SEATCA is a multi-sectoral alliance established to support ASEAN countries in developing and implementing effective tobacco control policies. It responds to the serious need to fast-track tobacco control policies in Southeast Asia. Working to identify tobacco control priorities in the region and coordinating efforts on these priorities, SEATCA promotes knowledge-sharing among countries for effective, evidence-based tobacco control measures and regional cooperation among its advocacy partners.

SEATCA is acknowledged by governments and academic institutions for its advancement of tobacco control movements in Southeast Asia. In 2004, the WHO Western Pacific Regional Office (WPRO) presented the World No Tobacco Day Award to SEATCA. WHO-WPRO has since engaged SEATCA to provide technical assistance directly to government officials across the region.

HealthJustice aims to bridge the gap between health and law to empower Filipinos to make healthy choices. The founding members of HealthJustice include doctors, lawyers, and economists who have been recognized for their services in both the private and public sector, especially in the field of promoting policy change in the fields of health, environment, and human rights.

The vision of HealthJustice is to enlighten Filipinos to make the right health choices and endow them with equal access to health. Its mission is to be the source of information (research), formation (alliance building), transformation (capacity building), and translation (dissemination) for priority public health policies.
Toolkit for Policy Makers and Advocates

Preventing Tobacco Industry Interference

Based on the Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC Article 5.3)
Guidelines recommend that FCTC Parties

Key Steps

- **SET IT UP**
  - Establish a Core Group (Committee)
  - Raise awareness
  - Strategize
  - Build capacity
  - See p. 18

- **ADOPT POLICIES**
  - Adopt policies
  - Code of Conduct
  - Require Information
  - No incentives for tobacco
  - No CSR from tobacco
  - See p. 27 & 46

- **MONITOR**
  - Monitor and report the progress
  - Evaluate the policies, strategies, and programs
  - Continue monitoring for interference

**Tools**
- Checklist for Policy, p. 33
- Template for Code of Conduct, p. 47
- Sample Policies, see Templates

**Templates**
- Template for Policies on Information from the Tobacco Industry, p. 47
- Sample Policy on Banning Tobacco Industry Contribution, see Templates

**Checklist for Policy, p. 33**
- Template for Code of Conduct, p. 47
- Sample Policies, see Templates

**Template for Policies on Information from the Tobacco Industry, p. 47**

**Sample Policy on Banning Tobacco Industry Contribution, see Templates**
Best Practices Checklist

ESTABLISH A FORUM
In early 2009, the Philippines set up a multisectoral committee that includes the ministry of health, civil service, other government agencies and NGOs.

PUBLISH MEETINGS & PAPERS
Australia and New Zealand requires public disclosure of meetings with the tobacco industry. All notice of meetings and reports are posted on the government website.

ADOPT A CODE OF CONDUCT
In 2010, the Philippines adopted a policy to "Protect the Bureaucracy from Tobacco Industry Interference" which includes revisions to the Code of Conduct, a monitoring/reporting process, and administrative sanctions.

EXCLUDE TOBACCO INDUSTRY IN MEETINGS
In Albay, Philippines, government lawyers excluded Philip Morris from intervening in a Smoke Free Ordinance hearing in 2012. For 3 consecutive meetings, representatives of over a hundred governments agreed to eject the tobacco industry from the gallery during the International Negotiating Body sessions for the Illicit Trade Protocol. The Indian government severed ties with a tobacco conference that included tobacco industry representatives.

REJECT DONATIONS/DENORMALIZE so-called CSR
In Thailand and Singapore, so-called CSR from the tobacco industry, if any, cannot be published. The Philippine Department of Education and Land Transportation Regulatory Board adopted a policy to reject tobacco industry donations. Shanghai World Expo 2010 returned a donation from a tobacco corporation.

REMOVE INCENTIVES
The Singapore government removed tax incentives of a tobacco company, citing FCTC Article 5.3.

REMOVE FINANCIAL INTERESTS, DIVEST STOCKS
The Norwegian government announced that it will sell its stock investments, estimated to be worth $2.1B, in companies that derive more than 5% of its profit from tobacco.
Preventing Tobacco Industry Interference Toolkit Overview

HOW TO USE THE TOOLKIT

Find out your government's level of compliance
• Take a QUICK TEST (p. 16)
• Ask another government agency to take a QUICK TEST (p 15, 24, 25)

Find out if existing policies protect your government
• Take a test on best policy interventions in GOVERNMENT ACTION (p.31-32)
• Find a CHECKLIST of policies to be adopted & IMPACT (p.33-34, 49-50)

Develop strategies & plans
• Check out case studies and best practices (p.20, 21, 26)
• See CHECKLIST FOR DEVELOPING A STRATEGY (p.29)

Adopt relevant policies
• Consider templates on COMPREHENSIVE 5.3 POLICY, REQUIRING INFORMATION, CODE OF CONDUCT (p.46-48, Templates, and Annexes)

Monitor and evaluate
• Check for SIGNS OF SUCCESS (p.37-39)

Raise Awareness: QUICK WINS

ASK THE LEGAL DIVISION TO REQUIRE ALL GOVERNMENT CONTRACTS TO PROVIDE: ‘The government of X does NOT deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate the tobacco industry and tobacco products.”

Require a DECLARATION OF INTEREST to be signed for all invitees to a meeting, all employees, volunteers, etc.

POST ONLINE all meetings, position papers, correspondence, comments of the tobacco industry.

