty provides otherwise and no punishment has yet been imposed abroad (*ne bis in idem* principle) (Article 7/1,2 ukrCC),
  - on the basis of section 8 CC, foreign citizens and stateless persons not residing permanently in Ukraine who commit a criminal act outside the territory of Ukraine are subject to criminal liability in either of the following two cases: (1) if criminal liability is provided for by international treaties; (2) if such persons have committed grave or particularly grave offences punishable under the ukrCC against the rights and freedoms of Ukrainian citizens or the interests of Ukraine.
- Liability of legal persons: No<sup>412</sup>.
- Protection of witnesses and whistle-blowers: Yes. The Law of Ukraine on Security Protection of the Participants in Criminal Proceedings of 2 March 1994 provides *that a person who reported to a law enforcement authority a criminal offence or in other manner took part in discovering, prevention, termination or solving the criminal offence as well as a witness has the right for security protection according to this Law* (Art.2). Article 66 “Rights and duties of a witness” of the new UkrCCP of 19 November 2012 provides for a witnesses’ right to request that protection be ensured as prescribed by law. Under Paragraph 1 of Article 232 of the UkrCCP interrogation of persons, identification of persons or objects during pre-trial investigation may be conducted in the mode of video conference involving transmission from other premises (distant pre-trial investigation), where it is necessary to ensure protection of persons. UkrCCP also stipulates that court proceedings may be conducted through video conference with transmission from another premise, including such as is located beyond

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<sup>411</sup> Citizens of Ukraine as well as stateless persons permanently residing in Ukraine who commit a criminal act outside the territory of Ukraine are subject to criminal liability unless they have been criminally punished for such acts abroad.

<sup>412</sup> “Ukraine: Progress report and written analysis by the Secretariat of Core Recommendations”, MONEYVAL(2010)1 REV, p. 9.

the bounds of the court premises, (distant court proceedings), where it is necessary to ensure the persons' security (Paragraph 1 of Article 336).

- Anti-money laundering measures:
  - o Under Article 209 ukrCC, the anti-money laundering provision in ukrCC, it is an offence to commit acts aiming at covering up illegal origin of money or other property, originating from “socially dangerous criminal offences”, defined as offences punishable by imprisonment. Fraud, as such, is a predicate offence.
  - o For offence under Article 209 of ukrCC forfeiture of criminally obtained money and other property and forfeiture of property might apply. Seizure is also applicable (under Chapters 16 and 17 of the Ukraine Code of Criminal Procedure).
- Application of special investigative techniques: Special investigative techniques are widely applicable under Chapter 21 “Covert Investigative (Detective) Actions” of the ukrCCP<sup>413</sup>..

### **Taking a bribe (Article 368 ukrCC)**

- Offence: Article 368 ukrCC makes it an offence *receiving a bribe of any kind by an official in return for performing or refraining from any action, using his/her authority or official position, in the interests of the person giving the bribe or in the interests of a third person.*
- Scope: The offence under Article 368 ukrCC incriminates passive corruption by public officials (Article 368/1 ukrCC), as well as judges, prosecutors and investigators, heads and deputy heads of government and public agencies, local government bodies, their divisions and units, that may be accompanied by requests of a bribe or extortion of a bribe<sup>414</sup>.
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: General rules apply, see above in the part on Article 190 ukrCC.
- Sanctions envisaged:

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<sup>413</sup> The following measures might be applied: audio, video monitoring of an individual, arrest of correspondence, inspection and seizure of correspondence, collecting information from transport telecommunication networks, collecting information from electronic information systems, inspecting publicly inaccessible places, home or any other possession of a person, establishing the location of a radio electronic device, surveillance of an individual, an object or a place, audio or video monitoring of a place, control of the commission of a crime, carrying out special assignment to expose criminal activities of the organized group or criminal organization.

<sup>414</sup> Article 368, Note 2 of the ukrCC.

Taking a bribe under Article 368/1 ukrCC is punishable by:

- *a fine of 500 to 750 tax-free minimum incomes,*
- *or by correctional work for up to 1 year, or by up to 6 months' arrest, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years.*

In case of:

- receiving a bribe of a significant sum is punishable by a fine of 750 to 1500 times the tax-free minimum income, or by 2 to 5 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years (Article 368/2 ukrCC);
- receiving a bribe either of a large sum, or by an official in a responsible position or upon prior conspiracy by a group of persons, or if repeated, accompanied by extortion of a bribe, it is punishable by 5 to 10 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, and with forfeiture of property (Article 368/3 ukrCC);
- receiving a bribe of a particularly large sum, or by an official in a particularly responsible position, is punishable by 8 to 12 years' imprisonment, with deprivation of the right to occupy certain positions or engage in certain activities for up to 3 years, and with forfeiture of property (Article 368/4 ukrCC).

Extortion of a bribe shall mean a request for a bribe by an official accompanied by a threat to perform or refrain from actions, using his/her authority or official position, which may cause harm to the rights and lawful interests of the person giving the bribe, or the wilful creation by an official of conditions in which a person is compelled to give a bribe in order to prevent harmful consequences with respect to his/her rights and lawful interests.

- Jurisdiction: General rules apply, see section on Fraud, Article 190 ukrCC.
- Liability of legal persons: No.
- Protection of witnesses and whistle-blowers: Yes, see above<sup>415</sup>.
- Anti-money laundering measures: Yes, see above.

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<sup>415</sup> In the Chapter 2.1.17.1.

- Application of special investigative techniques: Yes, see section on Fraud.

### **Giving a bribe (Article 369 ukrCC)**

- Offence: Under Article 369 ukrCC, it is an offence to *offer or give a bribe*. However, a person will not be criminally liable:
  - *if s/he was subject to extortion of a bribe, or*
  - *if, after giving the bribe and prior to the instigation of criminal proceedings against the person, s/he voluntarily makes a statement concerning the acts in question to a body authorised by law to instigate criminal proceedings.*
- Scope: Every person can be a perpetrator on the active side, if s/he offers or gives a bribe to the official.
- Area of applicability: Public sector.
- Participatory acts and organized crime activity: General rules apply, see above in the part on Article 190 ukrCC (fraud).
- Sanctions envisaged: The offence is punishable by:
  - *by a fine of 100 to 250 times the tax-free minimum income or by up to 2 years' restriction of liberty in the case of offering the bribe<sup>416</sup>;*
  - *by a fine of 250 to 750 times the tax-free minimum income or by 2 to 5 years' restriction of liberty in the case of giving the bribe<sup>417</sup>;*
  - *by 3 to 6 years' imprisonment, with a fine of 500 to 1000 times the tax-free minimum income, and with or without forfeiture of property in the case of repeated offence<sup>418</sup>;*
  - *by 4 to 8 years' imprisonment, with or without forfeiture of property in the case of giving a bribe to an official in a responsible position, or upon prior conspiracy by a group of persons<sup>419</sup>;*
  - *by 5 to 10 years' imprisonment, with or without forfeiture of property in the case of giving a bribe to an official in a particularly responsible position, or by an organised group or a participant in such a group<sup>420</sup>.*
- Jurisdiction: General rules apply, see above in the part on Fraud, Article 190 ukrCC.

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<sup>416</sup> Article 369/1 ukrCC.

<sup>417</sup> Article 369/2 ukrCC.

<sup>418</sup> Article 369/3 ukrCC.

<sup>419</sup> Article 369/4 ukrCC.

<sup>420</sup> Article 369/5 ukrCC.

- Liability of legal persons: No.
- Protection of witnesses and whistle-blowers: Yes, see above in the chapter on Fraud.
- Anti-money laundering measures: Applicable in case of Paragraphs 3 - 5 (given that the offence then carries a punishment of imprisonment).
- Application of special investigative techniques: Yes, see the part on Fraud, Article 190 ukrCC.

**Commercial bribery of an official of a legal entity of private law, regardless of its organizational and legal form (Article 368.3 ukrCC)**

- Offence: It is a criminal offence:
  - *offering, giving or transferring an illegal benefit to an official of a legal entity of private law, regardless of its organisational and legal form, in return for performing or refraining from any action, using his/her authority, in the interests of the person giving or transferring the benefit or in the interests of a third person<sup>421</sup>,*
  - *receiving an illegal benefit by an official of a legal entity of private law, regardless of its organisational and legal form, in return for performing or refraining from any action, using his/her authority, in the interests of the person giving or transferring the benefit or in the interests of a third person<sup>422</sup>.*
- Scope: The offence under Article 368.3 ukrCC incriminates active and passive corruption in the private sector.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: General rules apply, see above in the part on Article 190 ukrCC.
- Sanctions envisaged:
 

The offence is punishable:

  - *by a fine of 500 to 1000 times of the tax-free minimum income in the case of Paragraph 1,*
  - *by a fine of 5000 to 8000 times of the tax-free minimum income with deprivation of power to occupy certain position or engage in certain activities for up to 2 years, in the case of Paragraph 3,*

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<sup>421</sup> Article 368.3/1 ukrCC.

<sup>422</sup> Article 368.3/3 ukrCC.

- *by a fine of 3000 to 5000 times of the tax-free minimum income in the case of committing the crime from Paragraph 1 repeatedly or upon a prior conspiracy by a group of persons or by an organized group,*
- *by a fine of 10000 to 15000 times of the tax-free minimum with deprivation of power to occupy certain position or engage in certain activities for up to 3 years with the forfeiture of property, in the case of committing the crime from Paragraph 3 repeatedly or upon a prior conspiracy by a group of persons or accompanied by extortion of an illegal benefit.*
- Jurisdiction: General rules apply, see section on Fraud, Article 190 ukrCC.
- Liability of legal persons: No.
- Protection of witnesses and whistle-blowers: Yes, see above<sup>423</sup>.
- Anti-money laundering measures: No.
- Application of special investigative techniques: No.

#### **Gambling Business (Article 203)**<sup>424</sup>

- Offence: Article 203 ukrCC makes *gambling business* an offence.
- Scope: The ukrCC does explicitly prohibit gambling business.
- Area of applicability: Private sector.
- Participatory acts and organized crime activity: General rules apply, see above in the part on Article 190 ukrCC (fraud).
- Sanctions envisaged:  

*The offence is punishable by a fine of 10 000 to 40 000 tax-free minimum incomes with forfeiture of the gambling equipment (Article 203/1 ukrCC).*

*If the offence is committed by persons already convicted for the gambling business the offence is punishable by restraint of liberty for a term up to five years by a fine of 40 000 to 50 000 tax-free minimum incomes with forfeiture of the gambling equipment (Article 203/2 ukrCC).*
- Jurisdiction: General rules apply, see above in the part on Fraud, Article 190 ukrCC.
- Liability of legal persons: No<sup>425</sup>.

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<sup>423</sup> In the Chapter 2.1.17.1.

<sup>424</sup> Following »Law on Amendments to the Certain Legislative Acts on the Humanization of Liability for Offences in the Sphere of Economics» of 15 November 2011.

<sup>425</sup> «Ukraine: Progress report and written analysis by the Secretariat of Core Recommendations», MONEYVAL(2010)1 REV, p. 9.

- Protection of witnesses and whistle-blowers: Yes, see above in the part on Article 190 ukrCC.
- Anti-money laundering measures: Not applicable.
- Application of special investigative techniques: No.

### **2.1.17.2 Applicability of Ukrainian criminal law in the fight against match-fixing**

There is no ad hoc criminal offence of match-fixing in the Ukrainian legislation. The analysis of provisions on fraud and bribery is needed to assess how the Ukrainian criminal legal system is equipped for the fight against match-fixing.

#### **2.1.17.2.1 Fraud**

There is one criminal offence, which can be applied in the area of match-fixing<sup>426</sup>. The description of fraud, as contained in Article 190 ukrCC, is broad enough to cover all instances of match-fixing. In the area of jurisdiction<sup>427</sup> for fraud, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for aggravated forms of criminal offence as described in Paragraphs 2 and 3 of Article 190 ukrCC are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence<sup>428</sup>. Whistleblowers and witnesses can be protected. Anti-money laundering measures may be applied for offences, which carry the sanction of imprisonment. Special investigative techniques may also be used.

#### **2.1.17.2.2 Bribery offences**

Following changes in the Ukrainian legislation in 2011, three types of bribery offences are important in the area of match-fixing: passive bribery in the public sector, active bribery in the public sector, and active and passive bribery in the private sector.

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<sup>426</sup> Article 190 ukrCC.

<sup>427</sup> Articles 6, 7 and 8 ukrCC.

<sup>428</sup> But on 17.01.2013, the Government of Ukraine tabled with the Parliament a draft Law on Amendment of Certain Legislative Acts On Introducing Criminal Law Measures Regarding Legal Entities (# 2032).

For the passive bribery offence<sup>429</sup> in the public sector, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts and forms of organized criminality are subject to adequate sanctions. Legal persons cannot be held liable for this offence. Protective measures for whistleblowers and witnesses are in place. Anti-money laundering measures, including seizure, freezing and confiscation, may be applied for offences, which carry the sanction of imprisonment. Special investigative techniques may also be used.

For the passive bribery offence<sup>430</sup> in the public sector, the territoriality principle applies and active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts and forms of organized criminality are also subject to adequate sanctions. Legal persons cannot be held liable for this offence. Whistleblowers and witnesses can be protected and anti-money laundering measures may apply in the case of offence which carries the sanction of imprisonment. Special investigative techniques can be used.

The abovementioned analysis is also valid for the private bribery offence<sup>431</sup>.

Ukraine has ratified the UNCAC on 2 December 2009.

#### **2.1.17.2.3 *Illegal/irregular gambling***<sup>432</sup>

Article 203 ukrCC specifically incriminates illegal gambling – any “gambling business”. Concerning jurisdiction, the territoriality principle applies and active personality principle may also apply. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanction provided in Paragraph 2 can serve as a basis for the application of the provisions of the UNTOC. Legal persons cannot be held liable for this offence. Protection can be provided to whistleblowers and witnesses. Anti-money laundering measures, including seizure, freezing and confiscation, as well as special investigative techniques cannot be applied.

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<sup>429</sup> Article 368 ukrCC.

<sup>430</sup> Article 369 ukrCC.

<sup>431</sup> Article 368.3 ukrCC.

<sup>432</sup> “Gambling business”, Article 203 ukrCC.

### **2.1.17.3 Conclusion**

The Ukrainian legislation can only address match-fixing to a limited extent.

The criminal offence of fraud may be used to combat match-fixing but many of the necessary features related to its implementation, especially the criteria for the application of the UNTOC and anti-money laundering measures apply only for the aggravated forms of the offence.

Bribery of public officials is well defined after the last amendments in 2011 and bribery in the private sector is also criminalized. However, the latter carries in most cases only pecuniary sanctions..

Illegal gambling is sanctioned, but there are no provisions on irregular gambling.

In all cases participatory acts and forms of organized criminality are properly incriminated and witnesses and whistleblowers can be protected.

On the other hand, there is no responsibility of legal persons for any of the offences and anti-money laundering and special investigative techniques in cases of private sector bribery and illegal gambling cannot be applied. Therefore, law enforcement agencies and the judiciary in Ukraine face limitations and difficulties in their efforts to effectively investigate, prosecute and adjudicate match-fixing.

## 2.1.18 UNITED ARAB EMIRATES

This analysis is based on the Federal Law No.3 concerning the Penal Code (hereinafter: uaePC), issued on 8 December 1987 and amended several times<sup>433</sup>.

### 2.1.18.1 United Arab Emirates Penal Code (Federal Law No. 3 of 1987, as amended in 2005 and 2006)

#### Common characteristics

- Participatory acts and organized crime activity: Criminal complicity (Articles 44 *et seq.* uaePC) includes:
  - instigation;
  - conspiracy; and
  - assistance.

The uaePC includes several provisions that target organised crime activity<sup>434</sup>, none of which seem applicable to offences listed below in the text. However, if widely construed, the offence under Article 180 uaePC may be applicable to bribery offences related to public sector<sup>435</sup>.

- Jurisdiction: The territoriality and the active personality principles apply (Articles 16 and 22 uaePC) to presented offences below; the latter is applicable provided that double criminality and *ne bis in idem* (Article 23 uaePC) principles are satisfied.
- Liability of legal persons: Yes, under Article 65, legal persons - other than government services and its official departments, public organizations and institutions – may be held

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<sup>433</sup> By the Federal Law No. 34/2005 dated 24/12/2005 and the Federal Law No. 52/2006 dated 14/12/2006.

<sup>434</sup> For details, see United Arab Emirates: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, International Monetary Fund 2008, p. 25-26.

<sup>435</sup> Under Art. 180 uaePC as amended pursuant to Federal Law No. 34/2005, it is an offence for any person to establish, found, organize or administer "an association, organization, formation, group, gang or a branch to one of these regardless of its denomination or form, that aims at: calling to overthrow or take over the system of government, disrupting the application of the constitution or law provisions, fighting the fundamental principles on which is based the governing system in the State, preventing one of the State organizations or one of the public authorities to perform their duties, violating personal freedom of citizens or any other public liberties or rights protected by the constitution or the laws, or jeopardizing national unity or social peace. Shall be sentenced to prison for a term not exceeding ten years, whoever joins one of the associations, organizations or formations provided for in the first paragraph of this Article or cooperates or participates with it in any manner whatsoever, or provides it with financial or material assistance, being aware of its objectives." (emphasis added).

criminally liable for the crimes perpetrated by their representatives, directors and agents for their account or in their name.

- Protection of witnesses and whistle-blowers: No specific provisions have been identified under the Criminal Procedural Law 1992 or other applicable statutes.
- Anti-money laundering measures: Article 2, Paragraph 1, of Federal Law No. 4 on the “Incrimination of Money Laundering” provides the legal framework for the criminalization of the conducts foreseen in Article 23 of the UNCAC, including self-laundering.

The UAE legislation defines the predicate offences in a broad manner<sup>436</sup> to also include any crimes set forth in the international conventions to which the UAE is a State party (including the UNCAC). However, there is no provision in the UAE legislation specifying that extra-territorial offences can also be regarded as predicate offences for the purposes of money laundering.

Confiscation of seized objects obtained from, used or to be used in the crime is applicable under Article 82 uaePC. Articles 71-79 CPC provide for provisional measures (tracing, freezing or seizure) of proceeds or instrumentalities of crime.

- Applicability of special investigative techniques: There is a variety of special investigative techniques available to UAE authorities<sup>437</sup> but Article 79 of the Criminal Procedural Law is requesting that correspondence, letters, cables or similar papers seized or addressed to the accused, are to be handed to him or he is to be given, within the shortest period possible, a copy thereof, unless this is prejudicial to the good run of the investigation.

### **Deceit (Article 399 uaePC)**

- Offence:
  - o It is an offence for *whoever succeeds in appropriating, for him or for others, movable property, a deed or a signature thereon, cancellation, destruction or*

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<sup>436</sup> See Article 2, Paragraph 2, of the Federal Law No. 4 of 2002.

<sup>437</sup> E.g. telecommunications interception, listening devices, controlled deliveries, physical and electronic surveillance, and the use of undercover officers. United Arab Emirates: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, International Monetary Fund 2008, p. 51.

*amendment thereof through deceitful means or use of false name or capacity, whenever this leads to deceit of the victim.*

- *Equal punishment applies to whoever disposes of an immovable or movable property being aware that it is not his property, that he is not entitled to dispose of it or disposes of it knowing that he previously disposed of, or contracted, it whenever such act of disposition causes prejudice to others.*
- **Area of applicability:** Public and private sectors. Under Article 399/2 uaePC, it is an aggravating circumstance, if the object of the crime is the property or a deed belonging to the State or other public entities (mentioned in Article 5 uaePC).
- **Sanctions envisaged:** The offence is punishable by detention or by a fine, within general limits imposed by the uaePC. Detention may not exceed three years and the fine may not exceed 100.000 Dirhams<sup>438</sup>.
- **Anti-money laundering measures:** The offence is a predicate offence to money-laundering offence under Article 2 of the Federal Law No. 4 (2002) on incrimination of money laundering. Seizure and freezing of assets are applicable under Articles 4 et seq. of the same Law.

