

Table of Contents

<i>Preface</i>	vii
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xvii
<i>Table of Conventions, Treaties, etc</i>	xlvi
1: Introduction	1
2: Corruption, Anti-Corruption Measures and Disqualification	7
2.1 Introduction	7
2.2 The Meaning, Nature and Effects of Corruption	7
2.2.1 Economic Theories on Corruption	9
2.2.2 Political Theories on Corruption	10
2.2.3 Social Theories on Corruption	11
2.3 Anti-Corruption Measures	13
2.3.1 Domestic Measures against Corruption	14
2.3.2 International Measures against Corruption	16
2.4 Public Procurement And Corruption	24
2.4.1 The Incidence of Corruption in Public Procurement	24
2.4.2 The Common Types of Corrupt Activity in Public Procurement	25
2.4.3 Measures Used in Procurement Regulation to Fight Corruption	27
2.5 The Use of Disqualifications in Public Procurement	31
3: An Overview of Procurement Regulation, Anti-Corruption and Disqualification Policy in the Jurisdictions	38
3.1 Introduction	38
3.2 The European Union	38
3.2.1 Public Procurement Regulation in the EU	38
3.2.2 The EU's Policy Against Corruption	41
3.2.3 Disqualification in the EU	43
3.3 The United Kingdom	47
3.3.1 Public Procurement Regulation in the UK	47
3.3.2 The UK's Policy Against Corruption	51
3.3.3 Disqualification in the UK	53

3.4	The United States	56
3.4.1	Public Procurement Regulation in the United States	56
3.4.2	The United States' Policy Against Corruption	58
3.4.3	Disqualification in the United States	60
3.5	The World Bank	64
3.5.1	Procurement Regulation in the World Bank	64
3.5.2	The World Bank's Anti-Corruption Policy	66
3.5.3	Disqualification in the World Bank	69
3.6	South Africa	71
3.6.1	Public Procurement Regulation in South Africa	71
3.6.2	South Africa's Anti-corruption Policy	74
3.6.3	Disqualification in South Africa	76

4: The Offences and the Requirement for a Conviction for Disqualification

		82
4.1	Introduction	82
4.2	The European Union	82
4.2.1	Offences for Disqualification	82
4.2.2	Disqualifying on the Basis of Convictions	84
4.2.3	The Status of Foreign Convictions	86
4.3.	The United Kingdom	88
4.3.1	Offences for Disqualification	88
4.3.2	Disqualifying on the Basis of Convictions	90
4.3.3	The Status of Foreign Convictions	91
4.4	The United States	93
4.4.1	Offences for Disqualification	93
4.4.2	Disqualifying on the Basis of a Conviction	94
4.4.3	The Status of Foreign Convictions	95
4.5	The World Bank	96
4.5.1	Offences for Disqualification	96
4.5.2	Disqualifying on the Basis of Convictions	96
4.5.3	The Status of Foreign Convictions	97
4.6	South Africa	98
4.6.1	Offences for Disqualification	98
4.6.2	Disqualifying on the Basis of Convictions	101
4.6.3	The Status of Foreign Convictions	102
4.7	Summary and Analysis of Main Issues	102
4.7.1	Requirement for Convictions	102
4.7.2	The Issue of Foreign Convictions	104

5: Procedural Issues Affecting Disqualification	106
5.1 Introduction	106
5.2 Procedure for Disqualifying	107
5.2.1 The Stages of the Disqualification Process and Accompanying Procedural Requirements	107
5.2.2 Are Disqualification Procedures Fair and Transparent?	125
5.3 Time Limits for Disqualification	130
5.3.1 Time Limits in the EU and UK	130
5.3.2 Time Limits in the US	134
5.3.3 Time Limits in the World Bank	134
5.3.4 Time Limits in South Africa	135
5.3.5 Time Limits, Proportionality, Reasonableness, Fairness and Transparency	136
5.4 Summary and Analysis of Main Issues	137
5.4.1 The Existence of a Clear Procedure for Disqualification	137
5.4.2 Time Limits	138
6: Disqualifying Entities and the Scope of Disqualification	140
6.1 Introduction	140
6.2 Disqualifying Entities	141
6.2.1 Courts	141
6.2.2 Procuring Authorities	143
6.2.3 Administrative Bodies	146
6.2.4 The Legislature	148
6.3 The Scope of Disqualification	149
6.3.1 A Requirement that Disqualification be Extended and Discovering Previous Disqualifications	150
6.3.2 No Clear Requirement that Disqualification be Extended	152
6.3.3 The Elements of the Disqualification Decision Left to the Non-Disqualifying Entity	154
6.4 Summary and Analysis of Main Issues	155
7: Investigations	157
7.1 Introduction	157
7.2 The Existence of a Requirement or Obligation to Investigate	158
7.2.1 The Requirement to Investigate for Disqualification Measures Based on a Conviction	158
7.2.2 The Requirement to Investigate for Disqualification Measures Not Based on a Conviction	161

7.3	The Entity with the Power to Investigate and the Extent of the Entity's Powers	162
7.4	The Nature and Sources of Information and Evidence	164
7.5	Summary and Analysis of Main Issues	166
8:	The Disqualification of Persons Related to a Corrupt Supplier	168
8.1	Introduction	168
8.2	Rationales for Disqualifying Related Persons	169
8.3	The Related Persons	170
8.3.1	Natural Persons	171
8.3.2	Connected Companies	186
8.3.3	Cooperating Companies	196
8.4	Summary and Analysis of Main Issues	204
8.4.1	Discovering the Existence and Complicity of Related Natural and Legal Persons: The Expense and Difficulty of Investigations	205
8.4.2	Procedural Burden and Delays to the Procurement Process	206
8.4.3	The Absence of Procedural Safeguards	206
8.4.4	The Lack of Clarity in the Legislation	207
9:	The Effect of Disqualification on Existing Contracts	208
9.1	Introduction	208
9.2	Rationales for Contractual Termination	210
9.3	Is There a Duty to Terminate Existing Contracts for Disqualification?	210
9.4	Problems with Contractual Termination	225
9.4.1	Determining if Termination is Prospective or Retrospective	225
9.4.2	Restitution and Apportionment of Losses	227
9.4.3	Disproportionality and the Rule against Double Jeopardy	235
9.4.4	Waste and Inefficiency	238
9.4.5	The Effect of Termination on the Delivery of Public Services	240
9.4.6	The Effect of Termination on Third Parties	241
9.5	Summary and Analysis of Main Issues	244
9.5.1	The Existence of a Duty to Terminate	244
9.5.2	The Nature and Consequences of Termination	245
10:	Derogating from Disqualification	248
10.1	Introduction	248

10.2	Reasons for Derogating from Disqualification	249
10.2.1	Exceptional Situations	249
10.2.2	Rehabilitation Measures	260
10.3	Preventing Abuse in the Use of Derogations	270
10.4	Summary and Analysis of Main Issues	273
11:	Remedies for Affected Suppliers	274
11.1	Introduction	274
11.2	The Availability of a Right of Review	275
11.2.1	The EU	276
11.2.2	The UK	277
11.2.3	The US	279
11.2.4	The World Bank	281
11.2.5	South Africa	285
11.3	The Kinds of Remedies Available	287
11.4	Summary and Analysis of Main Issues	295
11.4.1	Balancing the Tension between Effective Remedies and Delays to the Procurement Process	296
11.4.2	The Availability of a Right of Review	297
	<i>Index</i>	299

<http://www.pbookshop.com>