Quick Ways to Raise Awareness

¹ Sample Declaration of Interest available at Preventing Tobacco Industry Interference Toolkit Templates
ABBREVIATIONS

Association of Southeast Asian Nations - ASEAN
Civil Service Commission - CSC
Conference of the Parties - COP
corporate social responsibility - CSR
Department of Health - DOH
Department of Interior and Local Government - DILG
Department of Science and Technology - DOST
Framework Convention on Tobacco Control - FCTC
local government unit - LGU
National Housing Authority - NHA
non-government organization - NGO
tobacco industry - TI
UN Convention Against Corruption - UNCAC
World Health Assembly - WHA
World Health Organization - WHO

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Ms. Gigi Kellett, Director, Campaign Challenging Big Tobacco, Corporate Accountability International

PHOTO CREDITS

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I. INTRODUCTION

Purpose of this Toolkit

This Toolkit for Preventing Tobacco Industry Interference presents a range of issues, policy options, and considerations that each State needs to take into account when implementing Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).

The success of the business of the tobacco industry depends on the continued patronage of its products by the public. The end goal of tobacco control policies, which is to lower consumption of tobacco products, is directly opposed to the business interests of the industry. Hence, it can be expected that the tobacco industry will stop at nothing to prevent effective tobacco control policies.

In 2001, the World Health Assembly (WHA) unanimously adopted Resolution 54.18 in response to the evidence that the tobacco industry had been subverting the position and the role of governments and WHO as well as of efforts to reduce tobacco consumption. The said resolution urges members to be alert to any efforts by the tobacco industry to undermine public health policies.

The WHO Framework Convention on Tobacco Control (hereafter WHO FCTC) recognizes that tobacco industry interference poses the single greatest threat to tobacco control. It has been documented that the tobacco industry has used strategies to subvert, hinder and prevent tobacco control efforts. Hence, one of the General Obligations of Parties to the WHO FCTC is Article 5.3. It is the key provision aimed at protecting public health policies from interference by the tobacco industry.
Toolkit Usage Guide

This Toolkit serves as a practical starting point for those involved in implementing WHO FCTC Article 5.3. Policymakers, tobacco control advocates, and other persons responsible for promoting or implementing tobacco control and/or transparency and accountability in government will find it useful.

Basic Framework

This toolkit utilizes a basic framework to analyze what needs to be done based on the Recommendations listed in the WHO FCTC Article 5.3 Guidelines. To provide further clarification on how these recommendations came about and what their implementation would entail, this toolkit will provide some tools for each of the recommendations.

<table>
<thead>
<tr>
<th>THIS GUIDE IS NOT</th>
<th>THIS GUIDE IS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A one-size fits all model</td>
<td>• A generic model that can be customized to reflect a country’s unique environment</td>
</tr>
<tr>
<td>• A mandatory document</td>
<td>• A starting point and a tool for self-assessment</td>
</tr>
<tr>
<td>• Intended to provide all the answers</td>
<td>• A prompt on the issues to consider</td>
</tr>
</tbody>
</table>

Elements of the Toolkit

The toolkit provides guidance to drafting groups and policy makers by providing questions that prompt discussion and broader understanding of the issue.

Questions listed under the Quick Self-Tests will help the reader reflect on the key strengths and weaknesses of existing policies and will serve as prompts for priority areas of implementation. Note that not all questions will be relevant to each country’s situation.

After going through the Quick Self-Test, compare the current situation with the target or Signs of Success to determine the gaps, objectives, possible strategies and areas for improvement. This will help in developing a firm action plan.

Checklists are also provided to assist in ensuring the comprehensiveness of the plans to implement WHO FCTC Article 5.3.

Finally, essential features of the policy drafts are discussed under the section on Templates to give policy makers a range of policy options to prioritize.
II. WHO FCTC ARTICLE 5.3 GUIDELINES

With the adoption of the Guidelines for the Implementation of WHO FCTC Article 5.3 (Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry) in 2008 by Parties to the treaty, the international community specified underlying principles in relation to protecting public health policies from the commercial and vested interests of the tobacco industry.

GUIDING PRINCIPLES

The guiding principles adopted by the Parties to the WHO FCTC are as follows.

1. There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and public health policy interests.
   This conflict of interest principle reflects the unanimous recognition by different countries of the fact that the business of the tobacco industry contributes greatly to diseases, death, and other social ills, including increasing poverty. Because of this conflict of interest, governments must protect the setting and implementation of public health policies from any interference by the tobacco industry to the greatest extent possible. The words “fundamental and irreconcilable” emphasize that this is one principle that leaves no room for compromise, not even when the tobacco industry happens to be State-owned.

2. Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
   This principle underscores the need for transparency and accountability measures to govern how governments and their agencies, personnel, and agents interact with the tobacco industry. Any interactions by any government branch (executive, legislative, judiciary) responsible for setting and implementing tobacco control policies should be accountable and transparent.

3. Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
   In order to effectively implement WHO FCTC Article 5.3, governments must require the tobacco industry to submit specific information that will eliminate industry activities to undermine tobacco control and that will assist in the setting and implementation of effective tobacco control measures. In addition, the tobacco industry must be made accountable for its actions and for the accuracy and completeness of the information it provides.

4. Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.
   Governments providing preferential treatment or incentives to the tobacco industry would invariably be protecting and promoting interests that are diametrically opposed to those of public health.
RECOMMENDATIONS TO IMPLEMENT
ARTICLE 5.3

In accordance with the Guiding Principles, eight specific recommendations were developed to assist the Parties in implementing Article 5.3 of the WHO FCTC.

Each recommendation listed below is accompanied by some challenges and questions that governments will face in implementing tobacco control measures, followed by recommended actions under the Article 5.3 Guidelines to address these challenges.

According to the Guidelines, each Party should:

(1) **Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.**
   - **Challenge:** Lack of understanding of the past and present interference by the tobacco industry, including strategies and tactics used by the industry to interfere in tobacco control.
   - **Recommended action:** Raise awareness about the addictive and harmful nature of tobacco products and about who the tobacco industry is and how they have interfered and continue to interfere in policy development and implementation.