### **Bribery-related offences**

#### **Common characteristics:**

- **Sanctions envisaged:** Under Article 238 uaePC, offenders of bribery offences will also<sup>439</sup> be sentenced to a fine equal to what he has asked or accepted provided. The fine is not lower than one thousand Dirham (AED).
- **Anti-money laundering measures:** The offences are predicate offence to money-laundering offence under Article 2 of the Federal Law No. 4 (2002) regarding criminalisation of money laundering. Seizure and freezing of assets are applicable under Articles 4 et seq. of the same Law. Confiscation of the grant accepted by, or offered to, the public servant or the person in charge of a public service is provided for under Article 238 uaePC.

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<sup>438</sup> 1 AED = 0,272247 USD (on 22 November 2012).

<sup>439</sup> In addition to the primary sentence.

### **Acceptance of a bribe (Article 234-236 uaePC)**

- **Offence:**
  - Under Article 234/1 uaePC, it is an offence *for any public servant or person in charge of a public service to ask or accept for himself or for others any grant or privilege of any kind or a promise thereof in return of performing or abstaining from doing an act in breach of the duties of his office (Article 234/1)*. The provision applies even if the public servant or the person in charge of a public service intends not to perform or abstain from doing an act (Article 234/3).
  - Under Article 235 uaePC, it is an offence for public official to accept a bribe (as described above) pursuant to the completion or abstention from doing an act in breach of the duties of his office,
  - Under Article 236 uaePC, it is an offence to accept a bribe, as described above, in return of performing or abstaining from doing an act that is not included in the duties of his office.
- **Scope:** The offences relate to passive bribery of public servants or other persons performing public service.
- **Area of application:** Public sector.
- **Sanctions envisaged:**
  - The offence under Article 234 is punishable by imprisonment (Article 234/1). If the offender performs or abstains from doing an act he is bound to perform (Article 234/2), the offence is punishable by imprisonment for a term not exceeding ten years.
  - The offence under Article 235 uaePC is punishable by imprisonment for a term not exceeding ten years. If the performance or abstention from doing an act be a duty, the offence is punishable by detention.
  - The offence under Article 236 is punishable by imprisonment for a term not exceeding five years.

### **Commercial bribery (Article 236/1-@ uaePC<sup>440</sup>)**

- **Offence:**
  - It is an offence under this article, *for any member of the Board of Directors of any private company, institution, cooperative association or public benefit association,*

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<sup>440</sup> Added by Federal Law no. 34 dated 24/12/2005.

*as well as any manager or employee in any of these, who asks for himself or for others, accepts a promise or a grant in return of performing or abstaining from doing an act included in the duties of his office or in breach thereof.*

- Under Article 236-1/2, the offender is to be considered corrupt, even if he did not intend to perform the act or to breach the duties of his office.

*Same punishment is applicable, if the request, acceptance or taking is subsequent to the performance of the act, the abstention there from or to the breach of the duties of his office and is intended as a reward for so doing.*

- Scope: The offence relates to passive commercial bribery.
- Area of application: Private sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding five years.

#### **Offering a bribe (Article 237 uaePC)**

- Offence:
  - It is an offence for *whoever to offer or promise to a public servant or person in charge of a public service, even if he rejects the offer, a grant or privilege of any kind in return of performing, or abstaining from doing an act in breach of the duties of his office.*
  - Same applies to whoever intercedes with the briber or the bribed person to offer, ask for, accept, take or promise a bribe.
- Scope: The offence relates to active bribery in a public sector.
- Area of application: Public sector.
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding five years.

#### **Exertion of / trading in influence (Article 237-1-@ uaePC<sup>441</sup>)**

- Offence: It is an offence for *whoever to ask or accept for himself or for others a grant, privilege or benefit of any kind in return of his intervention or use of his influence with a public servant to do or abstain from doing an act in breach of the duties of his office.*
- Scope: The offence relates to unlawful exertion of influence over a public servant.

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<sup>441</sup> Added by Federal Law no. 34 dated 24/12/2005.

- Area of application: Public sector.
- Sanctions envisaged: The offence is punishable by:
  - *a detention for a minimum term of one year*
  - *and a minimum fine of ten thousands Dirhams.*

### **Gambling-related offences**

- Scope: Gambling games are those games in which every party agrees to pay, in case of losing, to the other party, the winner, an amount of money or anything else agreed (Article 413 uaePC).
- Anti-money laundering measures: Under Article 416 uaePC, seizure and confiscation of money and tools used in gambling is applicable by order of the court.

### **Gambling (Article 414 uaePC)**

- Offence: It is an offence for any person *who gambles*.
- Sanctions envisaged:
  - The offence is punishable by:
    - *a detention for a term not exceeding two years,*
    - *or a fine not in excess of twenty thousand Dirhams.*
  - If the offence is committed in a public place or open to the public, or in a place or house prepared for gambling, it is punishable by *detention or a fine*, within general limits set by the uaePC. Since the offence is considered a misdemeanor under Article 29 uaePC, *detention may not exceed three years* (Article 69 uae PC) and *fine may not exceed 30.000 Dirhams* (Article 71 uaePC).

### **Organising gambling games (Article 415 uaePC)**

- Offence: It is an offence for *whoever*:
  - *opens or manages a gambling house and prepares it to receive people;*
  - *organizes any gambling game in a public place or a place open for public or in a place or house prepared for this purpose.*
- Sanctions envisaged: The offence is punishable by imprisonment for a term not exceeding ten years.

### **2.1.18.2 Applicability of UAE criminal law in the fight against match-fixing**

There is no ad hoc match-fixing criminal offence in the UAE legislation.

#### **2.1.18.2.1 Fraud**

The description of fraud<sup>442</sup> contained in the Penal Code covers general forms of fraud and may also cover different occurrences of fraud in sport (match-fixing) and in gambling. In the area of jurisdiction for fraud, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts - and organized criminality conditionally - are subject to adequate sanctions. Sanctions provided for the criminal offence are not high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for this offence. No protective measures are foreseen for whistleblowers and witnesses. Special investigative techniques and anti-money laundering measures may be applied, however, there is no provision in the UAE legislation specifying that extra-territorial offences can also be regarded as predicate offences for the purposes of money laundering.

#### **2.1.18.2.2 Bribery offences**

The UAE Penal Code bribery provisions incriminate active<sup>443</sup> and passive<sup>444</sup> bribery in the public sector, passive bribery in the private sector<sup>445</sup>, and passive trading in influence<sup>446</sup>. In the area of jurisdiction, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts are subject to adequate sanctions. Legal persons can be held liable for these offences. No protective measures are available for whistleblowers and witnesses. Special investigative techniques and anti-money laundering measures may be applied. However, there is no provision in the UAE legislation specifying that extra-territorial offences can also be regarded as predicate offences for the purposes of money laundering.

UAE have ratified the UNCAC on 22 February 2006.

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<sup>442</sup> “Deceit” Article 399 uaePC.

<sup>443</sup> Article 237 uaePC.

<sup>444</sup> Articles 234,235,236 uaePC.

<sup>445</sup> Article 236/1-@ uaePC.

<sup>446</sup> Article 237/1-@ uae PC.

### ***2.1.18.2.3 Illegal/irregular gambling***

In the area of gambling games<sup>447</sup>, the UAE Penal Code incriminates both, gambling<sup>448</sup> and the organization of gambling<sup>449</sup>. Therefore, from the criminal law point of view, possible match-fixing cannot serve as a ground for the misuse of gambling in the UAE.

In the area of jurisdiction, the territoriality principle applies and the active personality principle may also apply, if double criminality and *ne bis in idem* requirements are satisfied. Participatory acts - and organized criminality conditionally - are subject to adequate sanctions. Sanctions provided for the criminal offence of gambling are not high enough to serve as a basis for the application of the provisions of the UNTOC, but sanctions provided for the criminal offence of organizing gambling games are high enough to serve this purpose. Legal persons can be held liable for these offences. No protection is in place for whistleblowers and witnesses. Special investigative techniques and anti-money laundering measures may be applied. However, there is no provision in the UAE legislation specifying that extra-territorial offences can also be regarded as predicate offences for the purposes of money laundering.

### **2.1.18.3 Conclusion**

The legislation of United Arab Emirates provides limited possibilities to address match-fixing. There is no special criminal offence incriminating this phenomenon. In addition, other provisions do not allow full coverage of possible forms of criminal activity related to match-fixing. There is no incrimination of active bribery in the private sector and no incrimination of active trading in influence. Sanctions in the cases of fraud and gambling<sup>450</sup> do not allow for the application of the UNTOC and no protection is available for whistleblowers and witnesses. In view of the very narrow description of organized crime,<sup>451</sup> related provisions will hardly ever apply in the area of match-fixing. However, legal persons are held

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<sup>447</sup> Gambling games are those games in which every party agrees to pay, in case of losing, to the other party, the winner, an amount of money or anything else agreed (Art. 413 uaePC).

<sup>448</sup> Article 414 uaePC.

<sup>449</sup> Article 415 uaePC.

<sup>450</sup> However, organisation of gambling is severely sanctioned – up to 10 years of imprisonment.

<sup>451</sup> Article 180 uaePC.

responsible for all criminal offences and anti-money laundering measures may also be applied but only to a limited extent<sup>452</sup>. Criminal justice and law enforcement authorities may use special investigative techniques for the investigation of the mentioned offences. The inclusion of a general prohibition of gambling and its organization is an asset of the UAE Penal Code, which has the strongest deterrent effect to possible match-fixing in the country<sup>453</sup>.

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<sup>452</sup> There is no provision in the UAE legislation specifying that extra-territorial offences can also be regarded as predicate offences for the purposes of money laundering.

<sup>453</sup> But nothing prevents possible match-fixers to bet on the UAE sports competitions abroad.

## 2.1.19 UNITED STATES OF AMERICA

Responsibility for criminal law in the United States is shared between the states and the federal government, whereby the criminal law is to a large extent a matter for the states, with smaller number of criminal activities reserved for the federal government to prosecute. For the purposes of the present analysis, two criminal codes were taken into account: the United States Code (hereinafter: USC), published in 2006, at the federal level and the Penal Law of the State of New York, 2011 edition.

### 2.1.19.1 Federal level – The United States Code (USC), published in 2006

Common characteristics for all crimes prescribed in the USC are the following:

- Participatory acts and organized crime activity:
  - Under 18 U.S. Code Section 2/a, *whoever*
    - *aids,*
    - *abets,*
    - *counsels,*
    - *commands,*
    - *induces*
    - *or procures,*

*commission of an offence, is punishable as a principal.*
  - Under 18 USC Section 2/b, *whoever willfully causes an act to be done which if directly performed by him or another would be an offence against the United States, is punishable as a principal.* Accessory after the fact is punishable under 18 USC Section 3.
  - Under Chapter 96 18 USC (RICO<sup>454</sup> Act), bribery in sporting contests (Section 224), mail and wire fraud (Section 1343), and offence under Section 1084 are all predicate offences to racketeering activity. Section 1962 makes it an offence for *any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of Section 2 (see above), to use or invest, directly or indirectly, any part of such income, or the proceeds of such income,*

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<sup>454</sup> Racketeer Influenced and Corrupt Organizations Act 1970.

*in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.*

- Offence under Section 1962 is punishable by:
  - *a fine, or*
  - *imprisonment of not more than 20 years or for life (if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment),*
  - *or both.*
- Jurisdiction:
  - The territoriality principle applies. The term “United States” in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone (Section 5 18 USC).
  - The term “special maritime and territorial jurisdiction of the United States” includes (Section 7):
    - (1) *The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.*
    - (2) *Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.*
    - (3) *Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.*
    - (4) *Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.*

- (5) *Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.*
- (6) *Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.*
- (7) *Any place outside the jurisdiction of any nation with respect to an offence by or against a national of the United States.*
- (8) *To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offence committed by or against a national of the United States.*
- (9) *With respect to offences committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act*
- *the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and*
  - *residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.*
- *The term includes some extraterritorial elements, in particular any place outside the jurisdiction of any nation with respect to an offence by or against a national of the United States, thus incorporating the active and passive personality principles of jurisdiction.*

- As to relationship between state and federal jurisdiction, definitions under 18 USC Section 10 are relevant, since offences on a federal level apply solely to interstate or foreign commerce:
  - the term “interstate commerce” includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.
  - the term “foreign commerce”, as used in this title, includes commerce with a foreign country.
- Protection of witnesses and whistle-blowers:
  - Under Section 1512, it is an offence *to tamper with a witness, victim, or an informant*; under Section 1513, it is an offence *to retaliate against a witness, victim, or an informant*.
  - Protection of witnesses is available under 18 USC Chapter 224, in proceedings concerning an organized criminal activity or other serious offence, if the Attorney General determines that:
    - *an offence involving a crime of violence directed at the witness with respect to that proceeding,*
    - *an offence set forth in 18 USC Ch.73 (regarding obstruction of justice, incl. offences under Section 1512 and 1513) directed at the witness,*
    - *or a State offence that is similar in nature to either such offence, is likely to be committed.*
- Anti-money laundering measures:
  - Seizure, restraining orders, civil and criminal forfeiture all apply to offences under Sections 224, 1084, 1341 and 1343 (by virtue of Sections 981/C (with a reference to Section 1956/c/7) and Section 1961(1)).
  - In case of offences under Section 1962 (RICO Act), the person guilty of the offence is *to forfeit to the United States, irrespective of any provision of State law: any interest the person has acquired or maintained; any interest in, security of; claim against; or property or contractual right of any kind affording a source of influence over:*
    - *any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962; and*

- *any property, constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of Section 1962.*

**Bribery in sporting contests (18 USC Section 224)**

- Offence : Under 18 USC Section 224, it is an offence to:
  - *carry into effect,*
  - *attempt to carry into effect,*
  - *or conspire with any other person to carry into effect,**any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest.*

- Scope: The provision is applicable within federal and state jurisdictions: *it will not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offence over which they would have jurisdiction in the absence of this section (18 USC Section 224/b).*

The term “scheme in commerce” means *any scheme effectuated in whole or in part through the use of any facility for transportation or communication, in interstate or foreign commerce.*

The term “sporting contest” within this Section means *any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence.*

- Area of applicability: Private sector.
- Sanctions envisaged: The offence is punishable:
  - *by fine;*
  - *by imprisonment of no more than 5 years*
  - *or both.*
- Liability of legal persons: Yes; the term “person” under 18 USC Section 224/3 means *any individual and any partnership, corporation, association, or other entity.*

- Application of special investigative techniques: Yes, under Section 18 USC 2516 (interception of wire, oral, or electronic communications). Pen-registers and trap-and-trace devices may be used under 18 USC Chapter 206.

**Mail fraud (18 USC Section 1341); Fraud by wire, radio, or television (18 USC Section 1343)**

- Offence:
  - o Under 18 USC Section 1341, it is an offence *for anyone, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do,*
    - *to place in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service,*
    - *or to deposit or cause to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier,*
    - *or to take or receive therefrom, any such matter or thing,*
    - *or knowingly cause to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing.*
  - o Under 18 USC Section 1343, it is an offence *for anyone, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, to transmit or cause to be transmitted, by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice.*
- Scope: Both, *wire fraud* under Section 1343 and *mail fraud* under Section 1341 may be applied to match-fixing.
- Area of applicability: Private sector.
- Sanctions envisaged: Offences are both punishable:
  - *by a fine, or*

- *by imprisonment of not more than 20 years,*
- *or both.*
- Liability of legal persons: Yes, corporations may be held liable under *respondeat superior* doctrine<sup>455</sup>.
- Application of special investigative techniques: Yes, under Section 18 USC 2516 (interception of wire, oral, or electronic communications). Pen-registers and trap-and-trace devices may be used under 18 USC Chapter 206.

**Transmission of wagering information (18 USC Section 1081)**

- Offence: Under this section, it is an offence *for whoever, being engaged in the business of betting or wagering, to knowingly use a wire communication facility*
  - *for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest,*
  - *or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers,*
  - *or for information assisting in the placing of bets or wagers.*
- Scope: The term “wire communication facility” means *any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission* (18 USC Section 1081).

The provision is not to be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal (Section 1084/b).

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<sup>455</sup> Corporations may be criminally liable for the illegal acts of officers, employees or agents, provide that it can be established that the individual's actions were within the scope of their duties and the individual's actions were intended, at least in part, to benefit the corporation. 'Corporate culture' as a basis for the criminal liability of corporations, prepared by Allens Arthur Robinson for the United Nations Special Representative of the Secretary- General on Human Rights and Business, February 2008, p. 29-30.

- Sanctions envisaged: The offence is punishable by
  - *a fine*
  - *or imprisonment of no more than two years,*
  - *or both.*
- Liability of legal persons: Yes, corporations may be held liable under *respondeat superior* doctrine.
- Application of special investigative techniques: Yes, under Section 18 USC 2516 (interception of wire, oral, or electronic communications). Pen-registers and trap-and-trace devices may be used under 18 USC Chapter 206.

### **2.1.19.2 State level: the New York Penal Law, 2011**

The New York Penal Law (hereinafter: NY PL) contains several provisions applicable to match-fixing, in particular:

- sports bribing (Article 180.40);
- sports bribe receiving (Article 180.45);
- tampering with a sports contest (Articles 180.50 and 180.51) and
- impairing the integrity of a pari-mutuel betting system (Articles 180.52 and 180.53).

For the purpose of these sections (Article 180.35):

- “sports contest” means *any professional or amateur sport or athletic game or contest viewed by the public;*
- “sports participant” means *any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team;* and
- “sports official” means *any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.*

**Common characteristics** of the relevant offences, listed below, are the following:

- Participatory acts and organized crime activity: Under Article 20 NY PL, another person is criminally liable for such conduct when he:
  - *solicits, requests or commands;*

- *importunes or intentionally aids such person to engage in such conduct.*

Criminal solicitation, conspiracy and criminal facilitation may be prosecuted as stand-alone offences under Articles 100, 105 and 115 NY PL.

- Jurisdiction: The territoriality principle applies (Article 20.20 (1) NY PL). Extraterritorial jurisdiction is defined in Article 20.20 (2): *a person may be convicted by the courts of NY, even though none of the conduct constituting such offence may have occurred within the state, when:*
  - a) *The offence committed was a result offence and the result occurred within this state. If the offence was one of homicide, it is presumed that the result, namely the death of the victim, occurred within this state if the victim's body or a part thereof was found herein; or*
  - b) *The statute defining the offence is designed to prevent the occurrence of a particular effect in this state and the conduct constituting the offence committed was performed with intent that it would have such effect herein; or*
  - c) *The offence committed was an attempt to commit a crime within this state; or*
  - d) *The offence committed was conspiracy to commit a crime within this state and an overt act in furtherance of such conspiracy occurred within this state; or*
  - e) *he offence committed was one of omission to perform within this state a duty imposed by the laws of this state. In such case, it is immaterial whether such person was within or outside this state at the time of the omission.*
- Liability of legal persons: Under Article 20.20 of NY PL, a corporation is guilty of an offence when:
  - (a) *the conduct constituting the offence consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or*
  - (b) *the conduct constituting the offence is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or*
  - (c) *The conduct constituting the offence is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offence is*
    - (i) *a misdemeanor or a violation,*
    - (ii) *one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation,*

*(iii) or (iii) any offence set forth in title twenty-seven of article seventy-one of the environmental conservation law.*

- Protection of witnesses and whistle-blowers: Protective orders limiting discovery of evidentiary material are applicable under Article 240.50 NY PL, due to any of the following reasons: constitutional limitations, danger to the integrity of physical evidence or a substantial risk of physical harm, intimidation, economic reprisal, bribery or unjustified annoyance or embarrassment to any person or an adverse effect upon the legitimate needs of law enforcement, including the protection of the confidentiality of informants, or any other factor or set of factors which outweighs the usefulness of the discovery.