(2) **Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.**
   - **Challenge:** Some tobacco industry and government interactions are necessary for purposes of industry regulation, supervision, or control; many are not.
   - **Recommended action:** Avoid interactions with the tobacco industry unless strictly necessary.

(3) **Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.**
   - **Challenge:** The tobacco industry creates partnerships with and offers voluntary agreements and policy drafts to the government.
   - **Recommended action:** Do not partner with or accept, support, or endorse any offer of assistance from the tobacco industry.

(4) **Avoid conflicts of interest for government officials and employees.**
   - **Challenge:** The tobacco industry gives donations, contributions, and gifts or invites officials to be their consultants. The government has investments in the tobacco business.
   - **Recommended action:** Do not accept contributions, gifts, or special invitations from the tobacco industry.

(5) **Require that information collected from the tobacco industry be transparent and accurate.**
   - **Challenge:** The tobacco industry does not disclose and is not transparent about its activities, including lobbying and political contributions.
   - **Recommended action:** Require the tobacco industry to be transparent and accountable.

(6) **Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility” (CSR).**
   - **Challenge:** The tobacco industry does so-called CSR to remove attention from the harmful effects of its tobacco products, to interfere in public health policy, and to serve as a marketing and public relations strategy.
   - **Recommended action:** Denormalize so-called CSR by not partnering or participating in such activities and by disallowing any government agency from accepting tobacco industry contributions.
(7) Do not give privileged treatment to tobacco companies.

**Challenge:** The government gives incentives, exemptions, or benefits to the tobacco industry.

**Recommended action:** Do not give privileges or benefits to the tobacco industry.

(8) Treat State-owned tobacco companies in the same way as any other tobacco industry.

**Challenge:** Existence of State-owned tobacco monopolies or companies.

**Recommended action:** Treat all tobacco companies, including State monopolies, the same way.

The table below illustrates challenges faced in relation to tobacco industry interference and the means to address them.

<table>
<thead>
<tr>
<th>CHALLENGES FACED</th>
<th>RECOMMENDATIONS UNDER THE ARTICLE 5.3 GUIDELINES TO ADDRESS THE CHALLENGES</th>
<th>POLICIES/PROGRAMS THAT MUST BE DEVELOPED OR ADOPTED</th>
<th>IMMEDIATE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of understanding of the past and present interference by the tobacco industry, including industry strategies and tactics</td>
<td>Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies</td>
<td>Programs and surveillance systems to raise awareness about tobacco industry interference, and identification of tobacco industry players</td>
<td>Awareness-raising activities, including media action</td>
</tr>
<tr>
<td>The tobacco industry interacts with government</td>
<td>Avoid interactions unless strictly necessary</td>
<td>Code of Conduct and similar personnel policies, corresponding State policies</td>
<td>Direct action based on existing laws governing public officials</td>
</tr>
<tr>
<td>The tobacco industry partners with and provides policy drafts to government</td>
<td>Do not partner with or accept policy drafts from the tobacco industry</td>
<td>Same as above</td>
<td>Same as above</td>
</tr>
<tr>
<td>The tobacco industry creates conflicts of interest for government officials</td>
<td>Do not accept contributions, gifts or invitations from the tobacco industry</td>
<td>Same as above</td>
<td>Same as above</td>
</tr>
<tr>
<td>The tobacco industry is not transparent</td>
<td>Require the tobacco industry to be transparent and accountable</td>
<td>Laws or rules regulating the tobacco industry (on transparency, information, privileges, and investment)</td>
<td>Direct action based on existing laws regulating the tobacco industry; awareness-raising activities, including media exposure</td>
</tr>
<tr>
<td>The tobacco industry does so-called CSR to remove attention from the harmful effects of tobacco</td>
<td>Denormalize so-called CSR of the tobacco industry</td>
<td>Policies/programs for surveillance and enforcement of tobacco advertising and sponsorship bans</td>
<td>Direct action based on advertising laws; awareness raising campaigns, including media exposure</td>
</tr>
<tr>
<td>The government gives exemptions or benefits to the tobacco industry</td>
<td>Do not give privileges or benefits to the tobacco industry</td>
<td>Laws prohibiting (or removing) benefits to the tobacco industry</td>
<td>Review of government laws and contracts providing such benefits</td>
</tr>
<tr>
<td>Existence of State monopolies</td>
<td>Treat state monopolies the same way</td>
<td>Additional provision in the above-cited policies to ensure that such policies apply equally to state monopolies</td>
<td>Encourage government to withdraw its investment in the tobacco business</td>
</tr>
</tbody>
</table>
EXAMPLES OF TOBACCO INDUSTRY INTERFERENCE

To illustrate further, here are some of the tobacco industry’s more common tactics to undermine tobacco control activities and fight tobacco industry regulation.

In April 2009, Philip Morris and the Department of Environment and Natural Resources (DENR) of the Philippines signed a Declaration of Mutual Cooperation where Philip Morris donated trashcans with ashtrays to DENR for use in public places. Studies suggest that the presence of ashtrays encourage or remind people of smoking. Ironically, DENR is the agency in charge of implementing the Clean Air Act, which bans smoking in all indoor spaces.

In early 2009, Philip Morris approached the Philippines’ Bureau of Customs to sign a Memorandum of Agreement with the company regarding counterfeit cigarettes. At that time, negotiations were ongoing for a Protocol on Illicit Trade of Tobacco Products, where governments had been asked to send representatives from the customs and law enforcement offices. Around this time, Philip Morris also offered their security marking system for possible adoption by the Philippine government.

Early in 2009, the Philippines’ Bureau of Internal Revenue awarded a Billionaire's Club Award to Philip Morris as one of the highest taxpayers. Many other businesses have received the award, but only Philip Morris’s award was widely publicized. This created a perception of partnership with the government.
Tobacco companies donate to schools and sponsor educational programs and school activities. This type of donation inevitably reaches the young, who are likely to form a positive impression or tolerant attitude toward tobacco use and tobacco companies.

**More examples of tobacco industry interference**

- In 2001, while the WHO FCTC was still being negotiated, British American Tobacco (BAT), Philip Morris International (PMI), and Japan Tobacco International (JTI) jointly introduced guidelines, called the International Tobacco Products Marketing Standards (ITPMS). This was the industry’s global strategy to offer self-regulation and implicitly question the need for the treaty. Although the WHO FCTC was adopted unanimously by Member States at the 56th World Health Assembly on May 21, 2003, the ITPMS was never withdrawn. It was still promoted by the tobacco industry, thereby implying that governments could choose between the WHO FCTC and the industry guidelines.

- In 2001, Lao Tobacco Limited, Inc. entered into a 25-year Investment License Agreement with the Lao PDR government that restricts tobacco excise tax rate to 15%, although the law stipulates a tax rate of 55%.

- In **Malaysia**, the Confederation of Malaysian Tobacco Manufacturers (CMTM) wrote to the Health Ministry in an attempt to defer the ban on kiddie packs in 2005. The industry was successful, and the Health Ministry explained that the postponement of the ban by another five years was to coincide with the advent of the ASEAN Free Trade Agreement (AFTA) in the country and also to allow tobacco farmers a grace period to switch to alternative crops (which had started more than 15 years earlier) under the National Agricultural Policy.

These examples of tobacco industry interference and more can be found in Tobacco Industry Interference in Health Policy in ASEAN Countries (2009), a SEATCA publication, available online at resources.seatca.org/Tobacco%20Industry%20Interference.pdf.
## Tobacco Industry Practices and Motives

The tobacco industry has been identified as the principal vector of tobacco-related diseases. In order to successfully implement tobacco control policies, it is important to understand the motives and vested interests of the tobacco industry whenever it approaches government officials. The illustration below provides examples of some of the challenges that the Article 5.3 Guidelines seek to address with regard to tobacco industry motives and practices.

### When the tobacco industry representative does this:

- **The ulterior motive is to:**

<table>
<thead>
<tr>
<th>Lobbies or requests to be part of tobacco control task forces or committees</th>
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<tbody>
<tr>
<td>Delay or derail the development, implementation, and enforcement of tobacco control policies</td>
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</table>

<table>
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<tr>
<th>Submits position papers on policies and proposes alternative wordings</th>
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<tr>
<td>Delay or derail the implementation of stricter laws against the tobacco industry</td>
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<tr>
<th>Appoints former prominent government officials as tobacco company board members or consultants</th>
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<tr>
<td>Use the influence of government officials to lobby within the government</td>
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<tr>
<th>“Befriends” and invites public officials to scientific conferences or study tours</th>
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<tbody>
<tr>
<td>Have allies within the government, buy their silence on anti-tobacco measures, or induce them to take a pro-tobacco industry position</td>
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<thead>
<tr>
<th>Disseminates research papers about the harm of smoking and the viability of smoking rooms</th>
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<tr>
<td>Mislead people into thinking that there is a safe level of exposure to tobacco smoke and that ventilated smoking rooms offer adequate protection from second-hand smoke</td>
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<tr>
<th>Donates to universities or research institutes involved in cancer research</th>
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<tbody>
<tr>
<td>Use the credibility of universities and research institutions to legitimize the tobacco industry’s false claims and give the perception that it is concerned about cancer</td>
</tr>
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</table>

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<tr>
<th>Funds “youth smoking prevention” programs and donates money for environmental programs</th>
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<tbody>
<tr>
<td>Counteract tobacco control measures by influencing the perception of the public and media, project the tobacco industry as a good corporate citizen, and deflect issues relating to the harm of tobacco and the damage caused by the tobacco industry</td>
</tr>
</tbody>
</table>
Quick Self-Test

Is your agency concerned with public health policy in relation to tobacco control? Find out more by answering the questions below:

IS YOUR AGENCY INVOLVED IN:

☐ The development or approval of policies, programs and projects that may be related to tobacco control?
☐ The development and/or implementation of health-related policies and programs?
☐ The promotion of the welfare of vulnerable sectors including protecting the sector’s health?
☐ The development or implementation of policies on tobacco taxes and/or licenses (e.g. collects taxes or fees on tobacco and related products or proposes measures that affect the rates of taxes, fees duties)?
☐ The registration and licensing of or collection of any type of information from tobacco companies?
☐ The development or implementation of government policies relating to the promotion of integrity, transparency, and accountability of public officials?
☐ The enforcement of relevant laws or policies such as tobacco-regulation laws (e.g. smoking bans, advertising bans, tobacco smuggling, tax evasion), as well as laws that promote integrity, accountability and transparency of public officials?

HAS YOUR AGENCY:

☐ Signed any contract with the tobacco industry?
☐ Accepted, supported or endorsed policy drafts from the tobacco industry?
☐ Given awards to the tobacco industry?
☐ Entered into partnerships or agreements with the tobacco industry?
☐ Received contributions from the tobacco industry?
☐ Given any privilege, incentives or benefits to the tobacco industry?
☐ Participated in tobacco industry’s “socially responsible” activities?
☐ Allowed any publicity of tobacco industry’s so-called “socially responsible” activities?
☐ Allowed interaction with the tobacco industry that is not strictly necessary for effective regulation?

☑ If you checked any of the above, then your agency could be a target of the tobacco industry.

For purposes of answering this questionnaire, the term “tobacco industry” refers to:

“organizations, entities, associations, and individuals that engage in work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, and any other individual or organization that works to further the interests of the tobacco industry, including their lawyers, scientists or front groups.”