Bribing, tampering or intimidating a witness is an offence under Article 215 NY PL. Additionally, New York is known to run a State-level witness protection program, according to some sources without specific legislative support<sup>456</sup>.

#### **Sports bribing (Article 180.40)**

- Offence: A person is guilty of sports bribing when he:
  - *confers, or offers or agrees to confer, any benefit upon a sports participant with intent to influence him not to give his best efforts in a sports contest; or*
  - *confers, or offers or agrees to confer, any benefit upon a sports official with intent to influence him to perform his duties improperly.*
- Scope: The offence relates to active bribery.
- Area of applicability: Private sector.
- Sanctions envisaged: Sports bribing is a class D felony. Class D felonies are punishable by (Article 70 and 80 NY PL):
  - *imprisonment, not exceeding 7 years;*
  - *a fine.*
- Participatory acts and organized crime activity:
  - o Provision of Article 460.20 NY PL is applicable to offences under Articles 180.40 and 180.45 NY PL. Under Article 460.20 NY PL, a person is guilty of *enterprise corruption when, having knowledge of the existence of a criminal enterprise and*

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<sup>456</sup> URL: [http://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652_of.htm), Retrieved on 13th November 2012.

*the nature of its activities, and being employed by or associated with such enterprise, he:*

*(a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity; or*

*(b) intentionally acquires or maintains any interest in or control of an enterprise by participating in a pattern of criminal activity; or*

*(c) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise.*

- Under Article 460.10 NY PL, a “criminal enterprise” means *a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure distinct from a pattern of criminal activity, and with a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents.*

Enterprise corruption is a class B felony, punishable by (Article 70 and 80 NY PL):

- *imprisonment, not exceeding 25 years;*
- *a fine.*
- Anti-money laundering measures: Seizure is applicable under Article 690 NY Criminal Procedure Law 2006. The offence is a predicate offence to money-laundering offences, specified in Article 470 of NY PL. In case of enterprise corruption (see above), forfeiture of assets under Article 460.30 is applicable.
- Application of special investigative techniques: Eavesdropping, video surveillance warrants, pen registers and trap and trace devices are applicable under Article 700 and 705 of NY Criminal Procedure Law.

### **Sports bribe receiving (Article 180.45)**

- Offence: A person is guilty of sports bribe receiving when:
  - *being a sports participant, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts in a sports contest; or*
  - *being a sports official, he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that he will perform his duties improperly.*
- Scope: The offence covers passive bribery.

- Area of applicability: Private sector.
- Participatory acts and organized crime activity: See above, in the part on offence of enterprise corruption.
- Sanctions envisaged: Sports bribe receiving is a class E felony. Class E felonies are punishable by (Article 70 and 80 NY PL):
  - *imprisonment, not exceeding 4 years;*
  - *a fine.*
- Anti-money laundering measures: Seizure is applicable under Article 690 NY Criminal Procedure Law. The offence is a predicate offence to money-laundering offences, specified in Article 470 of NY PL. A person convicted of money laundering may be sentenced to pay a fine not in excess of two times the value of the monetary instruments which are the proceeds of specified criminal activity (Article 470.25 NY PL). In case of enterprise corruption (see above), forfeiture of assets under Article 460.30 NY PL is applicable.
- Application of special investigative techniques: Eavesdropping, video surveillance warrants, pen registers and trap and trace devices are applicable under Article 700 and 705 of NY Criminal Procedure Law.

**Tampering with a sports contest (Article 180.50 and 180.51)**

- Offence:
  - o Under Article 180.50 NY PL (tampering with a sports contest in the second degree), a person is guilty of *tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tampers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest.*
  - o Under Article 180.51 NY PL (tampering with a sports contest in the first degree), a person is guilty of *tampering with a sports contest in the first degree when, with intent to influence the outcome of a pari-mutuel horse race:*
    - *he affects any equine animal involved in the conduct or operation of a pari-mutuel horse race by administering to the animal in any manner whatsoever any controlled substance listed in section thirty-three hundred six of the public health law; or*

- *he knowingly enters or furnishes to another person for entry or brings into this state for entry into a pari-mutuel horse race, or rides or drives in any pari-mutuel horse race any running, trotting or pacing horse, mare, gelding, colt or filly under an assumed name, or deceptively out of its proper class, or that has been painted or disguised or represented to be any other or different horse, mare, gelding, colt or filly from that which it actually is; or*
- *he knowingly and falsely registers with the jockey club, United States trotting association, American quarterhorse association or national steeplechase and hunt association a horse, mare, gelding, colt or filly previously registered under a different name; or*
- *he agrees with one or more persons to enter such misrepresented or drugged animal in a pari-mutuel horse race. A person shall not be convicted of a violation of this subdivision unless an overt act is alleged and proved to have been committed by one of said persons in furtherance of said agreement.*
- Scope: The offence is related to bribery offences, covering other methods of tampering with a sports contest, additionally including tampering with animals, equipment etc.
- Area of applicability: Private sector.
- Sanctions envisaged:
  - Tampering with a sports contest in the second degree is a class A misdemeanor. Class A misdemeanors are punishable by (Article 70.15 and 80.05 NY PL):
    - *imprisonment not exceeding 1 year;*
    - *a fine.*
  - Tampering with a sports contest in the first degree is a class E felony. Class E felonies are punishable by (Article 70 and 80 NY PL):
    - *imprisonment, not exceeding 4 years;*
    - *a fine.*
- Anti-money laundering measures: Seizure is applicable under Article 690 NY Criminal Procedure Law.
- Applicability of special investigative techniques: None.

**Impairing the integrity of a pari-mutuel betting system (Articles 180.52 and 180.53)**

- Offence:
  - Under Article 180.52 (impairing the integrity of a pari-mutuel betting system in the second degree), a person is guilty of impairing the integrity of a pari-mutuel betting

system in the second degree when, *with the intent to obtain either any payment for himself or for a third person or with the intent to defraud any person he:*

- *alters, changes or interferes with any equipment or device used in connection with pari-mutuel betting; or*
- *causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.*
- Under Article 180.53 NY PL (impairing the integrity of a pari-mutuel betting system in the first degree), a person is guilty of impairing the integrity of a pari-mutuel betting system in the first degree when, *with the intent to obtain either any payment for himself or for a third person or with the intent to defraud any person, and when the value of the payment exceeds one thousand five hundred dollars he:*
  - *alters, changes or interferes with any equipment or device used in connection with pari-mutuel betting; or*
  - *causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.*
- Scope: These provisions basically cover one offence, given in a basic and aggravated form (Article 180.53), and split by the margin of 1,500.00 USD.
- Area of applicability: Private sector.
- Sanctions envisaged:
  - Impairing the integrity of a pari-mutuel betting system in the second degree is a class E felony. Class E felonies are punishable by (Article 70 and 80 NY PL):
    - *imprisonment, not exceeding 4 years;*
    - *a fine.*
  - Impairing the integrity of a pari-mutuel betting system in the first degree is a class D felony. Class D felonies are punishable by (Article 70 and 80 NY PL):
    - *imprisonment not exceeding 7 years;*
    - *a fine.*
- Anti-money laundering measures: Seizure is applicable under Article 690 NY Criminal Procedure Law.
- Application of special investigative techniques: None.

### **2.1.19.3 Applicability of the U.S. criminal law in the fight against match-fixing**

The U.S. legislation provides for specific incriminations of match-fixing at the federal and state levels<sup>457</sup>. Since some<sup>458</sup> of those incriminations include bribery as one of the elements of the offence, it is also necessary to take a look at incriminations, which enable sanctioning of match-fixing where bribery does not appear or it cannot be proven by the law enforcement agencies. Of course, the question on the additional applicability of more general norms (i.e. on fraud) also arises in cases of ad hoc incrimination of match-fixing.

#### ***2.1.19.3.1 Specific offences of match-fixing***

At the federal level the offence of *Bribery in Sporting Contest*<sup>459</sup> incriminates match-fixing committed by the means of bribery and through the use of any facility for transportation or communication in interstate<sup>460</sup> or foreign<sup>461</sup> commerce. The provision of 18 USC Section 224 refers to fixing a “sporting contest”, which is understood as any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence. A positive element of the incrimination is the description of match-fixing itself. The USC uses a very broad definition, “to influence (by bribery) the contest”, which covers not only tampering with the outcome (result), but also with the course of the competition and with all facts<sup>462</sup> related to it. It should be noted as another important positive element of the provision under discussion that not only the completed act of match-fixing through bribery is criminalized, but also, explicitly, the attempt of, and conspiracy for, match-fixing.

Due to the division of jurisdictions between the federal and the state level, it is normal that this offence is linked to transportation and communication facilities in the interstate or foreign commerce. It is difficult to imagine that any serious criminal offence in this area would be committed without any use of transportation or communication facilities, yet for sure they will not all have the interstate or international character. Another narrow part of the definition

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<sup>457</sup> At least, this is the case of the state under analysis – New York.

<sup>458</sup> At the federal level.

<sup>459</sup> 18 USC Sec. 224.

<sup>460</sup> The term “interstate commerce” includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

<sup>461</sup> Commerce with a foreign country.

<sup>462</sup> For example, the number of goals scored, the length of extra-time etc.

is related to the public announcement of a sporting contest as a condition for the application of this incrimination. But this condition in practical terms does not represent any obstacle due to the fact that in real life all sports competitions are being publicly announced somewhere.

At the state level, the State of New York Penal Law has two different provisions on bribery-related match-fixing, one on *Sports Bribing*<sup>463</sup> and one on *Sports Bribe Receiving*<sup>464</sup>, incriminating active and passive bribery for the purposes of match-fixing. In both cases, provisions differentiate between bribing of a sports participant<sup>465</sup> and bribing of a sports official<sup>466</sup>. The action required from a corrupt sports participant is *not to give his best efforts in a sports contest* and the action required from the corrupt sports official is *to perform his duties improperly*, both adopting very wide descriptions of conducts, covering all possible forms of match-fixing. It is important to note that the term “sports contest” has a different meaning from the corresponding one at the federal level. According to the NY PL “sports contest” is *any professional or amateur sport or athletic game or contest viewed by the public*<sup>467</sup>. The difference relates to the involvement of public. At the state level, public has to be informed about the sports competition in advance, and in the State of New York public has to view the competition, directly or through the telecommunication means. The New York State requirement could cause certain problems<sup>468</sup>, nonetheless in a very limited number of cases.

Beside bribery-related match-fixing, the NY PL incriminates two forms of tampering with the sports contest<sup>469</sup>.

The first one - *tampering with a sports contest in the second degree* - exists when a person tampers with any sports participant, sports official or with any animal or equipment or other

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<sup>463</sup> Article 180.40 NY PL.

<sup>464</sup> Article 180.45 NY PL.

<sup>465</sup> Any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team - Article 108.35 NY PL.

<sup>466</sup> Any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest – Article 108.35 NY PL.

<sup>467</sup> Article 108.35 NY PL.

<sup>468</sup> There are cases where sports associations apply the sanction of holding sports competitions without the presence of the public, which still does not exclude match-fixing from those competitions, too. Fortunately, the ban usually does not involve the prohibition on televising such competitions.

<sup>469</sup> Articles 180.50 and 180.51 NY PL.

object involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest with the aim to influence the outcome of a sports competition. This description is also very broad and deals with a wide array of actions, participants, animals and technical preconditions for a sports competition without bribery, but with a limited goal to influence the result of the sports contest. As much as such a provision is important for fighting match-fixing in cases where it is impossible to provide evidence for a bribery related to it, it is certainly too narrow concerning its goal since match-fixers do not go only after the final result of the match but also after many other elements<sup>470</sup> of the match.

The second form - *tampering with a sports contest in the first degree* - is a specific provision which focuses on several different actions with the aim of influencing the outcome of a pari-mutuel horse race.

In the area of jurisdiction at the federal level, the territoriality principle applies, with some additional elements<sup>471</sup> of active and passive personality principles of jurisdiction. At the level of the New York State, the territoriality principle applies with some extra-territorial elements, but requiring some links with the territory or legislation of the State. Participatory acts and organized criminality related to the mentioned offences are covered. Only sanctions provided for tampering with a sports contest in the second degree in the State of New York are not high enough to serve as a basis for the application of the provisions of the UNTOC. In all the abovementioned offences, legal persons can be held criminally liable, and whistleblowers and witnesses can be protected. Anti-money laundering measures may be applied in all offences mentioned above and special investigative techniques can also be applied. There is only one exception, namely the investigation of tampering with a sports contest in the State of New York where there are no possibilities to apply those techniques.

The United States has ratified the UNCAC on 30 October 2006.

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<sup>470</sup> The course of the match, number of goals scored, timing of goals etc.

<sup>471</sup> “Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States” is included in the jurisdictional rules in 18 USC Sec. 7.

### **2.1.19.3.2 Fraud**

At the federal level, two forms of fraud are of interest for the purposes of the study: mail fraud<sup>472</sup> and fraud by wire, radio, or television<sup>473</sup>. In both cases, the description of the fraudulent activities is broad enough to cover match-fixing, but those activities have to be related either to the post or interstate carrier or to the wire, radio or television communication in interstate or foreign commerce. In practical terms, such definition covers any use of post or modern forms of communication in conducting the offence of fraud. Since it is hard to believe that all of the mentioned forms of communication can be left out in the process of conducting any type of match-fixing, there are very narrow possibilities for the perpetrators to get away without breaching this Section of the USC in cases of match-fixing without bribery.

In the area of jurisdiction, the territoriality principle applies, with some additional elements<sup>474</sup> of the active and passive personality principles. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for both criminal offences are high enough to serve as a basis for the application of the provisions of the UNTOC. Legal persons can be held liable for these offences. Protective measures are in place for whistleblowers and witnesses. Anti-money laundering measures and special investigative techniques may be applied.

### **2.1.19.3.3 Illegal/irregular gambling**

The offence of *Transmission of wagering information*<sup>475</sup> at the federal level covers the misuse of insider information and some other activities<sup>476</sup> in the area of betting or wagering on any sporting event or contest by anybody being engaged in the business of betting or wagering.

Two offences of *Impairing the integrity of a pari-mutuel betting system*<sup>477</sup> at the level of the New York State cover specific forms of fraud in the pari-mutuel betting system, which are committed if someone interferes with any equipment or device or deliberately causes any

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<sup>472</sup> 18 USC Sec. 1341.

<sup>473</sup> 18 USC Sec. 1343.

<sup>474</sup> “Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States” is included in the jurisdictional rules in 18 USC Sec. 7.

<sup>475</sup> 18 USC Sec. 1081.

<sup>476</sup> The transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers.

<sup>477</sup> Articles 180.52 and 180.53 NY PL.

false, inaccurate, delayed or unauthorized data with the intent to ensure any payment for himself or for a third person or with the intent to defraud any person. Part of the provisions contained in articles 180.52 and 180.53<sup>478</sup> USC may also be understood as covering match-fixing.

In the area of jurisdiction at the federal level, the territoriality principle applies, with some additional elements<sup>479</sup> of active and passive personality principles. At the level of the New York State, the territoriality principle applies with some extra-territorial elements, but requiring some links with the territory or legislation of the State. Participatory acts and forms of organized criminality are subject to adequate sanctions. Sanctions provided for both criminal offences at the New York State level are high enough to serve as a basis for the application of the provisions of the UNTOC. This is not the case with the sanction for the offence of *Transmission of wagering information* at the federal level. Legal persons can be held liable for these offences. Protective measures are available for whistleblowers and witnesses. Anti-money laundering measures may be applied. Special investigative techniques can be applied for the offence of *Transmission of wagering information* at the federal level, but not for the offence of *Impairing the integrity of a pari-mutuel betting system* at the level of the New York State.

#### **2.2.19.4 Conclusion**

Authorities in the United States have identified match-fixing as a serious threat and introduced special incriminations on it, at the federal level and also in the State of New York, which was selected for the purposes of this analysis. There is no guarantee, though, that other US states have also followed the same approach.

The incrimination of match-fixing at the federal level is slightly hampered due to the division of legislative powers between the federal and the state level. This can be seen in relation to the necessary linkages of sports bribery<sup>480</sup> with the transportation and communication

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<sup>478</sup> *Who causes any false, inaccurate, delayed or unauthorized data, impulse or signal to be fed into, or transmitted over, or registered in or displayed upon any equipment or device used in connection with pari-mutuel betting.*

<sup>479</sup> *Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States* is included in the jurisdictional rules in 18 USC Sec. 7.

<sup>480</sup> Bribery in Sporting Contest, 18 USC Sec.224.

facilities in the interstate or foreign commerce. Nevertheless, the definition of sports bribery is broad enough to enable coverage of the vast majority of forms of bribe-related match-fixing at the interstate and international level. What is not covered through the specific incrimination at the federal level are cases of match-fixing without bribes involved and, normally, cases of match-fixing at the state level. The first problem is, to a certain extent, addressed by a possible<sup>481</sup> application of criminal offences of fraud<sup>482</sup>, which cover all occurrences of match-fixing without bribes at the interstate and international level.

At the state level, the State of New York has explicitly incriminated bribe-related match-fixing<sup>483</sup>, as well as match-fixing without bribes involved<sup>484</sup>. The abovementioned provisions provide a solid basis for the effective fight against match-fixing and only some minor obstacles are encountered in their application. The provisions on bribe-related match-fixing only protect sports contests viewed by the public<sup>485</sup> and the provisions on match-fixing without the involvement of bribery incriminate actions influencing the final result of the competition only<sup>486</sup>. These obstacles are not highly important since in practice such cases do not happen regularly.

In the area of irregular bribes, the legislation at the federal level protects the integrity of betting and wagering against the misuse of insider information<sup>487</sup> by anyone being engaged in the business of betting or wagering. The State of New York legislation protects the integrity of betting operations as such<sup>488</sup> - against match-fixing, too.

The substantial legal framework on match-fixing in the United States offers very solid grounds for effective action by the competent authorities. In addition, other important provisions round up these grounds. In all cases, the jurisdictional principle of territoriality, with some extra-territorial elements, applies. Legal persons can be held liable, whistleblowers and witnesses can be protected and anti-money laundering measures may be applied. Only

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<sup>481</sup> The relationship between the specific incrimination of match-fixing and the “auxiliary” use of fraud for the purposes of fighting match-fixing does not seem to be very clear.

<sup>482</sup> 18 USC Sec. 1341, 18 USC Sec. 1343.

<sup>483</sup> Articles 180.40 NY PL and 180.45 NY PL.

<sup>484</sup> Articles 180.50 and 180.51 NY PL.

<sup>485</sup> Which may not always be the case since this is a sort of sanction applied by some sports organizations.

<sup>486</sup> Which does not have to be the only thing offered for betting.

<sup>487</sup> 18 USC Sec. 1081.