Source: WHO FCTC Article 5.3 Guidelines
Quick Self-Test

It is often not enough to be aware of tobacco industry interference in government. Agencies should regularly assess their own capacity for complying with their obligations under WHO FCTC Article 5.3. The questions below can help agencies in their self-assessments:

HAS YOUR AGENCY ESTABLISHED CLEAR POLICIES TO IMPLEMENT ARTICLE 5.3? DOES IT HAVE A POLICY:

- ☑ To impose transparency and accountability measures on the tobacco industry and to ensure accuracy of information received from it?
- ☑ Not to solicit and to reject any type of contribution, including policy drafts, legal advice, financial aid, or donations in kind, from the tobacco companies and those representing their interests?
- ☑ To reject any partnership with or to remove the perception of partnership with the tobacco industry and those representing its interests?
- ☑ To refuse giving preferential treatment, privileges, awards, benefits, exemptions, etc. to the tobacco industry?
- ☑ To raise awareness about the nature of tobacco products, tobacco industry interference with policies, or about the true purpose of the so-called CSR activities of the tobacco industry?

The questions below help identify steps in implementing WHO FCTC Article 5.3 obligations. Answers in the negative may require further action.

WHAT CAN YOUR AGENCY DO IN TERMS OF IMPLEMENTING ITS ARTICLE 5.3 OBLIGATIONS?

- ☑ **Defining the Scope.** Has your agency identified the specific individuals, firms, or entities including government agencies that can be considered as representing the interests of the tobacco industry? Has this been disseminated throughout the agency?
- ☑ **Incorporating Policies.** Has your agency’s human resource processes (e.g. recruitment, promotion and performance management, etc.) adopted policies related to avoiding conflicts of interests with the tobacco industry?
- ☑ **Raising Awareness.** Does your agency ensure that the rationale behind tobacco industry interference is communicated to the staff regularly? How does your agency monitor whether the communication has been received, understood and accepted? Does your agency brief new staff at all levels to address the importance of protecting public health policies from tobacco industry interests? Are these values incorporated in other training programmes?
- ☑ **Monitoring.** How does your agency monitor, collect, and exchange information related to tobacco industry interference? Is there a coordinating and monitoring body, with a corresponding budget, that is in charge of implementing and enforcing the said policies and codes of conduct?
- ☑ **Using Enforcement Mechanisms.** How does your agency enforce any violation of the policies related to tobacco industry interference? Is there a well-disseminated enforcement mechanism for Codes of Conduct and related policies that specify clear and proportionate sanctions in case of violations? Are there policies covering simple complaint and investigation procedure, whistle-blower provisions, and monitoring and reporting incentives?
- ☑ **Networking.** Does your agency work with other government bodies or agencies and NGOs not affiliated with the tobacco industry to ensure implementation of Article 5.3 of the WHO FCTC?
- ☑ **Securing Information.** Has your agency identified tobacco industry information that needs to be disclosed publicly? Have there been measures to ensure that this information is available to those working on tobacco control as well as to the public?
EFFECTIVE ARTICLE 5.3 IMPLEMENTATION

How can the State ensure the effective implementation of Article 5.3 of the WHO FCTC?

While an answer to this question has many dimensions, effective implementation can be initiated by creating an environment for the right culture and values through administrative policies and programs. It is simply not enough to rely on codifying the general obligation in national law or having a code of conduct to build resistance to tobacco industry interference.

One cannot overemphasize the need for government personnel to understand the rationale behind tobacco industry interference and its impact on public health. Public officials and personnel must be able to build a culture of resistance against tobacco industry interference in order for them to consciously and continuously respond to and report evolving forms of tobacco industry interference, and recognize the tobacco industry’s various disguises and schemes.

Given the constant change in the government environment and administration, maintaining the tobacco industry-resistant culture poses an ongoing challenge.

To provide further clarification on how these recommendations came about and what their implementation would entail, this toolkit provides some tools for each of the recommendations.

The Recommendations under the Article 5.3 Guidelines can be categorized into provisions relating to:

1. RAISING AWARENESS
2. Developing POLICIES for the STATE for purposes of:
   (a) REJECTING PARTNERSHIPS with the tobacco industry
   (b) REQUIRING INFORMATION from the tobacco industry, and
   (c) REMOVING / NOT GIVING PRIVILEGED TREATMENT to the tobacco industry
3. Developing POLICIES for PUBLIC OFFICIALS for purposes of:
   (a) AVOIDING CONFLICTS OF INTEREST and
   (b) PROHIBITING / LIMITING INTERACTION with the tobacco industry
4. DENORMALIZING so-called CSR of tobacco companies
III. TRANSLATING ARTICLE 5.3 OF THE WHO FCTC INTO REALITY
What Governments Need to Do

ESTABLISH A CORE GROUP AND DEVELOP A PLAN

Everything starts with a catalyst. Key persons or a Core Group must be willing to push forward with actively protecting public health from the vested and commercial interests of the tobacco industry, such as those who understand the issue the most, those working in tobacco control or public health, and/or those working on promoting transparency, integrity, and good governance.

In the Philippines, the Core Group members include high level officials in the Department of Health (DOH), Civil Service Commission (CSC), and several NGOs. Other potential partners include the Ombudsman and anti-corruption agencies.

Because the scope of Article 5.3 is broad and affects agencies and offices other than the Ministry of Health, it is critical to identify key champions that belong to the legislative branches and other government agencies. Often, government agencies are not aware of their role in tobacco control unless they form part of an interagency committee or body on tobacco control. Hence, the Article 5.3 Guidelines create an opportunity to welcome new members into the customary “interagency” tobacco control groups. New members may include public service agencies, anti-corruption groups, licensing authorities, and others.

The multifarious nature of the recommendations under the Article 5.3 Guidelines requires the Core Group to select strategic areas to pursue and prioritize. Each Recommendation suggests a list of measures that can be undertaken. Depending on the circumstances and strategies, some specific measures may need to be prioritized over others. Suggested measures under each Recommendation are listed on pages 19 to 43.
Checklist for Developing a Strategy

Below are some steps that can be followed when developing a strategy to implement Article 5.3.

Developing a National Strategy
- Identify elements of government with interest in tobacco control.
- Identify a lead person or institution. This includes identifying a focal point within each institution or participating organization that is responsible for or has expertise in the various measures (e.g., codes of conduct, tobacco industry information regulations, etc.).
- Identify policy development fora and mechanisms that can be used to coordinate the activities of the government, the private sector, and civil society in the development of the national strategy.

Implementing a National Strategy
- Identify a lead person or institutions, as well as persons within each institution or participating organization, for each element of the national strategy.
- Identify mechanisms for coordination.
- Develop and disseminate tools and fact sheets; provide updates to deepen understanding of the issues.
- Establish a response team to address emerging issues.
- Elaborate the national strategy.
- Develop action plans to build capacity, and allocate/mobilize resources, among others.

Collaborating with Civil Society Organizations
- Include the civil society perspective in the development and implementation of strategies.
- Bring civil society groups together to participate in monitoring, surveillance, and reporting.

Preventing Tobacco Industry Interference
- Identify national coordinating bodies or point persons.
- Identify a monitoring and reporting process and mechanism.
- Promote pertinent policies through information dissemination programs.
- Provide training programs for relevant agencies, including the judiciary.
- Conduct a baseline survey of the adequacy of existing laws and identify policy gaps.
- Identify and prioritize actions so that national laws and the legal infrastructure will conform to international norms.

Creating Article 5.3 Implementation Capability
- Determine roles and functions needed to implement policies relating to Article 5.3.
- Identify contacts within government including those in law enforcement, tobacco regulation, anti-corruption, education, communities or local governments.
- Identify non-government organizations (NGOs), private sectors and academic with expertise in the area of transparency and accountability.
- Conduct and disseminate regular situational analysis and awareness regarding tobacco industry interference.
- Provide sustainable funding.
- Develop implementation and enforcement tools and procedures relating to implementation of policies relating to Article 5.3.

Promoting a National Culture of Tobacco Industry Resistance
- Implement comprehensive awareness programs for all government personnel (include private sectors, when possible).
- Review and update existing policies with government personnel and stakeholders.
- Develop awareness of emerging issues to enhance a coordinated response to tobacco industry tactics.
- Implement a surveillance, monitoring, and reporting mechanism.
- Support outreach to private sectors to denormalize tobacco industry’s so-called CSR.
- Build the capacity of other units or agencies to replicate rational efforts.
- Build, allocate and mobilize resources.
Case Study: Philippines

In July 2009, an Article 5.3 Committee was formally set up under the Department of Health (DOH) to develop implementation strategies to fulfill the obligations under Article 5.3 as elaborated by the Guidelines. The Committee is composed of DOH directors and high-level policy makers, high-level representatives from the Civil Service Commission (CSC), Office of the President, as well as civil society and NGO representatives. The body meets monthly and has created a working group for Inter-agency Linkages, Policy Development, and Communications.

The Inter-agency Linkages working group coordinates the meetings with key government agencies to ensure that Article 5.3 is implemented in these agencies.

The Policy Development working group focuses on developing strategies and policies required to promote a tobacco industry-resistant culture.

The Communications group develops tools, response mechanisms and IEC materials to raise awareness about tobacco industry interference. It has produced fact sheets, posters, and videos relating to Article 5.3. It also developed letter templates and press releases to enjoin agencies to reject donations from the tobacco industry.

In June 2010, the DOH and CSC issued Joint Memorandum Circular 2010-01, banning government workers from interacting with any tobacco corporation or company, except “when strictly necessary for the latter’s effective regulation, supervision, or control.”

In accordance with WHO FCTC Article 5.3, the LTFRB “shall endeavor to partner with government agencies, civil society organizations, and the private sector, except those representing tobacco industry interests, in order to fully implement this memorandum circular.”

No Smoking in PUVs

Effective 07 January 2010, the Land Transportation and Franchising Regulatory Board (LTFRB) has required all Public Utility Vehicles (PUVs) and public land transportation terminals to be 100% smoke free.

PUV drivers and operators are responsible for posting “No Smoking” signs in their vehicles and drivers are responsible for warning their passengers and co-workers against smoking inside PUVs.

In accordance with WHO FCTC Article 5.3, the LTFRB “shall
RECOMMENDATION 1
Raise awareness about the harmful nature of tobacco products and about tobacco industry interference in tobacco control policies

In practical terms, Recommendation 1 implies that governments must:

a. Monitor and document examples of tobacco industry interference.

b. Develop materials about tobacco industry interference and the government’s obligations under Article 5.3 of the WHO FCTC. (e.g., FAQs, news articles, posters).

c. Build alliances among civil society groups, NGOs, and government agencies, and identify champions in key agencies that need to be involved. Consultative meetings and workshops are useful in explaining this recommendation to other government bodies/agencies and civil society groups.

d. Develop and implement a media plan to disseminate information about the harms of tobacco and tobacco industry interference. This should include publicizing actions taken to prevent tobacco industry interference, such as letters sent to warn government agencies about tobacco industry interference.

e. Establish programs to systematically conduct surveillance, monitor, document, act upon, and disseminate instances of tobacco industry interference.

f. Develop policies or provide technical assistance to develop policies that institutionalize surveillance and monitoring activities, raising awareness programs, and reporting mechanisms.