<sup>488</sup> Articles 180.52 and 180.53 NY FL.

sanctions provided for the offence of *Transmission of wagering information*<sup>489</sup> at the federal level and sanctions provided for the offence of *Tampering with a sports contest in the second degree*<sup>490</sup> in the State of New York are not high enough to serve as a basis for the application of the provisions of the UNTOC. Investigative techniques are not used in the investigation of offences tampering with a sports contest and the offences of impairing the integrity of a pari-mutuel betting system, both in the State of New York. This, however, does not affect the general conclusion that the U.S. criminal law system provides a solid framework of legal responses to match-fixing.

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<sup>489</sup> 18 USC Sec. 1081.

<sup>490</sup> Article 180.50 NY PL.

## 2.1.20 EUROPEAN STATES – OVERVIEW

The issue of match-fixing is high on the agenda of European institutions. In 2011, the Council of Europe has adopted a “Recommendation on promotion of the integrity of sport against manipulation of sports results”, the European Union Council the “Conclusions on combating match-fixing”, and the European Parliament the “Resolution on the European Dimension of Sport”.

As part of the feasibility study on a possible convention against match-fixing<sup>491</sup>, the Council of Europe in 2012 has also conducted a survey and collected information on the criminal laws from 29 of its member states. The compendium of the answers was published as a working document and the analysis of the answers by the CDPC - European Committee on Crime Problems, the Council of Europe committee in charge of crime issues - was also reproduced<sup>492</sup>. The feasibility Study itself dealt with several features of possible convention, which would not have a predominantly criminal-law character<sup>493</sup>: scope of a possible convention, co-operation platform for fighting match-fixing, basic principles on the organization of the betting market, fight against illegal betting, harmonization of preventive measures and legislation, facilitation of harmonization of disciplinary regulations of sports organizations, promotion and support of measures to be taken by the sports movements, setting up a frame for the betting market, support of measures to be taken by betting operators, development of international cooperation, combination of disciplinary, administrative and criminal sanctions, jurisdiction, investigative means, cyber criminality in the area of sport, establishment of a follow-up to the Convention, including monitoring of its implementation and a Conventional Committee.

In order to analyze the existing criminal-law provisions on match-fixing in 27 EU Member States, the European Commission has ordered and funded a special study<sup>494</sup> in 2011 (hereinafter: the Study). The Study was published in March 2012 and deals with analysis of criminal law provisions in the EU Member States with a special emphasis on sporting fraud

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<sup>491</sup> No. MSL12 (2012) 4.

<sup>492</sup> As information documents EPAS(2012)INF04, EPAS(2012)INF05.

<sup>493</sup> Due to the fact that majority of European countries were of the opinion that there is no need for new criminal-law provisions to incriminate match-fixing (but more the need to amend the existing ones).

<sup>494</sup> KEA European Affairs: Match-fixing in sport, A mapping of criminal law provisions in EU 27, March 2012.

and match-fixing. Despite some serious constraints<sup>495</sup>, the Study gives an accurate and exhaustive description of applicable criminal-law anti-match-fixing provisions in the EU Member States, identifies loopholes and recommends possible EU actions against match-fixing in the future. The Study also reaches a conclusion – not undisputed – that the existing international conventions do not ensure effective fight against match-fixing.

The Study analyzes different definitions of match-fixing<sup>496</sup> and for its purposes reaches out to the definition of match-fixing as given by the Council of Europe Recommendation on promotion of the integrity of sport against manipulation of sports results: *The manipulation of sports results covers the arrangement on an irregular alteration of the course or the result of a sporting competition or any of its particular events (e.g. matches, races,..) in order to obtain financial advantage, for oneself or for other, and remove all or part of the uncertainty normally associated with the results of a competition.*

The Study, not surprisingly, comes to the conclusion that the EU criminal-law picture on match-fixing is “far from uniform”. It ranges from general offences referred to in a common law or criminal codes to specific and very detailed provisions dealing with sport offences. Generally, EU countries can be divided into four different groups with regards to match-fixing: the first group of countries deals with match-fixing as a form of corruption, the second group of countries deals with it as a form of fraud, the third group of countries refers to match-fixing as cheating at gambling, while the fourth group of countries<sup>497</sup> has introduced specific sport offences.

There are at least seven countries<sup>498</sup> dealing with match-fixing as a form of corruption, at least twelve countries<sup>499</sup> dealing with match-fixing as a form of fraud<sup>500</sup>. Only one country deals with match-fixing as a form of cheating at gambling. At least nine countries deal with match-

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<sup>495</sup> Such as the small amounts of reliable information provided in the questionnaires developed for the study, lack of academic literature on the issue of match-fixing.

<sup>496</sup> The one from Gorse and Chadwick (2011), the one from the Australian Sport Minister (2011) and the one from the Council of Europe Recommendation.

<sup>497</sup> Bulgaria, Cyprus, France, Greece, Italy, Malta, Poland, Portugal and Spain.

<sup>498</sup> Belgium, Czech Republic, Finland, Luxembourg, Romania, Slovakia, Sweden (Sweden is planning to introduce in 2012 a specific criminal offence of match-fixing related to betting).

<sup>499</sup> Austria, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, The Netherlands, Slovakia and Slovenia.

<sup>500</sup> Finland applies both types – corruption and fraud – provisions.

fixing in a form of specific criminal offences, although in three different ways: as sport corruption being part of general criminal codes<sup>501</sup>, as sport corruption being part of general sports laws<sup>502</sup>, and as sport offences being part of sport criminal laws<sup>503</sup>.

It would not be rational to expect that such diversity of solutions would ensure consistent and comprehensive response to the problem of match-fixing in the EU. In addition, several other serious problems were identified by the Study:

- When dealing with match-fixing in a form of corruption offences, some requirements of the existing provisions would be extremely difficult to be fulfilled, i.e. subjective elements concerning the scope of the offence, as well as requirements in relation to a specific position of suspects<sup>504</sup>;
- When dealing with match-fixing in a form of fraud, there is a significant deficiency in proving the links between the manipulation, benefit, and damage;
- Specific match-fixing offences sometimes carry very low penalties<sup>505</sup> or they do not cover all possible instances of match-fixing<sup>506</sup>;
- The lack of unified or at least converged approaches to criminalization causes serious problems in the area of international cooperation;
- There are substantial differences in the area of sanctions provided for the basic forms of criminal offences. Maximum sanctions for corruption vary from 2 to 15 years, for fraud they vary from 2 to 13 years, and for specific match-fixing offences sanctions vary from 6 months to 8 years. The problem is addressed, to a certain extent, by taking into account aggravating circumstances, including the ones on organized criminality.

With the aim to improve the effectiveness of the existing legal framework and its successful implementation in practice, the Study also contains a series of recommendations. According to the Study, it is necessary to:

- actively involve EU in the Council of Europe's negotiations on the future anti-match-fixing convention;

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<sup>501</sup> Bulgaria, France, Spain.

<sup>502</sup> Cyprus, Greece, Poland.

<sup>503</sup> Italy, Malta, Portugal.

<sup>504</sup> They have to be afforded a managerial or employee's status.

<sup>505</sup> In Greece, the maximum penalty is 6 months.

<sup>506</sup> Betting related cases involving non-professional sports in Spain.

- adopt a definition of match-fixing and ensure that the EU Member States have an effective legal framework in this area;
- expand the scope of the Framework Decision<sup>507</sup> on private corruption;
- impose monitoring obligations in the area of possible money laundering for betting operators;
- introduce new European sports crimes;
- encourage disciplinary rules and proceedings and better collaboration of sports organizations with law enforcement agencies and betting operators;
- encourage cooperation of EUROPOL and EUROJUST;
- reinforce international cooperation by promoting international agreements on mutual legal assistance and including a reference to integrity of sports;
- set-up a platform for exchange of information and best practices;
- raise awareness about the problem of match-fixing;
- explore the link between betting related provisions and the integrity of sport; and
- collect more data on related issues.

The results of the Study clearly demonstrate that even within the EU there is no comprehensive legal framework to combat match-fixing and that there is a potential for improvement. The Council of Europe is taking the lead in Europe with its plans to negotiate and possibly adopt a new convention in the area of sports in an effort to facilitate more coordinated action against the phenomenon of match-fixing. It is up to the negotiating States to take into consideration the issues mentioned above so that the final outcome of the negotiation (at the time of drafting the present study it was not evident whether this outcome would finally be a normative instrument or soft law standards) can offer viable solutions and provide for effective counter-measures.

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<sup>507</sup> EU Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

## **2.2 Applicability of the analyzed criminal law provisions of selected jurisdictions in the fight against match-fixing**

Taking into consideration the analysis of the legislation of the 19 jurisdictions covered in the present study, there are four main groups of criminal offences, which are important in the area of suppression of match-fixing:

- specific criminal offences of match-fixing;
- criminal offences of fraud;
- criminal offences of bribery; and
- criminal offences of illegal/irregular gambling.

Despite the lack of several relevant laws or their translation from the original languages, it is possible to identify some common problems and find common solutions for all four groups of these offences. In addition, there is also a need to analyze features which are important for the effective implementation of the relevant legal provisions<sup>508</sup> in the fight against manipulation of sport, including jurisdiction, sanctioning of participatory offences and organized criminality, the applicability of the UNTOC provisions (and, where necessary, the provisions of the UNCAC), the liability of legal persons, the witnesses and whistleblowers protection, the application of anti-money laundering measures and the use of of special investigative techniques.

### **2.2.1 Specific criminal offences of match-fixing**

Out of 19 analyzed jurisdictions, only five have incriminated match-fixing as a specific criminal offence at the state level<sup>509</sup>. Those are Japan, the Republic of Korea, the Russian Federation, South Africa and the United States of America.

There are already substantial differences among the abovementioned jurisdictions:

- they do not cover sports competitions to the same extent, i.e. their coverage varies from professional soccer<sup>510</sup> through professional sports competitions<sup>511</sup>, sports competitions,

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<sup>508</sup> Specific criminal offences of match-fixing or fraud.

<sup>509</sup> There are countries, where there are special criminal offences introduced at the sub-national level (e.g. New South Wales in Australia).

which can be legally betted on<sup>512</sup> to any sporting event<sup>513</sup> or sporting contest<sup>514</sup>, and even to profit-making entertainment competitions<sup>515</sup>;

- they all incriminate active and passive bribery in the area of sports competitions and some of them also prejudicing the fairness of sport<sup>516</sup>, influencing its integrity<sup>517</sup> and even non-reporting of attempted match-fixing<sup>518</sup>;
- the range of persons to which special criminal offences on match-fixing apply varies and sometimes includes a closed list of possible perpetrators<sup>519</sup> (i.e. past, present and future officers and employees of sports organizations, members of the organizations which own sports teams, athletes, managers, coaches, referees, persons authorised to call-off the events,..) and sometimes an open list (“other participants and organizers”, “any person”)<sup>520</sup>;
- the goal of match-fixing also differs, i.e. sometimes it is very specific (“exert influence on the results”)<sup>521</sup>, sometimes very open-ended (“influence a sporting contest”, “fix the match”, “perform an unfair act or not to perform a just act”)<sup>522</sup>, sometimes combined (“threatening or undermining the integrity of a sporting event, including, in any way influencing the run of the play or the outcome of the event”)<sup>523</sup>; and
- the maximum sanctions provided for basic forms of these offences are also quite different, i.e. from two<sup>524</sup>, three<sup>525</sup> or five<sup>526</sup> years of imprisonment to life imprisonment<sup>527</sup>.

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<sup>510</sup> Japan.

<sup>511</sup> Russian Federation.

<sup>512</sup> Korea.

<sup>513</sup> South Africa.

<sup>514</sup> USA.

<sup>515</sup> Russian Federation.

<sup>516</sup> Japan.

<sup>517</sup> South Africa.

<sup>518</sup> South Africa.

<sup>519</sup> In the case of Japan and Korea.

<sup>520</sup> Russian Federation, South Africa and the USA.

<sup>521</sup> Russian Federation.

<sup>522</sup> USA, Japan, Korea.

<sup>523</sup> South Africa.

<sup>524</sup> Russian Federation.

<sup>525</sup> Japan.

<sup>526</sup> USA.

<sup>527</sup> If the sentence for match-fixing in South Africa is imposed by a High Court.

One of the issues arising in the context of the specific incrimination of match-fixing is how to define precisely the constituent elements of the offence. The following variants can be considered:

- To incriminate fixing of matches without the aim to achieve any material benefit;
- To incriminate intentional betting on fixed matches without fixing them,;
- To incriminate fixing of matches based on bribery; and
- To incriminate fixing of matches with the intent to bet on them.

The analysis above clearly shows that there are quite different approaches to this crucial question. While the legislation in Japan and South Africa incriminate match-fixing with or without bribery, the laws in the Republic of Korea, the Russian Federation and the United States incriminate only bribery-related match-fixing. No other variations could be observed in five countries under analysis.

### **2.2.2 Criminal offences of fraud**

All jurisdictions under assessment incriminate fraud and in all cases definitions of this offence are very wide and general, thus enabling their use in the area of match-fixing as well. The most common elements of fraud are the following:

- An element of deception;
- The deception causes mistaken beliefs to victims that there are reasons for transfer of the property to someone else; and
- The victims, acting on the basis of mistaken beliefs, transfer the property to someone else causing material damage to themselves or others.

Other characteristics of the criminal offence of fraud in different national laws are the following:

- The aim of the fraud is always a material one, most often the pecuniary one;
- Usually there are no specific conditions for possible perpetrators<sup>528</sup>,
- Some countries<sup>529</sup> use specific descriptions of victim,;

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<sup>528</sup> Anyone can commit the offence, with some exceptions in the form of aggravated circumstances, i.e. in the Republic of Korea.

<sup>529</sup> E.g. Australia with its Commonwealth Criminal Code Act, requiring a victim of a fraud at a Commonwealth level to be a "Commonwealth entity".

- In the majority of countries<sup>530</sup>, sanctions provided are quite severe<sup>531</sup>; and
- The use of different terminology for fraud may cause inconsistencies in the practical application of related provisions.

The most important problem encountered in the application of criminal offences on fraud in match-fixing cases is a practical one. The perpetrator of the main offence of fraud is always the active participant of the match, an athlete or a sports official influencing the match directly in a fraudulent way. If the altered course or result of the match is also used in illegal or irregular gambling, then persons betting on such match may also be considered as fraudsters, yet the causal link between the fraudulent fixing of the match and fraudulent betting is extremely difficult to prove, especially if no direct links between the two suspects could be proven. Due to the fact that the most serious forms of match-fixing usually involve a larger number of suspects, who are not always directly related to each other, severe difficulties may appear already in the phase of detecting, but also in the phase of investigation of such offences.

According to the current practice and despite some problems identified, provisions on the criminal offence of fraud seem to be the most applicable ones for fighting match-fixing in the absence of specific provisions on match-fixing in the majority of the jurisdictions under scrutiny. However, this is a solution which, due to possible problems in practical application may raise some doubts on its appropriateness for the full and comprehensive incrimination, investigation, and prosecution of all possible cases of match-fixing.

### **2.2.3 Criminal offences of bribery**

In the area of criminal offences of bribery, the conducted analysis in the 19 jurisdictions shows the following:

- All jurisdictions criminalize public sector bribery;
- In some jurisdictions<sup>532</sup>, public sector bribery is limited to specific categories of public officials;

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<sup>530</sup> With the exception of Qatar, Thailand and UAE.

<sup>531</sup> At least 4 years of imprisonment.

<sup>532</sup> Canada, Japan, New Zealand.

- The public sector bribery offences in federal countries are usually limited to federal officials at the state level, whereas other categories of public officials are covered by their entities' legislation<sup>533</sup>;
- Trading in influence is sometimes limited to its passive form<sup>534</sup>;
- In several jurisdictions, private sector bribery is not incriminated<sup>535</sup>;
- There are jurisdictions<sup>536</sup>, where the offence of active private sector bribery is not established;
- There are jurisdictions<sup>537</sup>, where the incrimination of private sector bribery has a narrow scope of application;
- In one jurisdiction<sup>538</sup>, the provisions on bribery in the public sector were simply “extended” to sport by means of legislative inclusion of sports bodies into the group of public bodies;
- In some jurisdictions<sup>539</sup>, the definitions of bribe do not encompass all possible types of “benefit” or “undue advantage”;
- The penalties for bribery offences differ significantly, they can even reach to the capital punishment<sup>540</sup>.

Several serious problems may appear when applying national anti-bribery provisions in the fight against match-fixing:

- Usually the most comprehensive incriminations exist for the public sector bribery, whereas sport most often does not fit into public sector;
- Activities of intermediaries in the public sector bribery are not always incriminated in the required<sup>541</sup> format of active and passive trading of influence;

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<sup>533</sup> E.g. Australia.

<sup>534</sup> Argentina, Brazil, UAE.

<sup>535</sup> Argentina, Japan, New Zealand, Qatar, Thailand.

<sup>536</sup> UAE.

<sup>537</sup> Brazil.

<sup>538</sup> Malaysia.

<sup>539</sup> In the Russian Federation, the definition of a bribe may consist of money, securities and other assets or property-related benefits, or else of services normally subject to payment but provided free of charge. As such, a bribe may involve not only tangible assets of any kind, but also intangible benefits (see the executive summary of the UNCAC country review report at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1382896Ae.pdf>). In Ukraine, the 2011 legal amendments introduced the concept of “illegal benefit” into the CC provisions on private sector bribery and trading in influence (see the executive summary of the UNCAC country review report at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1257230e.pdf>).

<sup>540</sup> China - if the circumstances in passive bribery of public official are “especially serious”.

- Private sector bribery, which could be the most applicable criminal offence for bribery in sport, is not always criminalized; and
- Even existing incriminations of private sector bribery are sometimes too narrow to cover all possible forms of bribery-related match-fixing.

Based on the findings above, it can be concluded that the national provisions on the criminalization of bribery do not offer comprehensive solutions for the incrimination of bribery-related match-fixing and are, typically, not applicable in cases of match-fixing without bribery involved.

#### **2.2.4 Criminal offences of illegal/irregular gambling**

According to the definitions given in Chapter 1, “illegal betting” is to be understood as all types of betting that are not allowed on a specific territory or jurisdiction and “irregular betting” is to be understood as legal betting on matches influenced by match-fixing.

Common features on gambling in the legislation of the 19 jurisdictions under analysis are the following:

- Some jurisdictions have specific legislation on gambling in place<sup>542</sup> and some deal with offences of gambling in their criminal codes<sup>543</sup>;
- Other jurisdictions deal with gambling in their sports laws<sup>544</sup>;
- Some jurisdictions regulate legal and illegal gambling by mainly following the principle that gambling is generally prohibited – with numerous exceptions<sup>545</sup>;
- Several jurisdictions have a ban on gambling<sup>546</sup> or on specific activities related to gambling, mostly on the organization of gambling<sup>547</sup>;
- The majority of the jurisdictions do not incriminate irregular gambling, while others do so in a form of “cheating at play”<sup>548</sup>, “cheating at gambling”<sup>549</sup>, “corrupt activities relating to gambling”<sup>550</sup>, “transmission of wagering information”<sup>551</sup>;

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<sup>541</sup> By international conventions.

<sup>542</sup> Australia, Hong Kong, Malaysia, New Zealand.

<sup>543</sup> Canada, China, Japan, Nigeria, Qatar, Republic of Korea, Russian Federation, South Africa, Ukraine, USA.

<sup>544</sup> Japan.

<sup>545</sup> Australia, Canada, Japan (both, in the Penal Code and in the Sports Promotion Lottery Law), New Zealand.

<sup>546</sup> Malaysia, Qatar, Korea, UAE.

<sup>547</sup> China, Nigeria.

<sup>548</sup> Canada.