Case Studies

In Thailand, documents about the dishonest behavior and devious nature of the tobacco industry are translated into the Thai language.

An Australian survey shows that the tobacco industry ranks among the “least trusted,” second only to a second-hand car dealer.

In the Philippines, the DOH is required to state the following in all its correspondence and issuances relating to tobacco control: “The Department of Health does not deal with the tobacco industry or those representing its interests.” In addition, all DOH personnel are required to publicly denounce any tobacco industry donation or perception of partnership.
Raising Awareness

The first step to raising awareness is identifying the (a) tobacco industry and those representing its interests, and (b) those contributing to tobacco control efforts.

Since the tobacco industry comes in different disguises, defining it to avoid misunderstanding is a big challenge. As long as it is not clear to people and policymakers who the tobacco industry is and how it misbehaves, it will be difficult for them to establish a case of tobacco industry interference.

One possible way to resolve this is to identify specific individuals, firms, or entities which are known to have tobacco industry interests, and have promoted these interests, and categorize them as part of the tobacco industry. This list must be disseminated throughout the government and relevant civil society sectors in order to ensure that government personnel are forewarned. After dissemination, it may be assumed that any act favorable to the tobacco industry, such as granting incentives or partnering with the tobacco industry, may be considered to have been done knowingly.

Another category that needs to be defined are “those contributing to tobacco control policies.” Depending on how this is defined, this group may include some or practically all (national or local) government agencies and personnel.

Who comprises the tobacco industry?

The guidelines refer to “tobacco industry interference” not only as interference by the tobacco industry itself but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry. This broad definition is based on the vast body of evidence that shows how the tobacco companies have used and continue to use various types of persons and entities to further their commercial and vested interests at the expense of public health.

Transnational tobacco companies’ internal documents have pointed to the fact that they utilize the following types of intermediaries to thwart public health interests:

- lawyers
- public relation firms
- advertising agencies
- front groups, including retailers and tourism associations

In many cases, however, the list is longer. Hence, in codifying policies to protect public health interests from the tobacco industry, it is recommended that governments adopt a broad definition to cover all possible tobacco industry representations.

Case Studies

In the Philippines, the Department of Health adopted a policy to implement WHO FCTC Article 5.3, which includes a provision requiring the department to keep a public record of persons and entities identified as part of the tobacco industry.

In Australia, the NGO, Action on Smoking and Health (ASH) Australia posted a list of tobacco companies, as well as persons and entities that represent the interests of the tobacco industry (http://www.ashaust.org.au/lv4/WhoAreTheTI.htm).
The Article 5.3 Guidelines refer to “public health policies with respect to tobacco control”. They apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of such policies.

Almost all government agencies, to a certain degree, contribute or could contribute to the setting or implementation of public health policies with respect to tobacco control.

Refer to the Quick Self-Tests in the following pages to determine the extent to which government agencies or personnel are contributing to tobacco control. This is further elaborated in the succeeding section “Government Roles in Setting and Implementing Tobacco Control Policies” (see page 26).

**Which bodies contribute to the formulation, implementation, administration, or enforcement of public health policies with respect to tobacco control?**

**Broad definition of the “tobacco industry” supported by Parties to the WHO FCTC**

The technical definition of “tobacco industry” in the WHO FCTC is limited to “tobacco manufacturers, wholesale distributors and importers of tobacco products.” However, the 170 countries that have ratified the WHO FCTC have adopted broader definitions of “tobacco industry” for purposes of making all responsible entities accountable.

For instance, the Guidelines to the Implementation of Article 13 of the WHO FCTC (Tobacco Advertising, Promotions and Sponsorships) have identified more entities that can be held accountable because they are likely to promote tobacco industry interests in marketing tobacco products.

These include:

- Tobacco retailers and their agents and associations.
- Persons or entities that produce or publish content (e.g. advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, and Internet, mobile phone, satellite and game content producers).
- Any entity that makes any relevant form of contribution, those that receive any relevant form of contribution and any intermediaries that facilitate the making or receiving of a relevant form of contribution.
- Persons or entities, for example media and event organizers, sports-people, celebrities, film stars and other artists, who should be banned from engaging in tobacco advertising, promotion and sponsorship.

When defining conflicts of interests, the tobacco industry includes potential contractors or tenderers with tobacco industry interests. Needless to say, any entity or person, when promoting or representing the interests of the tobacco manufacturers, wholesalers and distributors, are also included in the broad definition of “tobacco industry” for purposes of implementing Article 5.3 of the WHO FCTC.
Quick Self-Test

Defining which agencies contribute to tobacco control sets in motion the recommendations provided in the Article 5.3 Guidelines. Find out if your agency is one which needs to be particularly vigilant in its compliance with the government’s obligations under Article 5.3 of the WHO FCTC.

DOES YOUR AGENCY ENGAGE IN THE FOLLOWING TOBACCO CONTROL MEASURES?

- Sets and/or implements health-related policies and programs.
- Develops or approves policies, programs and projects that may be related to the regulation of tobacco companies through the passage of legislation, or issuance of orders and opinions (e.g., secure marking systems; taxation; anti-smuggling measures; ban on advertising, promotions, and sponsorships; tobacco industry interference; packaging; education campaigns, etc.).
- Proposes measures that affect the rates of taxes, fees, and duties and sets or implements policies on tobacco taxes, import quotas, licenses (e.g. collects taxes, duties, or fees on tobacco and related products).
- Protects the welfare of vulnerable sectors by including a health component in programs to protect vulnerable sectors.
- Regulates, directly or indirectly, tobacco products, tobacco companies and/or its activities (promotions, advertising, packaging, product content).
- Collects any type of information from tobacco companies and/or affiliated companies.
- Sets or implements policies relating to the promotion of integrity, transparency and accountability.
- Enforces relevant laws or policies related to tobacco-regulation laws such as smoking bans, advertising bans, tobacco smuggling, tax collection, alternative livelihoods for tobacco farmers, as well as laws that promote integrity, accountability and transparency.
- Prosecutes or adjudicates cases relating to tobacco companies and their liability.
- Sets or implements national strategies for alleviation of poverty and other targets of the UN Millennium Development Goals.
Quick Self-Test