- Some jurisdictions<sup>552</sup> explicitly mention sports bets in their provisions on gambling, while others do not make such reference;
- Some jurisdictions explicitly prohibit betting for all athletes or sports officials of the sporting events and for individuals involved in the organization of legal betting<sup>553</sup>;
- A number of jurisdictions have just recently introduced specific criminal offences on gambling<sup>554</sup>;
- For some countries, it was not possible to acquire relevant information on provisions on gambling<sup>555</sup>.

Solutions in the area of criminalization of illegal or irregular gambling differ. National approaches are divergent, first of all, on the format of gambling provisions. Sometimes a specific law exists, while in other cases these provisions are included in criminal codes and occasionally even in the sports laws. Beyond any doubt, countries' cultural differences or similarities also play a significant role<sup>556</sup>.

Gambling on sport events is not always explicitly mentioned and it is obvious that in certain countries this feature is a consequence of the newest developments in the area of sport related to match-fixing.

Provisions on the illegality of gambling are quite often in the form of a complete ban on gambling and occasionally in a form of a general prohibition, softened by numerous exceptions. These prohibitions may be given in a very specific form directed exclusively to gambling, or in a more general form through a prohibition of illegal operations of all legal persons in all areas.

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<sup>549</sup> Hong Kong.

<sup>550</sup> South Africa has a criminal offence on bribery-related and non-bribery-related "undermining integrity" of gambling as a specific form of fraud at gambling (Section 16 PCCAA 2004).

<sup>551</sup> USA 18 USC Section 1081 can also be interpreted in a way which sanctions transmission of information on a fixed match.

<sup>552</sup> Australia, Canada, Japan, Malaysia, New Zealand, Nigeria.

<sup>553</sup> Japan.

<sup>554</sup> Russian Federation, Ukraine.

<sup>555</sup> Argentina, Brazil, Thailand, Trinidad and Tobago.

<sup>556</sup> Similar solutions (in some areas) in Russian Federation and Ukraine or in Malaysia, Qatar and UAE.

Incriminations of irregular gambling are very seldom and given in very different ways. These incriminations are very close to the idea of prohibition of gambling on fixed matches as a specific form of fraud, sometimes even related to bribery.

Finding comprehensive or maybe even unified solutions for match-fixing-related gambling may be extremely difficult – in the area of illegal gambling and even more in the area of irregular gambling.

Gambling, by athletes and/or sports officials and/or employees of betting operators, which does not involve match-fixing in the majority of countries is not subject of a criminal responsibility but of a disciplinary one<sup>557</sup>.

At first glance, it seems that countries, which absolutely prohibit any kind of gambling are in the best position, since possible fixed matches cannot have a follow-up in fraudulent betting. Nevertheless, this is the case within individual States only. However, there are usually no barriers in place to prohibit external<sup>558</sup> betting on matches in a country where there is no knowledge of the betting.

Ways of dealing with the problem of match-fixing-related betting can differentiate, but the following general principles may help in building a comprehensive system of provisions, which should decrease the threat of match-fixing and its misuse in the area of gambling:

- Jurisdictions with absolute ban on gambling should not be forced to change this position;
- Jurisdictions allowing gambling should clearly define which forms of gambling are legal and which are not;
- Within the framework of legal gambling, the national legislator should define incidences of irregular betting and its possible forms, i.e. match-fixing, bribery, fraud, misuse of internal information;
- Criminalisation in a form of criminal offences of gambling without match-fixing involved by athletes and/or sports officials and/or employees of betting operators should be dealt with extreme caution or even avoided.

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<sup>557</sup> Of sports organizations.

<sup>558</sup> From other countries.

### 2.2.5 Important features for the implementation of match-fixing related incriminations

Substantial provisions on match-fixing are very important, yet not enough to ensure effective fight against this phenomenon. Therefore, it is essential to analyze some other elements of the jurisdictions covered in the present study to assess the real value of the most important provisions directly or indirectly linked to match-fixing: existing specific criminal offences on match-fixing and - in their absence - criminal provisions on fraud. As points of reference, provisions of the most applicable<sup>559</sup> international conventions in this area, the UNTOC and the UNCAC, are also mentioned, where appropriate.

#### 2.2.5.1 Jurisdiction

All countries under analysis have introduced at least the territoriality principle of jurisdiction. Some of them<sup>560</sup> also apply the active personality principle, usually connected with two conditions, *ne bis in idem* and double criminality.

There is a smaller group of countries, which in addition to the territoriality and the active personality principles, also apply the passive personality principle<sup>561</sup> and some countries even apply a universal principle of jurisdiction<sup>562</sup>.

The provisions on jurisdictional principles provide different possibilities for effective fight against international match-fixing. Although they fulfil the requirements set forth in the first paragraph of Article 15 of the UNTOC<sup>563</sup>, countries<sup>564</sup> that only apply territorial principle can be weak links in international cooperation to combat manipulation of sports results, which is

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<sup>559</sup> See below, Chapter 3.

<sup>560</sup> Argentina, Brazil, Canada, China, Nigeria, Republic of Korea, Russian Federation, Thailand, Ukraine, UAE and USA.

<sup>561</sup> China, Thailand, USA.

<sup>562</sup> Australia, Hong Kong, Qatar (in a limited form), Trinidad and Tobago.

<sup>563</sup> *Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:*

(a) *The offence is committed in the territory of that State Party; or*

(b) *The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

<sup>564</sup> Japan, Malaysia, New Zealand.

easy to be recognized in view of paragraph 3 of the same Article<sup>565</sup>. In the situation where countries decline extradition solely on the basis that the alleged offender is one of their nationals, they are not in position to start prosecution against him/her for any of match-fixing offences committed abroad, as required by Paragraph 10 Article 16 of UNTOC. All other countries have much more potential to be effectively included in the international efforts against it.

Similar remarks can be made with regard to the corresponding provisions of Article 42 of the UNCAC.

### **2.2.5.2 Sanctioning of participatory acts and organized criminality**

In all country cases covered by the present study, participatory acts are sanctioned. What differs are only the terms used, i.e. instigating, aiding, counselling, procurement, co-perpetrating, accessory after the fact, conspiracy. There are also differences in the form of criminalization and in the level of sanctions, but not to the extent that the effective prosecution of these offences is hampered.

Countries also incriminate different forms of organized criminality, where usually three to four different levels of sanctions apply: for the conspiracy itself, for the participation in an organized criminal group, for the organization and/or leadership of such group, and for committing criminal offences within the framework of such group. From this point of view, there are also no problems in relation to the fulfilment of conditions for “participation in the organized criminal group” set forth in Article 5 of the UNTOC and for effective prosecution of match-fixing or fraud. There is one exception<sup>566</sup>, where the sanctioning of organized criminal activities depends on a list of different aims, which are provided as conditions to consider a group of perpetrators as an organized criminal group.

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<sup>565</sup> *For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

<sup>566</sup> See Article 180 of the UAE Penal Code, which does not leave much room for prosecution of match-fixing in an organized criminal group.

### **2.2.5.3 Applicability of the United Nations Convention against Transnational Organized Crime**

Countries usually express their opinion on the danger of different criminal offences through sanctions provided for them. There are many different reasons for different levels of sanctioning, but more countries apply sanctions for match-fixing and fraud, which are high enough<sup>567</sup> to enable the use of the UNTOC provision on “serious crime” (Article 2, subparagraph (b)).

There is a smaller number of jurisdictions that in cases of fraud with lower damage<sup>568</sup> do not apply sanctions, which would enable qualification of those offences as “serious crimes”.

Two jurisdictions with specific criminal offences on match-fixing only in some cases provide sanctions high enough to apply the UNTOC<sup>569</sup>.

There are also certain jurisdictions, where sanctions are generally not high enough to allow for the application of the UNTOC<sup>570</sup>.

Although it is an extremely technical issue and fully dependent on a general criminal policy of the country, the level of sanctioning in some of the analyzed jurisdictions clearly does not satisfy the requirements for the application of Article 2, subparagraph (b) of the UNTOC on “serious crime”. Therefore it may seriously hamper the use of this convention for fostering international cooperation in the area of match-fixing.

A more detailed analysis on the applicability of the requirements and provisions of the UNTOC in match-fixing cases will follow under section (3.3) of the present study.

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<sup>567</sup> Maximum sanction of at least 4 years of imprisonment.

<sup>568</sup> Canada: 5000 USD and less, China: “relatively large”, New Zealand: 1000 USD and less.

<sup>569</sup> Japan in the case of passive bribery and in the case of performing unjust act or failing to perform just act; and Russian Federation in the case of active bribery committed in an organized manner.

<sup>570</sup> Qatar, Thailand, UAE.

#### 2.2.5.4 Liability of legal persons

Article 10 of the UNTOC and Article 26 of the UNCAC require that States parties adopt such measures as may be necessary to establish the liability of legal persons for participation in the offences covered by the two conventions.

The obligation to provide for the liability of legal entities is mandatory, to the extent that this is consistent with each State's legal principles. There is no obligation, however, to establish criminal liability in view of the divergent approaches followed in different legal traditions. Civil or administrative forms of liability for legal entities are sufficient to meet the requirement set forth in articles 10 of the UNTOC and 26 of the UNCAC respectively. Nevertheless, whatever form it takes, the liability of legal persons shall not affect the criminal liability of the natural persons who have committed the offences. In addition, States parties have an obligation to provide for effective, proportionate and dissuasive sanctions, which may be criminal on non-criminal and may also include monetary sanctions.

The approaches adopted by common and civil law jurisdictions on the issue of criminal liability of legal persons differed notably over the years. The first attempts to impose corporate criminal liability were taken by common law countries following standing principles in tort law. In doing so and at the jurisprudence level, the English courts, for example, followed the doctrine of *vicarious liability*, in which the acts of a subordinate are attributed to the corporation.

On the other hand, the incorporation of corporate criminal liability into the criminal codes of civil law jurisdictions has met a wide range of criticism, because the continental European legal systems are based on the principle of individual guilt. The principle that corporations cannot commit crimes (*societas delinquere non potest*) was widely accepted.

Nevertheless, the fact that crime has shifted from almost solely individual perpetrators to white-collar crimes on an increasing scale and that criminal activities have rapidly become transnational in nature have contributed over the last years to a substantial development: the traditional debate on whether legal entities can bear criminal responsibility has now shifted more widely to the question of how to define and regulate such responsibility.

That was in recognition of the fact that serious and sophisticated crime is frequently committed by, through or under the cover of legal entities, such as companies, corporations or charitable organizations. Complex corporate structures can effectively hide the origin of proceeds of crime or clients or specific transactions related to serious crimes, including transnational organized crime. Moreover, in the context of globalization, international corporations play an important role and decision-making processes within such corporations have become increasingly sophisticated, making it difficult to say who exactly is responsible or liable. Even when such a determination may be possible, individual executives may reside outside the State where the offence was committed and the responsibility of specific individuals may be difficult to prove. Thus, the view has been gaining ground that the only way to have in place appropriate shields against serious crime is to introduce the concept of liability of legal entities that may also be of criminal nature. Criminal liability of a legal entity may also have a deterrent effect, partly because reputational damage and monetary sanctions can be very costly and partly because it may act as a catalyst for more effective management and supervisory structures to ensure compliance with the law.

In view of the above, the inclusion of Article 10 in the text of the UNTOC and Article 26 in the text of the UNCAC demonstrates a significant development in international criminal law and, in addition, can further support effective mutual legal assistance on the basis of the two conventions in relation to offences for which a legal person may be held liable (see Article 18, paragraph 2, of the UNTOC and Article 46, paragraph 2, of the UNCAC).

Although not such an old concept, the liability of legal persons has been recognized in many of the analyzed jurisdictions.<sup>571</sup> For some countries<sup>572</sup>, no provisions on criminal liability of

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<sup>571</sup> For example, under general legal principles, the United States may hold legal persons criminally responsible, as it does for individuals. A corporation is held accountable for the unlawful acts of its officers, employees and agents when these persons act within the scope of their duties and for the benefit of the corporation. The corporation is generally liable for acts of its employees with the exception of acts which are outside the employee's assigned duties or are contrary to the company's interests, or where the employee actively hides the activities from the employer. The criminal responsibility of the legal person is engaged by the act of any corporate employee, not merely high-level executives. The sanctions against legal persons, which may be criminal, civil or administrative, can further be mitigated if an effective compliance programme is already in place. See the executive summary of the review of implementation of the UNCAC at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1251970e.pdf>.

In Australia, the Crimes Act provides that a law of the Commonwealth relating to indictable offences shall, unless the contrary intention appears, refer to bodies corporate as well as to natural persons. This provision makes bodies corporate subject to many offences, and affects the sentence that can be imposed on a corporation, including criminal, civil and/or administrative sanctions. See the executive summary of the review of

legal persons were found, but measure to ensure the establishment of civil and/or administrative liability are in place.

In view of the fact that legal persons are increasingly (mis)used as a cover-up for various illegal activities, such as channelling and laundering illicit proceeds of criminal offences, but also specifically in the field of match-fixing, it is recommended that each State take measures to establish the criminal liability of legal persons, if such an option is consistent with the fundamental principles of the domestic legal system.

### 2.2.5.5 Whistleblowers protection

Criminal offences which do not leave any material track behind, are extremely difficult to be detected, investigated and proved. This is a common difficulty encountered in corruption cases, but also in cases of match-fixing. In addition, there are no obvious victims or it may be possible that such victims even do not know that they have been victimized. In many cases, there is no other way for the law enforcement agencies to gain knowledge and collect evidence about related criminal arrangements, mostly based on series of agreements, than through a report or a complaint on such behaviour. In order to motivate participants of criminal offences, or individuals in general, to report on those offences, i.e. to blow the whistle, three conditions have to be fulfilled:

- Potential whistleblowers have to be familiar with the possibility to blow the whistle;
- Mechanisms to enable whistleblowing should be in place; and

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implementation of the UNCAC at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1253616e.pdf>.

In South Africa, Section 2 of the Interpretation Act (1957) states that “person” includes: (a) any company incorporated or registered as such under any law; or (b) any persons natural or legal. Section 2(5) of the PRECCA defines person to include the person in the private sector. Section 1(xx) of the PRECCA defines “private sector” to include all persons or entities, including businesses, corporations or other legal persons. See the executive summary of the review at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1257446e.pdf>.

In Malaysia, the criminal liability of legal person exists. According to the Interpretation Act, the term “person” generally includes a body of persons, corporate or incorporated. Section 11 of the Penal Code defines “person” to “include ... (b) any company or association or body of persons whether incorporated or not”. However, the limited application of those provisions was noted in the context of the review process for the implementation of the UNCAC. See the executive summary of the review at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1383920e.pdf>.

<sup>572</sup> Argentina, Brazil, Republic of Korea, Russian Federation, Ukraine.

- Whistleblowers should be protected against any retaliatory measures after blowing the whistle.

The inclusion of provisions in international instruments on the protection of whistleblowers is a quite recent trend and development in international criminal law. The UNTOC does not make reference to related protective measures, but the UNCAC calls States parties to consider the protection of reporting persons (Article 33)<sup>573</sup>. International evaluation mechanisms in different areas<sup>574</sup> also show that there are only few countries, which comply with all three conditions mentioned above and have established truly comprehensive systems for whistleblowers' protection<sup>575</sup>. This can be observed also in the area under analysis.

There are jurisdictions<sup>576</sup>, where no provisions on whistleblowers' protection were found, while in other jurisdictions such provisions exist, but they offer only limited protection, i.e. only the identity of whistleblowers is protected<sup>577</sup> or protective measures depend on the nature of the criminal offence reported<sup>578</sup>. The legislation in some jurisdictions protect whistleblowers, although, in order to ensure the rights of the accused, they do not allow for anonymous witnessing<sup>579</sup>.

In the absence of more precise requirements on whistleblowers protection in the international conventions and on the basis of the analysis above, it can be concluded that in the majority of the analyzed jurisdictions one or another form of protection of whistleblowers exists. Nevertheless, as there are no unified standards required, those forms differ significantly.

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<sup>573</sup> Despite the optional nature of Article 33 of the UNCAC, it has been acknowledged in several reviews on the implementation of the UNCAC that the adoption and implementation of measures geared towards protecting reporting persons is a significant anti-corruption action which could supplement similar protective measures for witnesses (and victims insofar as they are witnesses).

<sup>574</sup> E.g. GRECO – Group of States against Corruption ([www.coe.int/greco](http://www.coe.int/greco)).

<sup>575</sup> Usually this requires a special law.

<sup>576</sup> Brazil, Qatar, UAE. In Argentina, there is legislation (not structured into a single regulatory body) which provides protection to witnesses and reporting persons in cases of corruption. While the national programme for the protection of witnesses and defendants (Law No. 25.764) lists specific criminal offenses for which protection can be granted, offences applicable in the area of match-fixing are not explicitly included. However, there is a way of coverage through Article 1, paragraph 2, which provides protection in cases not explicitly specified by the law (preliminary findings of the ongoing – at the time of drafting the study – review of Argentina on the implementation of the UNCAC).

<sup>577</sup> Nigeria.

<sup>578</sup> In the Republic of Korea whistleblowers will be protected only if the offence reported is breaching the public interest.

<sup>579</sup> Canada – but there is a possibility for the witness to testify outside of the court room.

### **2.2.5.6 Anti-money laundering measures**

One of the most effective methods in the fight against any form of criminality is the adoption and implementation of measures aimed at ensuring that the perpetrators and their accomplices do not retain proceeds of their criminality. The principle “follow the money” has become one of the most important segments of last conventions against crime<sup>580</sup> and some sort of “mantra” of all investigative and prosecutorial activities. Significant changes in the principles of its implementation can be observed in the last years throughout the world<sup>581</sup>. Anti-money laundering measures, mainly the criminalization of money laundering and the seizure, freezing and confiscation of illicit proceeds, have really proven to be the most effective tool in disassembling organized criminal groups, compensating the victims and abolishing the material grounds for future criminal behaviour.

Therefore it is not surprising that also in the area under analysis almost all countries apply anti-money laundering measures. Of course, a more in-depth analysis may indicate some “traditional” shortfalls<sup>582</sup>, but that would be beyond the goals of this assessment. There are only two jurisdictions which do use additional requirements for the application of anti-money laundering measures in a form of conditions that have to be fulfilled to enable the use of these methods, i.e. offences for which these measures can apply should be part of a “significant criminal activity”<sup>583</sup> or offences, which carry the sanction of imprisonment<sup>584</sup>. However, none of two solutions represents a serious obstacle to the effective application of anti-money laundering measures in the field of match-fixing.

### **2.2.5.7 Application of special investigative techniques**

The detection, investigation and collection of evidence to prove the commission of criminal offences is always a challenging exercise, especially in match-fixing cases. Therefore it is extremely important that law enforcement agencies have proper investigative measures at

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<sup>580</sup> UNTOC: Articles 6,7,12,13,14, UNCAC: Articles 14,23,31, 51-59.

<sup>581</sup> E.g. reversal of the burden of proof for assets of the criminals.

<sup>582</sup> Lists of predicate offences differ from country to country, question of self-laundering, question of relation between the intent and the negligence in money laundering cases.

<sup>583</sup> New Zealand.

<sup>584</sup> Ukraine.

their disposal. The so called “special investigative” techniques<sup>585</sup>, which enable effective investigations have always been subject of a special interest, but also of a special scrutiny due to their intrusive nature which may turn them into a threat for human rights and liberties that is bigger than the threat deriving from the criminal offences for which these methods are applied.

Countries usually do not allow the application of these intrusive methods for all criminal offences. Normally, they set a list, a “catalogue” of criminal offences for which these methods can be applied. There are different criteria for the composition of such a catalogue, but most often the range of sanctions provided for specific criminal offences is an essential element when considering these criteria.

Also, there may be differences among the countries concerning the range of methods which can be applied, sometimes even based on the constitutional grounds<sup>586</sup>.

Nevertheless, international conventions recognize the need for the application of such methods and they call States parties to use them. Indicative reference is made in these conventions to certain special investigative techniques (controlled deliveries, electronic or other forms of surveillance, undercover operations) without exhaustive lists of possible methods<sup>587</sup>.

Since the extent of possible threat of match-fixing has not been recognized just until recently and, therefore, divergent approaches exist among different countries regarding the sanctioning of such conduct, it seems quite logical that the use of these methods varies among the jurisdictions under evaluation.

There are jurisdictions<sup>588</sup> which do not allow for the application of these methods for offences related to match-fixing. Other jurisdictions allow only for the application of certain methods<sup>589</sup> or set substantial conditions for the application of these methods in general<sup>590</sup>.

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<sup>585</sup> Wire-tapping, bugging, secret observations, controlled deliveries, undercover operations, electronic surveillance etc.

<sup>586</sup> For example, some countries are very reluctant to allow bugging but also some other methods.

<sup>587</sup> See Article 20 of the UNTOC and Article 50 of the UNCAC .

<sup>588</sup> Japan (with the exception of undercover investigations), Malaysia, Nigeria (but two bills concerning this issue are pending before the Parliament).

Having in mind that the detection and investigation of match-fixing may well be hampered without the application of special investigative techniques, the fact that the overwhelming majority of jurisdictions allow for their application is a positive indication. With the exception of one jurisdiction, where the range of these methods is really extremely narrow<sup>591</sup>, all other countries are well equipped for the effective suppression of match-fixing through the application of these methods. Then again and notwithstanding the fact that these methods are really needed, they have to be applied with extreme caution in order not to produce more damage (by too excessive intrusion into human rights<sup>590</sup>) than the offences under investigation themselves.

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<sup>589</sup> It seems that in China only seizure of mail and telegrams of the suspect is allowed.

<sup>590</sup> In New Zealand, these methods can be applied for cases where loss caused or the value of what is obtained or sought to be obtained exceeds \$1,000; and in case of participation in a organized criminal group.

<sup>591</sup> China.

### **2.3 Conclusion: lack of comprehensive national legal frameworks to fight match-fixing**

Match-fixing has only recently been recognized as an extremely dangerous criminological phenomenon, endangering not only material interests of sports organizations, athletes, sports officials, ordinary gamblers and gambling operators, but also, far more importantly, the spirit of sport and its values. This can also be acknowledged in the analysis of the legislation of the 19 jurisdictions under scrutiny and in the measures that such jurisdictions are in a position to apply in the detection, investigation and prosecution of match-fixing cases.

Only five jurisdictions out of 19 have criminalized match-fixing in a form of a specific criminal offence, which still raises some serious concerns in different areas. In particular:

- The national laws do not cover the same range of sports competitions,;
- bribery is still considered as the most common criminal offence in this area, while other possible occurrences of match-fixing are legally much less regulated;
- The lists of possible perpetrators are quite different; and
- The goal of incriminated match-fixing is not yet clearly defined and/or harmonized.

Other jurisdictions may use different forms of incriminations of fraud to deal with match-fixing, since in the majority of them these incriminations are defined quite extensively and can serve as a solid legal basis for prosecution of match-fixing. Two difficulties have been reported in this regard: how to establish the causal link between individuals fixing the matches and those earning through betting on fixed matches; and different terminology used in various jurisdictions. However, these difficulties do not seem to be too challenging.

Bribery offences in the 19 analyzed jurisdictions cover more or less adequately public sector corruption, but match-fixing in the majority of cases is linked to the private and not the public sector. Since countries are not obliged to incriminate private-to-private corruption (see article 21 of the UNCAC), this may create loopholes regarding the efforts to combat match-fixing through bribery offences.

There are also major differences in the regulations on gambling in the 19 jurisdictions under scrutiny. In some jurisdictions it is absolutely prohibited, though most of the countries allow for certain forms of it. In those countries, the regulatory framework for legal and illegal gambling is at least in place, while only in four jurisdictions there are certain types of

incriminations which can also be understood as legal norms against irregular betting. Notwithstanding the fact that betting on fixed matches is “only” an accessory offence to match-fixing itself, there will be hardly any positive development without application of at least the same basic principles in the area of gambling: the decision of the national legislator to define legal, illegal and irregular gambling even without harmonizing the substance of those definitions would be an extremely important step forward.

In relation to criminal jurisdiction, there are three countries which only apply the territoriality principle, thus encountering problems of cooperation with other countries to combat match-fixing.

In the area of sanctioning participatory acts and organized criminality, there is one jurisdiction which defines organized crime in an extremely narrow way, thus rendering the application of provisions on organized crime in match-fixing cases difficult.

There are five jurisdictions where sanctions for either specific match-fixing offences or fraud are never, or only in a few very concrete situations, high enough to serve as basis for the application of the relevant provisions of the UNTOC on serious crime and all related provisions. This, in turn, could make the efforts of the competent authorities of those countries against match-fixing ineffective, especially where international cooperation on the basis of the UNTOC is pursued.

At least five jurisdictions do not provide for sanctioning of legal persons for criminal offences of match fixing. In those cases, forms of civil and/or administrative liability of legal persons could be used instead.

Seven jurisdictions either do not provide for the protection of whistleblowers or do it in a limited manner. This may have an impact on the real time detection and investigation of match-fixing are quite limited.

The area of anti-money laundering regulations is the only one where no serious obstacles for the effective fight against match-fixing and against laundering of its proceeds for any of the analyzed jurisdictions have been detected.

In at least five jurisdictions, investigators face serious difficulties while investigating match-fixing since they either have no possibility to use special investigative techniques or they can use only very few of them.

In an attempt to summarize, it can be said that in certain areas of consideration - jurisdiction, sanctioning of participatory offences and organized criminality, applicability of the UNTOC, whistleblowers protection and application of special investigative techniques – certain difficulties are encountered in reaching the optimum of the required standards, which would ensure meaningful application of the substantial anti-match-fixing provisions and effective suppression of this phenomenon.

On the basis of the analysis and findings of the present study, it can be concluded that only in few cases the national legal framework, seems to be comprehensive enough to address the challenges posed by match-fixing in an effective manner. In addition, there are legislative loopholes in many jurisdictions which may seriously hamper the efforts of law enforcement agencies and the judiciary to combat match-fixing both at the national and international levels.

### **3 INTERNATIONAL LEGAL INSTRUMENTS AND MATCH-FIXING**

As mentioned above, match-fixing can be criminalized as a form of corruption offence, fraud, betting-related offence or as a separate and specific criminal offence. Since none of the existing mandatory international legal instruments incriminates match-fixing explicitly, there is an obvious question if the existing provisions of those instruments could be used as a tool for the fight against match-fixing. The study shortly addresses regional legal instruments on corruption, i.e. the Council of Europe Criminal Law Convention on Corruption (ETS 173) with the additional Protocol (ETS 191), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the EU Convention on the Protection of the European Communities' Financial Interests with additional protocols, the EU Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, and the Inter-American Convention against Corruption. Then the study assesses the applicability of the only global anti-corruption legal instrument, the UNCAC, in cases of match-fixing. However, there is also a clear need for a much more thorough assessment of the applicability of the UNTOC in the area of match-fixing (some preliminary references were made earlier in the text under section 2.2.5.3). Concrete chapters of the study are devoted to the analysis of the UNCAC and UNTOC provisions on incriminations, as well as their provisions on some other important elements needed for the effective fight against match-fixing, such as jurisdiction, liability of legal persons, protection of whistleblowers, money laundering, freezing, seizure and confiscation measures and special investigative techniques.

### 3.1 Non-global conventions on corruption and match-fixing

Many conventions exist that deal with the issue of corruption and are not of a global nature, i.e. the Council of Europe Criminal Law Convention on Corruption with the additional Protocol, Council of Europe Civil Law Convention on Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the EU Convention on the Protection of the European Communities' Financial Interests with additional protocols, the EU Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, the Inter American Convention against Corruption, etc. None of these conventions explicitly deals with match-fixing (an ad hoc instrument of the Council of Europe is currently being negotiated). Therefore the applicability of their provisions on different forms of corruption for the fight against match-fixing would have to be assessed.

However, all these conventions have serious shortcomings, which do not enable them to be used as global criminal law tools against corruption. However, some parts of these conventions may be used for future solutions regarding the establishment of a global and effective criminal law front against match-fixing.

The main obstacle why the abovementioned conventions cannot be used as an effective global criminal law tool against match-fixing is that they are obviously geographically limited to the regions, where they have been adopted:

- The Council of Europe conventions are not exclusively<sup>592</sup> limited to the territory of the European continent. However, it still cannot be expected that so many non-European countries, which have not taken part in relevant negotiation processes, would accede to Council of Europe conventions, thus transforming them from regional to global normative instruments;
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is not geographically limited since its State Parties can come from around the world under condition that they are members of the OECD Working Group on Bribery. Since it cannot be expected that all countries will join this working group, Convention can also not be considered as a global tool. Moreover,

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<sup>592</sup> Possibility exists for non-European countries to accede to these conventions, too.

there is an additional and substantial shortcoming: the Convention deals - in combination with other OECD documents<sup>593</sup> – with active bribery of foreign public officials in international business transactions only and, hence, it cannot be used as a global and comprehensive response to the problem of match-fixing;

- The EU Convention on the Protection of the European Communities' Financial Interests with its additional protocols and the EU Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union are – beside some substantial shortcomings – limited to the European Union Member States and, therefore, not applicable in fighting global match-fixing;
- The Inter-American Convention against Corruption is limited to two American continents and is also not applicable globally.

Having in mind the findings above, only the two United Nations conventions, the UNCAC and the UNTOC, can be considered as potential global legal frameworks for consideration in match-fixing cases. A more detailed assessment of the use of these instruments in this context, together with the limitations and the challenges which arise, is contained in the following chapters.

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<sup>593</sup> The OECD Recommendation on Combating Bribery in International Business Transactions, The OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, The OECD Action Statement on Bribery and Officially Supported Export Credits, The OECD Principles of Corporate Governance, The OECD Guidelines for Multinational Enterprises, The OECD Guidelines on Corporate Governance of State-Owned Enterprises, The OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, including Good Practice Guidance on Internal Controls, Ethics, and Compliance.

### **3.2 The United Nations Conventions against Corruption (UNCAC) and match-fixing**

“Match-fixing” can appear in a form of six corruption criminal offences:

- Active and passive bribery in the public sector;
- Active and passive trading in influence; and
- Active and passive bribery in the private sector.

The consideration of match-fixing as a form of corruption offence is based on the presumption that the perpetrators, in their desire to influence the course or result of the match, will offer, promise or give an undue advantage to active participants, namely persons taking part in the match (players, sports officials,..) or persons who can influence active participants of the match. In such a scenario, at least two problems may appear:

- The active participant of the match or his/her intermediary is not given, offered or promised anything (in such instance there will be no case of bribery);
- Betting on fixed matches (unless individuals betting do not have at the same time active role in match-fixing itself) is not covered - those gamblers cannot be punished for bribery and they usually cannot be prosecuted as abettors, aiders or accessories in the framework of bribery offences.

Offering or promising an undue advantage to someone for a specific sort of (in)action usually constitutes a criminal offence of bribery or – under certain circumstances - trading in influence. However, practical problems are linked to the specific nature of sport and its participants. Can they be deemed as persons performing public functions and therefore qualified as “public officials” or not? If the answer is positive, then the provisions of the UNCAC on public sector bribery need to be taken into account. If the response is negative, then the focus should be on the private sector bribery provisions. Nothing, of course, prevents a combined consideration of both clusters of bribery provisions in cases where the persons involved include both officials performing public functions and persons “working in any capacity for a private sector entity.. in the course of economic, financial or commercial activities” (to “borrow” the language used Article 21 of the UNCAC on bribery in the private sector).

### **3.2.1 Match-fixing as possible active and passive bribery in the public sector**

The UNCAC incriminates public sector bribery in the following provisions:

#### Article 15. Bribery of national public officials

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

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

- 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*
- 2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

The main features of these articles are the following ones:

- Article 15 criminalizes in a mandatory manner of the bribery of national public officials;
- Article 16, paragraph 1, establishes as a mandatory criminal offence the active bribery of foreign public officials and officials of public international organizations;

- Article 16, Paragraph 2, establishes as an optional criminal offence the passive bribery of foreign public officials and officials of public international organizations;
- The aim of influencing a national public official in Article 15 is to make him/her acting or refraining from action in the exercise of his/her official duties;
- The aim of influencing a foreign or international public official in paragraph 1 of Article 16 is to make him/her acting or refraining from action in the exercise of his/her official duties in order to obtain or retain business or other undue advantage in relation to the conduct of international business;
- The aim of soliciting or accepting bribes by foreign or international public official in paragraph 2 of Article 16 is to act or refrain from action in the exercise of his/her official duties.

The first Paragraph of Article 16 defines the aim of bribery much more precisely and also more narrowly in scope than the other three analyzed paragraphs, since the (in)action of the official has to be related to the conduct of international business. The application of this definition in the framework of match-fixing through provisions on foreign or international bribery would mandatorily require sports activities to be considered as “international business”, which is unlikely especially in cases where the targets of match-fixers would be national competitions.

The UNCAC also includes definitions of a national, foreign and international “public official” in Article 2, as follows:

*(a) “Public official” shall mean:*

- (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;*
- (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;*
- (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;*

*(b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;*

*(c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization.*

The following elements have to be fulfilled in order to consider a person as a national or foreign public official:

- Either s/he holds legislative, judicial, administrative, or executive office; or
- S/he performs public function or provides public service; or
- S/he is defined as “public official” in the national law.

Since sportsmen<sup>594</sup> do not hold legislative, judicial, administrative or executive office, they can only be considered as public officials if their activity in sport in a specific country is being understood as “public function”, “public service”, or if they are explicitly defined as public officials. Such cases do not appear too often<sup>595</sup>. Therefore, these provisions have only limited applicability in the area of match-fixing.

At first glance, it looks much easier to fight match-fixing related to bribery of international public officials. Paragraph 2 of Article 16 qualifies them not only as “civil servants”, but also as persons who are authorized to act on behalf of public international organizations. The problem is in the use of the word “public”, which means that international sports organizations and associations<sup>596</sup> are not covered by this definition since they are not public (governmental) organizations. Notwithstanding this fact, match-fixing-related bribery of persons representing public international organisations<sup>597</sup> could be easily sanctioned through this provision.

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<sup>594</sup> Athletes and sports officials.

<sup>595</sup> In the jurisprudence, there is only one case from the East European country, which considered soccer referee as performing public function.

<sup>596</sup> IOC, UEFA, FIFA, IAAF.

<sup>597</sup> UN, Council of Europe, EU.

### 3.2.2 Match-fixing as possible trading in influence

The UNCAC defines trading in influence in Article 18:

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

The main features of the Article are the following:

- The criminalization of trading in influence is not mandatory;
- The first paragraph deals with “active” and the second with “passive” trading in influence;
- The person who should use his/her real or supposed influence can be a public official but also any other person; and
- The aim of the envisaged influence is to gain an undue advantage from “an administration or public authority” and those terms have been explained as “an administration, public authority or State authority”<sup>598</sup>.

Although the incrimination of trading in influence is not limited to public officials only, it is obvious that the aim of trading is an advantage from the public sphere. This makes this provision extremely limited in its possible scope for the fight against match-fixing as the aim of match-fixing<sup>599</sup> has usually nothing to do with administration, public authority or State authority.

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<sup>598</sup> Legislative Guide for the Implementation of the United Nations Convention against Corruption, United Nations, New York 2006, p. 101.

<sup>599</sup> An arrangement on an irregular alteration of the course or the result of a sporting competition.

### 3.2.3 Match-fixing as possible active and passive bribery in the private sector

In the majority of the jurisdictions under scrutiny, sport is not considered to be part of the public sector, but part of a private sector. Private sector bribery in the UNCAC is defined in Article 21:

#### *Article 21. Bribery in the private sector*

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*
- (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

The main features of this provision are the following:

- The criminalization of private sector bribery is not mandatory;
- The “private sector” is described as “economic, financial or commercial activities”;
- The aim of the bribery is to incite a person to breach his/her duties by an action or omission; and
- A person breaching his/her duties can be anyone working in any capacity for a private sector entity.

On the basis of this Article and if sport is considered as part of the private sector, the following parameters concerning possible forms of corrupt misbehaviour related to match-fixing need to be taken into consideration:

- The “private sector” is defined as “economic, financial or commercial activities” and this definition opens the possibility that in some countries sport would not fit into it at all;
- There is only an option for States parties to the UNCAC to criminalize the active and passive bribery in the private sector.

### **3.2.4 Other important provisions of the UNCAC**

As stated above, jurisdiction, liability of legal persons, protection of witnesses and whistleblowers, money laundering measures, as well as freezing, seizure and confiscation and special investigative techniques are also extremely important factors for the effective implementation of the UNCAC in the fight against match-fixing.

#### **3.2.4.1 Jurisdiction**

In Article 42, the UNCAC applies several principles on jurisdiction as follows:

- States Parties have to establish their jurisdiction when the offence is committed in their territory, including their vessels and aircrafts<sup>600</sup>,
- States Parties may establish their jurisdiction if the offence is committed against them, if it is committed against or by their national, or by a stateless person residing in their territory, or if preparation or participation in the offence of money laundering occurred outside their territory<sup>601</sup>,
- States Parties have to establish jurisdiction over all offences established in accordance with UNCAC, if the perpetrator is present in their territory and s/he will not be extradited solely on the ground that s/he is their national,
- States Parties may establish their jurisdiction over all offences established in accordance with UNCAC, if the perpetrator is present in their territory and s/he will not be extradited from any other reason than nationality.

It is obvious that the UNCAC calls States Parties to put in place a flexible regime on jurisdiction, whereby the perpetrator of any of the offences covered by the scope of application of the Convention is subject to the jurisdiction of at least one State Party.

#### **3.2.4.2 Liability of legal persons**

According to Article 26, States Parties are required to establish liability of legal persons for participation in any of the offences established in accordance with the Convention. The liability may be criminal, civil, or administrative and legal persons should be subject to effective, proportionate and dissuasive sanctions.

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<sup>600</sup> Article 42, Paragraph 1 – a and b.

<sup>601</sup> Article 42, Paragraph 2.

### **3.2.4.3 Protection of witnesses and whistleblowers**

In Article 32, the UNCAC requires States Parties to provide for mandatory protection of witnesses, victims acting as witnesses and experts who give testimony concerning offences established in accordance with the Convention, their relatives and other persons close to them. The protection can have the form of physical protection, relocation, non-disclosure, or limited disclosure of information concerning the identity and whereabouts and testimonies ensuring safety of witnesses and experts.

In Article 33, the UNCAC calls States Parties to consider taking measures for the protection of “reporting persons”<sup>602</sup>, which in some countries may leave whistleblowers unprotected since they are not obliged to follow this requirement given in a form of a recommendation.<sup>603</sup>

### **3.2.4.4 Money laundering**

In Article 14, the UNCAC requires State Parties to develop comprehensive measures to prevent money laundering. Some of the measures are of mandatory nature<sup>604</sup>, others are not<sup>605</sup>.

In Article 23, the UNCAC sets forth an obligation for States Parties to criminalize the “laundering of proceeds” derived from offences established by the Convention. Article 23 refers to direct intent for money laundering<sup>606</sup> and enables State Parties to exclude self-laundering<sup>607</sup> from the scope of incrimination.

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<sup>602</sup> “Persons who report in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”.

<sup>603</sup> However, in many of the already completed country reviews in the context of the UNCAC Review of Implementation Mechanism, it has been acknowledged that the adoption and implementation of protective measures for reporting persons, despite the optional nature of their regulation in the UNCAC, constitute a significant component of effective anti-corruption policies and strategies and therefore recommendations have been made that the national authorities of States Parties under review take action in this direction (if they have not yet done so).

<sup>604</sup> Domestic regulatory and supervisory regime (Para 1 a) and exchange of information (Para 1b).

<sup>605</sup> Detection of movement of cash and negotiable instruments (Para 2), proper identification of clients and maintenance of such an information (Para 3).

<sup>606</sup> In Para 1a(i) and in Para 1b(i) the word “knowing” is used.

<sup>607</sup> Laundering of proceeds of a predicate offence committed by the perpetrator of a predicate offence, Para 2e.

#### **3.2.4.5 Freezing, seizure and confiscation**

In Article 31, the UNCAC establishes a comprehensive system of freezing, seizure and confiscation of proceeds of offences established by the Convention, and enables State Parties to reverse the burden of proof for the origin of proceeds<sup>608</sup>.

In addition, Chapter V on asset recovery calls, among others, States Parties to establish financial intelligence units, which will be responsible for handling of information on suspicious financial transactions.

#### **3.2.4.6 Special investigative techniques**

In Article 50, the UNCAC requires States Parties, to the extent permitted by the basic principles of their domestic legal systems, to allow for the appropriate use of special investigative techniques for the investigation of offences established by the Convention. Some of the techniques (controlled deliveries, different forms of surveillance, undercover operations) are explicitly mentioned, but since this is not a closed list, States Parties may also use other investigative techniques. Besides, it is important that UNCAC enables State Parties to cooperate in the area of special investigative techniques without pre-existing agreements on a case-by-case basis.

#### **3.2.5 Applicability of the UNCAC provisions in the area of match-fixing**

Based on the above analysis, it is obvious that the UNCAC provisions on bribery are not sufficient enough to fully cover match-fixing. The following limitations need to be mentioned:

- Betting on fixed matches (unless people betting do not have at the same time active role in match-fixing itself) is not covered by the mentioned provisions;
- The passive bribery of foreign public officials and officials of public international organizations is an optional offence for States Parties. This, in turn, makes it possible that a number of States Parties consider the criminalization as an option, but finally do not take legislative action in this regard;

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<sup>608</sup> Para 8.

- Only in extreme cases sportsmen would fit into the categories of national, foreign or international public officials and, therefore, articles on public sector bribery typically cannot be used extensively in the area of match-fixing;
- Trading in influence is an optional offence for States Parties. This, in turn, makes it possible that a number of States Parties consider the criminalization as an option, but finally do not take legislative action in this regard;
- Even if trading in influence is incriminated in national laws, its aim, as required by the UNCAC (to gain an undue advantage from an administration or public authority of the State), is a completely different than the aim of match-fixing, which makes the provision on trading in influence hardly applicable for the cases of match-fixing;
- The private sector bribery is an optional offence for States Parties. This, in turn, makes it possible that a number of States Parties consider the criminalization as an option, but finally do not take legislative action in this regard;
- The private sector, as defined by the UNCAC (“economic, financial or commercial activities”), hardly covers all possible forms of sport activities, which makes this provision only conditionally applicable in the area of match-fixing;
- There is no mandatory requirement for States Parties to protect whistleblowers;
- In accordance with established international standards, the Convention requires only for the incrimination of intentional money laundering, which leaves many other money laundering offences<sup>609</sup> out of the scope of incrimination;
- “Self-laundering”, as prescribed in the UNCAC, does not have to be incriminated<sup>610</sup>, which opens a lot of possibilities for perpetrators in the area of match-fixing to evade justice for laundering of proceeds of match-fixing that they have conducted themselves.

Based on the analysis of problems above, it is clear that the UNCAC provisions can be used against (bribery-related) match-fixing only to a certain extent.

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<sup>609</sup> Where negligence or “should have known” principle would apply.

<sup>610</sup> Many States Parties consider the incrimination of self-laundering as a practice which is contrary to the fundamental principles of their legal system.

### **3.3 The United Nations Convention against Transnational Organized Crime (UNTOC) and match-fixing**

If the UNCAC does not fully cover bribery offences in sport, the question is whether other international legal instruments could apply to combat match-fixing. The – already mentioned in previous parts of the present study - UNTOC may offer solutions in this regard. The UNTOC requires States Parties to prevent, investigate, and prosecute<sup>611</sup> different forms of behaviour, sometimes prescribed in an explicit manner (Article 6 – money laundering, Article 8 – corruption in the public sector, Article 23 – obstruction of justice) and other times in a structural manner (Article 2 – serious crime, Article 5 – participation in an organized criminal group). In all cases, the offence has to be transnational in nature and has to involve an organized criminal group<sup>612</sup>. While the incrimination of money laundering covers only, although important<sup>613</sup>, consequences of match-fixing and the provision on the incrimination of corruption is even narrower than the one in UNCAC (as it covers corruption only in the public sector), it is clear that these explicit provisions cannot add much to the solution of the problem of match-fixing. Therefore, structural provisions on organized and serious criminality may be helpful:

#### *Article 5: Criminalization of participation in an organized criminal group*

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*
  - (a) *Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:*
    - (i) *Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*

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<sup>611</sup> UNTOC, Article 3, Para 1.

<sup>612</sup> UNTOC, Article 3.

<sup>613</sup> Therefore, the issue will be explored later in the text.

*(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*

*a) Criminal activities of the organized criminal group;*

*b) Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.*

For the purpose of fully understanding the above cited provisions, there is a need to analyze the important concepts of “serious crime” and “organized criminal group”.

### **3.3.1 Content of the term “serious crime”**

The concept of “serious crime” in Article 2 of the UNTOC is described as “offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. Differently said, in order to apply Article 5, criminal offences related to match-fixing would have to include at least one criminal offence punishable by at least four year imprisonment. Of course, the majority of bribery offences in the national laws would, beyond any doubt, satisfy this condition but, as seen above, the UNCAC gives no insurances, that other elements of bribery-related match-fixing would be satisfactorily covered by national legislations. Consequently, there is an obvious need to seek better solutions in a form of a criminal offence, which may ensure more effective prosecution of what usually takes place in match-fixing cases and fulfils the condition of four years sanctioning, as required by the UNTOC.

As analyzed above<sup>614</sup> in the part dealing with the national legislation of the countries covered by the present study, as well as with the match-fixing study of the EU, the second group of offences, which at least to a certain extent may be helpful, is that of the offences related to fraud. The criminal offence of fraud has already been used as a basis for conviction in a well-known match-fixing case in Germany<sup>615</sup>. But to be sure that the incriminations of fraud could create the basis for international response in a form of application of the UNTOC provisions on organized criminal group, three conditions would have to be fulfilled: transnational nature

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<sup>614</sup> Chapter 2.1.

<sup>615</sup> The referee Hoyzer's case.

of the offence, proper description of the offence and four years imprisonment as a benchmark for the consideration of the offence as “serious crime”.

Having in mind the essence of match-fixing<sup>616</sup>, the criminal offence, of fraud seems to be very helpful and in randomly chosen countries is described as:

- *A person is guilty of an offence if the person, by a deception, dishonestly obtains a financial advantage from another person...* (Australia<sup>617</sup>),
- *“Whosoever with the intent of obtaining for himself or a third person an unlawful material benefit damages the property of another by causing or maintaining an error by pretending false facts or by distorting or suppressing true facts” .....* (Germany<sup>618</sup>);
- *Fraud is considered as taking possession of somebody else's property or obtaining the property title by deceit or breach of confidence* (Ukraine<sup>619</sup>);
- *It is an offence to seize, for themselves or others, movable properties, debt or quittance bond, or canceling, spoiling or modifying this bond by using:*
  - o *fraud means,*
  - o *assuming a false name or*
  - o *a fake character,*
  - o *in a way to delude the victim* (Qatar<sup>620</sup>).

The definitions of fraud, as given in the cases of Australia, Germany, Ukraine and Qatar, in most cases cover what usually takes place in match-fixing. However, the following should also be taken into account:

- Sometimes there are some additional requirements given in the descriptions of criminal offences, which make otherwise useful incriminations completely inapplicable for the purposes of fighting match-fixing. Such is the case with Australian Article 134.2 (Obtaining a financial advantage by deception) of the

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<sup>616</sup> Cheating (against the spirit of sport) during the sport competition.

<sup>617</sup> Article 134.2 (Obtaining a financial advantage by deception) of the Commonwealth Criminal Code Act 1995.

<sup>618</sup> Section 263 of the German Criminal Code 1998.

<sup>619</sup> Ukrainian Criminal Code, Article 190.

<sup>620</sup> Article 354 of Qatar Penal Code.

Commonwealth Criminal Code Act 1995, which can be applied only if the victim is a “Commonwealth entity”, which rarely – or never - happens in match-fixing cases;

- The content of the same term may vary from country to country, especially if they belong to different legal traditions<sup>621</sup> or continents;
- In given examples, different terms<sup>622</sup> are applied, which, in turn, may cause more confusion;
- The applicability of a fraud offence in the area of match-fixing is subject to practical work of the law enforcement and judiciary, which may result in different opinions/outcomes<sup>623</sup>.

According to the current practice and despite the above mentioned reservations, criminal offences of fraud substantially seem to be the most applicable solution for fighting match-fixing through criminal-law means. However, they do not seem to be the solution which would fully ensure incrimination, investigation and prosecution of all possible cases of match-fixing.

In order to enable the application of the term “serious crime” and the related provisions of the UNTOC on the organized criminal group, the fraud offences would have to carry a sentence of at least 4 years of imprisonment. In Australia, the sentence can be 10 years of imprisonment, while in Germany the sentence for the basic form<sup>624</sup> of fraud is imprisonment of up to 5 years or a fine. In Ukraine, the maximum sentence for the basic form of fraud<sup>625</sup> can be 3 years of imprisonment, but the sentence for the qualified form of fraud<sup>626</sup> may be extended to 12 years of imprisonment. In the case of Qatar the sentence can be maximum 3 years of imprisonment. Based only on these four country examples, it is possible to conclude that condition of 4 years of imprisonment as a sentence, which would enable application of the term of “serious crime” and ensure mandatory incrimination of organized criminal groups in the area of match-fixing, is fulfilled in the majority of jurisdictions, but not in all of them.

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<sup>621</sup> Common law systems versus continental legal systems.

<sup>622</sup> “Dishonestly obtaining” in Australia, “causing/maintaining error through false facts” in Germany, “deceit” in Ukraine, “deluding by fraud means” in Qatar.

<sup>623</sup> That happened in the already mentioned case of referee Hoyzer in Germany where the prosecution in one phase of the proceedings changed its mind on the applicability of fraud.

<sup>624</sup> Article 263, Paragraph 1 of the German CC.

<sup>625</sup> Article 190, Paragraph 1 of the Ukrainian CC.

<sup>626</sup> Article 190, Paragraph 2 of the Ukrainian CC.

In summary, there are no assurances that all possible forms of fraud, being the closest to real events in cases of match-fixing, could be legally defined as “serious crimes”. This may create loopholes and have an impact on the applicability of Article 5 of UNTOC and hampers the efforts to fight match-fixing with the tools given in the mentioned Convention.

### **3.3.2 Content of the term “organized criminal group”**

The “organized criminal group” in Article 2 of UNTOC is described as *a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.*

“Structured group” in the same provision (Article 2) is defined as *a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.*

There are different forms of match-fixing, from a single case of an individual perpetrator (which in practice almost does not happen) to the most dangerous ones, which continue over years and have well-established and well-functioning structure of gamblers, organizers of match-fixing and active participants of the matches. The only case of match-fixing, which is not covered by UNTOC is the case of an individual perpetrator. However, in such a case the social danger of the offence committed is a minimal one and does not have to cause any special concern. In addition, the basic criminal offence of fraud can be applied in this regard.

All other cases, involving two or more persons, acting for the first time or already through a longer period of time, are, at least theoretically, covered by the provision of Article 5. The problem, which may emerge in practice, is the wording in Article 5.1.a “*either or both*”, which leaves State Parties the choice to decide what to criminalize, either the criminal agreement from Article 5.1.a.i or the active participation in the organized criminal group from Article 5.1.a.ii. Since the latter could also be understood in a sense that it also partly covers the first option, the only problem which may emerge is the situation where State Parties would choose not to incriminate “criminal agreement” of Article 5.1.a.i, thus leaving the agreement of two persons to commit serious crimes uncovered. Here again, the social danger

of agreement on match-fixing (and not followed by concrete action) involving only two persons is not sizable, especially having in mind that for their possible concrete actions they could without any further doubt be punished for either bribery or fraud.

In brief, only cases where there are up to two perpetrators involved may not always be covered with the term of “organized crime group”.

### **3.3.3 Other important provisions of UNTOC**

As stated above, jurisdiction, liability of legal persons, protection of witnesses and whistleblowers, money laundering, freezing, seizure and confiscation, and special investigative techniques are also extremely important factors for achieving effective implementation of the UNTOC in the fight against match-fixing.

#### **3.3.3.1 Jurisdiction**

In Article 15, the UNTOC applies several principles on jurisdiction:

- States Parties have to establish their jurisdiction when the offence is committed in their territory, including their vessels and aircrafts<sup>627</sup>,
- States Parties may establish their jurisdiction if the offence is committed against or by their national, or by a stateless person residing in their territory, or if the offences from Article 5, Para 1<sup>628</sup> and preparatory acts for money laundering, both with a view to the commission of the offence within their territory, occurred outside their territory<sup>629</sup>,
- States Parties have to establish jurisdiction over all offences established in accordance with UNTOC, if the perpetrator is present in their territory and s/he will not be extradited solely on the ground that s/he is its national<sup>630</sup>,
- States Parties may establish their jurisdiction over all offences established in accordance with UNTOC, if the perpetrator is present in their territory and s/he will not be extradited from any other reason than nationality<sup>631</sup>.

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<sup>627</sup> Article 15, Paragraph 1 – a and b.

<sup>628</sup> Preparatory acts and finalised offences.

<sup>629</sup> Article 15, Paragraph 2.

<sup>630</sup> Article 15, Paragraph 3.

<sup>631</sup> Article 15, Paragraph 4.

It is obvious that the UNTOC attempts to establish a system whereby the perpetrator of any of the offences falling within its scope of application will be subject to jurisdiction of at least one State Party. Contrary to the UNCAC, the UNTOC does not include a jurisdictional principle, even in an optional wording, that covers offences committed abroad against a State Party, but it does include a principle for the establishment of jurisdiction over all preparatory acts abroad with a view to the future commission of serious crime or money laundering offence within its territory (and not only for incrimination of preparatory acts for money laundering<sup>632</sup>).

### **3.3.3.2 Liability of legal persons**

According to Article 10 of the UNTOC, States Parties to the Convention are obliged to establish liability of legal persons for participation in any of the offences covered by the Convention. The liability of legal persons may be criminal, civil or administrative and legal persons have to be subject to effective, proportionate, and dissuasive sanctions.

The UNTOC provisions on liability of legal persons are identical to the corresponding ones of the UNCAC (see article 42).

### **3.3.3.3 Protection of witnesses and whistleblowers**

In Article 24, the UNTOC obliges States Parties to ensure the protection of witnesses, including victims acting as witnesses, who give testimony concerning offences established in accordance with the Convention, their relatives and other persons close to them. Protection can have the form of physical protection, relocation, non-disclosure, or limited disclosure of information concerning the identity and whereabouts, as well as evidentiary rules to ensure the safety of witnesses.

Article 26 of the UNTOC asks for the protection<sup>633</sup> of a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention and for the consideration of granting immunity from prosecution or recognizing mitigating

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<sup>632</sup> Like UNCAC in Article 42, Paragraph 2.

<sup>633</sup> In the same way as in Article 24.

circumstances for the punishment of such a person (a similar provision – Article 37 – is contained in the UNCAC).

Contrary to the UNCAC, the UNTOC does not protect experts giving testimony, as well as whistleblowers or reporting persons (for whom the UNCAC includes a separate provision – Article 33 – which is of an optional nature, as highlighted above).

#### **3.3.3.4 Money laundering**

Article 6 of the UNTOC requires the mandatory incrimination of laundering of proceeds of serious crime and of criminal offences established by the Convention and obliges States Parties to include as predicate offences for purposes of money laundering all crimes covered by the Convention and, in case of laws setting out lists of specific predicate offences, to include, at a minimum, a comprehensive range of offences associated with organized criminal groups<sup>634</sup>. Article 6 is asking for a direct intent for money laundering<sup>635</sup> and enables States Parties to exclude self-laundering<sup>636</sup> from the scope of incrimination.

Article 7 of the UNTOC requires States Parties to develop comprehensive measures with the aim to prevent money laundering. Some of the measures are of mandatory nature<sup>637</sup>, others are of optional nature<sup>638</sup>.

#### **3.3.3.5 Freezing, seizure and confiscation**

In Article 12, the UNTOC requires States Parties to have in place domestically a comprehensive and robust system for freezing, seizure and confiscation of proceeds derived from offences established by the Convention. It further enables States Parties to reverse the burden of proof in confiscation proceedings when judging whether or not the origin of the proceeds is lawful<sup>639</sup>.

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<sup>634</sup> Article 6, Para 2 b.

<sup>635</sup> In Para 1a(i, ii) and in Para 1b(i) the word “knowing” is used.

<sup>636</sup> Laundering of proceeds of a predicate offence committed by the perpetrator of a predicate offence, Para 2e.

<sup>637</sup> Domestic regulatory and supervisory regime (Para 1 a) and exchange of information (Para 1b).

<sup>638</sup> Detection of movement of cash and negotiable instruments (Para 2).

<sup>639</sup> Para 7.

In addition, the UNTOC provides for international cooperation for the purposes of confiscation and disposal of confiscated assets<sup>640</sup>.

In comparison to the UNTOC, it can be said that UNCAC has devoted more attention to the issue of asset recovery devoting a whole chapter<sup>641</sup> on it, but the basic solutions are the same in both conventions.

### **3.3.3.6 Special investigative techniques**

In Article 20, the UNTOC requires States Parties to use, if permitted by the basic principles of their domestic legal systems, special investigative techniques for the investigation of offences established by the Convention. Some of the techniques (controlled deliveries, different forms of surveillance, undercover operations) are explicitly mentioned. However, as the reference made in the Convention to these techniques is not exhaustive, States Parties may also introduce other investigative techniques as well. It is also important that UNCAC enables States Parties to cooperate in the area of special investigative techniques without pre-existing agreements on a case-by-case basis.

In the area of special investigative techniques, the provisions of the UNTOC are basically identical to the corresponding provisions of the UNCAC (see Article 50).

### **3.3.4 Applicability of the UNTOC provisions in the area of match-fixing**

Based on the analysis above, it can be argued that the provisions of the UNTOC on organized criminal groups in the area of match-fixing could cover many situations involving match-fixing, but not all of them. The biggest problem is related to a definition of a criminal offence, which could serve as a substantial basis for the application of structural definitions of “serious crime” and “organized crime group”. The criminal offence which comes closest to real events in a usual case of match-fixing is that of fraud, but due to different reasons, cited above, there are no absolute assurances that such an offence can be applicable in all cases of match-fixing. In particular, the following should be taken into account:

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<sup>640</sup> Article 14.

<sup>641</sup> Chapter V.

- Differences in the theoretical definition and practical application of a fraudulent element as part of a criminal offence of fraud may lead to very different solutions, leaving some instances of match-fixing without sanctions;
- Sanctions foreseen for fraud worldwide do not always correspond to the UNTOC requirement of 4 years imprisonment for a “serious crime”;
- Experts giving testimony and whistleblowers are not protected;
- The UNTOC requires the incrimination of only intentional money laundering, which leaves a lot of other money laundering offences out of the scope of incrimination;
- “Self-laundering” does not have to be incriminated, which, in turn, may lead to impunity of perpetrators in the area of match-fixing for laundering of proceeds of match-fixing that they have conducted themselves.

Compared to the UNCAC, the UNTOC offers a wider array of “tailor-made” legal responses to the problem of match-fixing. However, the UNTOC can still not be considered as a complete and comprehensive tool in this field, given that some of the match-fixing cases may remain out of its scope, not to mention that whistleblowers are not protected by this Convention.

### 3.4 Applicability of the UNCAC and the UNTOC in the fight against match-fixing

Unfortunately, none of the conventions individually and also none of their combinations ensures full incrimination of acts which usually occur in match-fixing. The absence of several other important elements does not enable States Parties to effectively combat this phenomenon either. Too many of overly important forms of different offences may remain non-incriminated and, therefore, not sanctioned, and other important topics may not be fully addressed:

- Betting on fixed matches, whereby the person betting knows that matches have been fixed, does not have to be criminalized in national legislations;
- The UNCAC provisions on public sector bribery are hardly applicable in the area of match-fixing;
- Trading in influence and private sector bribery are not subject to mandatory criminalization in national legislations;
- Even if trading in influence and private sector bribery are incriminated in national legislations, the UNCAC is very restrictive in the definition<sup>642</sup> of both conducts, thus making them hardly applicable for match-fixing;
- There is no criminal offence<sup>643</sup> in any of the conventions which would ensure full coverage of match-fixing through other – not related to bribery – offences;
- Whistleblowers are not mandatorily protected (or not protected at all); similarly, there is no uniform approach as to the protection of experts who give testimony;
- Money laundering is limited to offences committed with direct knowledge; and
- Self-laundering does not have to be incriminated in national legislations.

Other features – jurisdiction, liability of legal persons, freezing, seizure and confiscation and special investigation techniques – as regulated in one of, or both, the conventions - offer enough assurances for the effective fight against match-fixing if the abovementioned problems can be somehow solved.

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<sup>642</sup> The aim of trading in influence and definition of private sector as given by UNCAC.

<sup>643</sup> Including references to offences of fraud in national legislations.

#### 4 GENERAL CONCLUSIONS

To a certain extent, all problems mentioned above in chapters dealing with the applicability of national legislations and international conventions in the area of match-fixing may be understood as a logical consequence when a new form of criminality emerges and neither the existing laws nor the criminal justice and law enforcement authorities are ready to cope with it to the maximum extent possible. It always takes time to understand all significant elements of a new form of crime and regulate it in a way which corresponds to its social danger and the basic characteristics of the legislation and existing law enforcement practices in place.

Regulatory action to cope with new phenomena of crime may take place in two different ways, either by using or “stretching” existing legal and practical solutions, or by introducing new ones. As much as the first option seems to be very attractive<sup>644</sup>, especially due to the fact that several existing national incriminations of fraud cover a large part of the new criminological phenomenon, the findings of the present study demonstrate that this may turn into an “impossible mission” for the national legislator in many countries.

Notwithstanding the fact that in some regions of the world<sup>645</sup> the application of criminal offences of fraud in the area of match-fixing may address important aspects of the problem, it should not be ignored that significant differences between national legislations still exist even within the regional context. Further complications arise at the international level which need to be taken into account in view of the global nature of match-fixing. In an effort to ensure effective investigation, prosecution and cooperation to combat match-fixing, there is a need for further changes in the legislation of many countries, which are related not only to substantive issues of match-fixing but also to procedural aspects. It could be argued that it will be difficult for the national authorities of many countries with different laws and regulations and with varying provisions on the issues under scrutiny to deal with all challenges<sup>646</sup> encountered when adjusting the existing substantive and procedural criminal

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<sup>644</sup> Competent authorities tend sometimes to be reluctant to introduce new criminal offences in the national legislation.

<sup>645</sup> For example, Europe.

<sup>646</sup> Applying practically existing criminal offences on fraud (mostly) also in the area of match-fixing, ensuring incrimination of all of its possible forms and entering necessary changes in the most important related areas

law provisions to address the new phenomenon. And even if they succeed, such an extensive effort would most probably open new loopholes and inconsistencies in the national legislative and law enforcement systems.

Therefore, it seems far more logical to introduce new solutions in a way which would also ensure full compliance with the relevant international conventions, namely the UNTOC and the UNCAC. In some areas, existing incriminations could suffice, but there are also areas where countries apply the same principles for all criminal offences or for certain groups of criminal offences – jurisdiction, sanctioning of participatory acts and organized criminality, liability of legal persons, whistleblowers’ protection, anti-money laundering measures, and special investigative techniques. Therefore match-fixing would have to be included into the existing system of application of the abovementioned principles and adjusted to them. This adds yet another layer of difficulty to the substantial formulation of new criminal offences, which obviously should take into consideration all important features of the existing national and international provisions.

Basically, the shortest and the least cumbersome way to ensure the proper incrimination of all possible forms of match-fixing and the adoption and implementation of all relevant substantive and procedural measures could be the following:

- a) Introduction of a separate and specific offence of match-fixing, appropriately reflecting the danger of different forms of the basic offence, as follows:
  - fixing of the match based on bribery;
  - fixing of the match with the goal to bet on it; and
  - intentional betting on the fixed match.

The question is whether match-fixing without pecuniary purposes<sup>647</sup> should also be treated as a criminal offence. Since such an action does not carry enough social threat and usually does not undermine general principles of any society, it seems that there is no need to introduce a criminal offence sanctioning those types of match-fixing. However, such a behaviour does breach principles of sports and still deserves to be sanctioned. This can

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(jurisdiction, liability of legal persons, application of the UNTOC, protection of whistleblowers, money laundering, freezing, seizure and confiscation and special investigative techniques).

<sup>647</sup> Sometimes athletes and clubs help each other to stay in the competition, to avoid a specific competitor etc.

and should be done by the sports organizations or/and their federations by imposing sports sanctions for it.

- b) Application of proper jurisdictional principles and minimizing the possibilities for criminals to evade justice by moving from one jurisdiction to another;
- c) Establishment of appropriate definition of participatory acts and acts of intermediaries in the conduct of the match-fixing offence;
- d) Appropriate incriminations and sanctioning of organized forms of match-fixing;
- e) Introduction of criminal liability of legal persons in the area of match-fixing, subject to the legal principles which are applicable in the countries;
- f) Introduction of an obligation to protect whistleblowers and other participants of the criminal proceedings against perpetrators of match-fixing and related offences;
- g) Introduction of a comprehensive set of anti-money-laundering measures; and
- h) Introduction of a comprehensive set of special investigative techniques, to the extent permitted by the basic principles of the domestic legal systems and in accordance with the conditions prescribed by the domestic laws.

In the annex, there are some model provisions which may be useful for countries which are - or will be - developing a comprehensive criminal law response to match-fixing. Since there is no mandatory international legal instrument dealing with the issue of match-fixing yet<sup>648</sup>, there is also no obligation for countries to incriminate this conduct and adopt other measures to ensure effective investigation and prosecution in related cases. However, having in mind that there is no other comprehensive possibility to effectively cope with this relatively new challenge, it is hoped that the suggestions above will be endorsed and followed by the competent authorities of as many countries as possible.

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<sup>648</sup> As already mentioned, the Council of Europe has started negotiations on a new Convention against Manipulation of Sports Results.

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## ANNEX 1: MOST IMPORTANT FEATURES OF NATIONAL LEGISLATION

	Type of basic offence	Jurisdictional principle	Area of applicability	Participatory acts sanctioned Y/N	Organised crime sanctioned Y/N	Sanctions enable application of UNTOC	Liability of legal persons provided	Whistle-blowers' protection Y/N	Anti-money laundering measures Y/N	Special investigative techniques Y/N
Argentina	Fraud	Territorial, Act. personal	Private sector	Y	Y	Y	N	N	Y	Y
Australia	Fraud	Universal	Public/Private	Y	Y	Y	Y	Y	Y	Y
Brazil	Fraud	Territorial, Act. Personal	Private	Y	Y	Y	N	N	Y	Y
Canada	Fraud	Territorial, Act. personal	Public/Private	Y	Y	Mostly	Y	Mostly	Y	Y
China	Fraud	Territorial, Act. and Pass. personal	Public/Private	Y	Y	Mostly	Y	Y	Y	Limited
Hong Kong	Fraud	Universal	Private	Y	Y	Y	Y	Y	Y	Y
Japan	Specific offence <sup>649</sup>	Territorial	Public/Private	Y	Y	Rarely	Y	Y	Y	N
Malaysia	Bribery	Territorial	Public/Private	Y	Y	Y	Y	Y	Y	Y
New Zealand	Fraud	Territorial	Public/Private	Y	Y	Mostly	Y	Y	Mostly	Mostly
Nigeria	Fraud	Territorial, Act. personal	Public/Private	Y	Y	Y	Y	Limited	Y	N
Qatar	Fraud	Limited universal	Private	Y	N	N	Y	N	Y	Y
Republic of Korea	Specific offence	Territorial, Act. personal	Public/Private	Y	Y	Y	N	Limited	Y	Y
Russian Federation	Specific offence	Territorial, Act. personal	Private	Y	Y	Rarely	N	Y	Y	Y
South Africa	Specific offence	Territorial, Act. personal	Private	Y	Y	Y	Y	Y	Y	Y
Thailand	Fraud	Territorial, Act. and Pass. personal	Private	Y	Y	N	Y	Y	Y	Y
Trinidad and Tobago	Fraud	Universal	Private	Y		Y	Y	Y	Y	Y
Ukraine	Fraud	Territorial, Act. personal	Public/Private	Y	Y	Y	N	Y	Conditional <sup>650</sup>	Y
United Arab Emirates	Fraud	Territorial, Act. personal	Public/Private	Y	Conditionally	N	Y	N	Y	Y
U.S.A.	Specific offence	Territorial, Act. and Pass. Personal	Private	Y	Y	Y	Y	Y	Y	Y

<sup>649</sup> Only in professional soccer.

<sup>650</sup> Only offences, which carry the sanction of imprisonment.

## **ANNEX 2: MODEL CRIMINAL LAW PROVISIONS ON MATCH-FIXING AND IRREGULAR BETTING**

### **1. Introduction**

The annex to the present study intends to provide a set of clear and concise options for use by interested States wishing to upgrade (or put in place new) legislation on issues pertaining to match-fixing and irregular betting.

The annex contains three model provisions for criminalization of match-fixing and irregular betting and guidelines for regulation of other important issues. Drawing on the legislative approaches presented in the main text of the study, the annex presents suggested incrimination language for different forms of conduct in match-fixing and irregular betting cases. The model provisions of this group do not intend to cover in an exhaustive manner all possible case scenarios of match-fixing and irregular betting. Instead, they cover basic forms of conduct for consideration as constituent elements of the offences in question.

The second group includes guidelines on other criminal justice aspects of both substantive and procedural nature which are considered in a complementary and supportive manner for the effective implementation of the criminalization provisions. Such aspects include issues of jurisdiction; participatory acts; organised criminality; liability of legal persons; protection of witnesses and whistle-blowers; anti-money laundering measures including freezing, seizure and confiscation of proceeds of match-fixing; and special investigative techniques.

Both groups – model provisions and guidelines - are offered as guidance to the competent authorities of States wishing to make adaptations in their national legislation to address the emerging forms of crime under scrutiny. As such, model provisions and guidelines do not have authoritative nature and the decision to use them is entirely in the discretion of States.

### **2. Model provisions for criminalization**

Possible incriminations include the following:

*Any person, who solicits or accepts, directly or indirectly, an undue advantage or its offer or promise for himself or herself or another person or entity in*

*order to alter the course or the result of a sporting competition or any of its particular events in breach of legislation or sports regulations, or accepts a reward for doing so, shall be punished by \_\_\_\_\_ .*

**NOTE:** This incrimination covers situations of passive bribery of match-fixers.

*Any person, who promises, offers or gives, directly or indirectly, an undue advantage to another person for himself or herself or for another person or entity, in order that the person alters the course or the result of a sporting competition or any of its particular events in breach of legislation or sports regulations, or gives him or her a reward after doing so, shall be punished by \_\_\_\_\_ .*

**NOTE:** This incrimination covers situations of active bribery of match-fixers.

*1) Any person, who alters the course or the result of a sporting competition or any of its particular events in breach of legislation or sports regulations in order to use the altered course or result in a betting scheme, shall be punished by \_\_\_\_\_ .*

*2) Any person who participates in betting with a knowledge that it has been influenced by the course or result of a sporting competition altered in breach of legislation or sports regulations, shall be punished by \_\_\_\_\_*

**NOTE:** This criminal offence sanctions two different types of perpetrators:

- an individual match-fixer, who fixes the match with the intention to get to illicit proceeds through (legal or illegal) betting schemes. It is not even important if s/he really gains anything from the betting planned. In the case of organised criminality, other members of the group might be sanctioned through provisions on participatory acts or organised crime;
- an individual, who knows that s/he is betting in a betting scheme influenced by match-fixing. Since the person betting can at the same time also be the person fixing the match, the gravity of his offence can effectively be dealt with with a proper range of sanctions - either for the first or for the second paragraph.

### **3. Guidelines for other important issues**

Legal provisions related to jurisdiction, sanctioning of participatory acts and organized criminality, the liability of legal persons, whistleblowers' protection, anti-money laundering measures, and special investigative techniques cannot be given in a directly applicable form due to different legislative techniques used in different countries. Proposals in this part rely profoundly on the solutions given in the context of the UNTOC and the UNCAC.

#### **3.1 Jurisdiction**

Each State would have to establish jurisdiction over criminal offences of match-fixing, irregular betting and related offences when:

- the offence is committed in whole or in part in its territory;
- or on board a ship flying the flag of that state;
- or on board an aircraft registered under the laws of that state;

or

the offender is one of its nationals or a stateless person who has his or her habitual residence in its territory;

or

the offence is committed against a national of that State or against the state itself.

**NOTE:** States can decide on the establishment of jurisdiction on the basis of the territoriality, active personality, and passive personality principles. Nothing prevents them to opt for all of them, although in order to achieve effective international cooperation, at least the territoriality and the active personality principles should apply.

#### **3.2 Participatory acts**

Each State would have to establish as a criminal offence the participation in any capacity such as the accomplice, assistant or instigator in criminal offences of match-fixing, irregular betting and related offences.

Each State would also have to establish as a criminal offence any attempt to commit a criminal offence of match-fixing, irregular betting and related offences.

Each State would also have to establish as a criminal offence, subject to the fundamental principles of its domestic legal system, any preparation for a criminal offence of match-fixing, irregular betting and related offences.

### **3.3 Organized crime activities**

Each State would have to establish as criminal offences, when committed intentionally:

Both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

- (i) Agreeing with one or more persons to commit criminal offences of match-fixing, irregular betting and related offences for a purpose relating directly or indirectly to gaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;
- (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit criminal offences of match-fixing, irregular betting and related offences, takes an active part in:
  - criminal activities of the organized criminal group;
  - other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;
  - organizing, directing, aiding, abetting, facilitating or counselling the commission of criminal offences of match-fixing and irregular betting, and related offences involving an organized criminal group.

In order to ensure the effective implementation of the provisions mentioned in the previous paragraph and a proper criminal law response to match-fixing, irregular betting and related offences which are committed in an organized manner, each State would have to punish these offences by a maximum deprivation of liberty of at least 4 years or apply a more serious penalty. Such penalties would also enable States to apply UNTOC in the fight against match-fixing.

**NOTE:** Paragraphs are following the requirements of articles 5 and 2 (definition of a “serious crime”) of the UNTOC, but in a stricter way. In order to ensure effective response to match-

fixing it is recommended that both options, i and ii, be incriminated cumulatively (and not alternatively as foreseen in Article 5 of the UNTOC).

### **3.4 Liability of legal persons**

Each State would have to establish the liability of legal persons for participation in the offences of match-fixing, irregular betting and related offences.

Established liability may be criminal, civil or administrative, and shall not prejudice criminal liability of natural persons who have committed the offences mentioned.

Sanctions envisaged for legal persons should be effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

**NOTE:** Reference is made to article 10 of the UNTOC and article 26 of the UNCAC.

### **3.5 Whistleblowers and witness protection**

Each State would have to provide effective and appropriate protection for those who, in a good faith and on reasonable grounds, report criminal offences of match-fixing, irregular betting and related offences or otherwise co-operate with the investigating or prosecuting authorities;

and especially,

to provide effective protection from potential retaliation or intimidation for whistleblowers, witnesses and experts who give testimonies concerning criminal offences of match-fixing, irregular betting and related offences and, as appropriate, for their relatives and other persons close to them, with measures that may include:

- procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
- providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

**NOTE:** These paragraphs are slightly more developed versions of the related provisions of the UNTOC (Article 24) and the UNCAC (Articles 32 and 33).

### **3.6 Anti-money laundering measures**

#### *Criminal offence of money laundering*

Each State would have to include criminal offences of match-fixing, irregular betting and related offences in the list of predicate offences for the criminal offence of money laundering, allowing for incrimination of self-laundering<sup>651</sup> and as well incrimination of negligent money laundering.

#### *Seizure, freezing and confiscation of proceeds of match-fixing*

Each State would have to enable confiscation of:

- proceeds of crime derived from criminal offences of match-fixing irregular betting and related offences or property up to the value of which corresponds to that of such proceeds;
- property, equipment or other instrumentalities used in or destined for use in criminal offences of match-fixing, irregular betting and related offences.

Each State would have to enable the identification, tracing, freezing, or seizure of any item referred to in the previous paragraph for the purpose of eventual confiscation.

If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

If proceeds from the previous paragraphs have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted, or from property with which such

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<sup>651</sup> Laundering of proceeds of crime by the same person who committed the predicate offence.

proceeds of crime have been intermingled shall also be liable to the measures mentioned above in the same manner and to the same extent as proceeds of crime.

For the purpose of the effective fight against money laundering derived from criminal offences of match-fixing, irregular betting and related offences, each State would have to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized without the possibility to be obstructed by obstacles that may arise out of the application of bank secrecy laws.

Each State may consider the possibility of requiring that an offender of criminal offences of match-fixing, irregular betting and related offences demonstrates the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of its domestic law and with the nature of judicial and other proceedings.

**NOTE:** A combination of the existing UNCAC provisions on incrimination of money laundering and on seizure, freezing and confiscation of proceeds of crime (Articles 23 and 31 respectively) could be useful in the area of match-fixing as well, especially if two amendments are made with regards to the incrimination of self-laundering and incrimination of negligent money laundering.

### **3.7 Special investigative techniques**

In the fight against match-fixing, each State would have to allow, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, for the appropriate use by its competent authorities of the widest possible range of special investigative techniques within its territory, and to allow for the admissibility in court of evidence derived therefrom. These techniques may include, among others, controlled deliveries, electronic or other forms of surveillance, undercover operations, fictitious business operations, and similar.

Each State would also have to ensure that using such special investigative techniques is allowed in the context of international cooperation to combat match-fixing.

**NOTE:** Reference is made to the relevant provisions of the UNTOC (Article 20) and the UNCAC (Article 50), both of which can be used as a starting point for enabling effective investigation of match-fixing cases and enhanced international cooperation in this area.