If your agency contributes to tobacco control as indicated in the previous page, then, as a minimum, it should promote awareness of Article 5.3 of the WHO FCTC. Assess your agency’s contribution to promoting awareness of tobacco industry interference in tobacco control policies. Find out by answering the questions below:

**DOES YOUR AGENCY CONDUCT ANY OF THE FOLLOWING ACTIVITIES?**

- ✔ Continuously and consistently raises awareness of policies relating to WHO FCTC Article 5.3.
- ✔ Informs and educates all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies from the commercial and other vested interests of the tobacco industry, and the strategies and tactics used by the tobacco industry.
- ✔ Raises awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on its behalf or to take action to further its interests.
- ✔ Ensures that all branches of government and the public are informed and made aware of the true purpose and scope of the so-called corporate social responsibility (CSR) activities of the tobacco industry.
- ✔ Collects and exchanges knowledge and experience among pertinent agencies with respect to tobacco industry practices.
- ✔ Monitors compliance with policies to counter tobacco industry interference and support the exchange of information to promote international cooperation in accordance with the WHO FCTC.
- ✔ Engages the support of NGOs and other members of civil society (not affiliated with the tobacco industry) in monitoring tobacco industry activities as well as government’s compliance with policies to counter tobacco industry interference.

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**Case Studies**

SEATCA’s “Surveillance of Tobacco Industry Activities Toolkit” published in 2009 provides a surveillance approach and tracking tool used by their tobacco industry surveillance network in seven ASEAN countries (online at [http://www.seatca.org](http://www.seatca.org)).

RECOMMENDATIONS 2 to 4

2. Establish measures to limit interaction
3. Reject partnerships and agreements
4. Avoid conflicts of interest for government officials and employees

These three Recommendations go hand in hand. They govern the behavior of the State, its agencies, instrumentalities, and personnel vis-a-vis the tobacco industry. They also require that alliances and champions have been identified to:

(a) **Develop firm policies** for all concerned government agencies and officials to avoid or limit interaction with, avoid conflicts of Interests with, and reject any partnerships or agreements with or contributions from the tobacco industry. This should include laws that prohibit campaign contributions to political parties or politicians. Many of these can be embodied in codes of conduct, amendments of laws on public officials (e.g., anti-graft and corrupt practices laws, codes of ethical conduct, election laws, rules governing public service, implementing rules and regulations of government agencies),

(b) **Develop and implement an action plan** and process on how to reject interactions / partnerships / agreements / contributions, or offers of the same, made by the tobacco industry,

(c) **Establish a process for divestment** of tobacco industry interests, incorporate a “no tobacco industry relationship” clause in contracts, and integrate safeguards in codes of conduct and anti-corruption programs,

(d) **Adopt personnel and hiring policies** consistent with preventing conflicts of interests,

(e) **Adopt transparency measures**, such as public notices, public participation, and public records of meetings with the tobacco industry that are deemed strictly necessary

(f) Identify the proper authority to monitor and enforce the policies.

Case Studies

In the **Philippines**, the DOH and the CSC issued Joint Memorandum Circular 2010-01 to protect the bureaucracy from tobacco industry Interference. The Circular prohibits all interaction with the tobacco industry unless strictly necessary for regulation, and mandates the reporting of any incidence of tobacco industry interference. All tenured government officials are subject of disciplinary action for violation of the policy.

In **Australia**, the public is notified of any necessary meetings with the tobacco industry and the minutes of these meetings are posted online.
DEVELOP POLICIES TO IMPLEMENT
Article 5.3 Recommendations 2 to 4

What is the role of the government in implementing tobacco control? How can conflicts of interest be avoided?

Basic Framework

A. GOVERNMENT AGENCY AND ACTION

The first part of this section discusses how all agencies play a direct or indirect part in setting and implementing tobacco control strategies and programs. This part helps identify agencies that should be involved in policy development, implementation, and enforcement.

B. GOVERNMENT PERSONNEL AND CODES OF CONDUCT

The second part focuses on how government agencies can avoid conflicts of interest by describing the key features of codes of conduct for government personnel that are pertinent to preventing tobacco industry interference.

Elements

The previous section contained Quick Self-Tests to allow government agencies to determine if they play a direct, indirect, remote, or central role in tobacco control. However, it is important to stress that all government agencies, unless they provide specialized and limited functions, have some level of contribution to tobacco control or at least a potential to contribute to it. In this sense, the Article 5.3 Guidelines apply to all government agencies.

This section provides another Quick Self-Test (page 30) to assist government agencies in reviewing existing policies, resources, and mechanisms in order to assess capacities, strategies, and next steps. This section also lists a number of policies that the State must adopt to build a tobacco-industry-resistant culture in government.

The second part of this Section focuses on government personnel. It discusses the International Code of Conduct for Public Officials adopted by the UN General Assembly and provides guidelines on how Codes of Conduct can be modified to ensure compliance with the Article 5.3 Guidelines. These standards include provisions on:

- Accountability
- Declaration of interests
- Sustained awareness-raising efforts
- Enforcement

It also discusses other personnel policies that need to be adopted to prevent tobacco industry interference in key government agencies that contribute to tobacco control.
Government Roles in Setting and Implementing Tobacco Control Policies

The WHO FCTC has expanded the traditional view of “public health policies related to tobacco control” to include specific measures that are not often included in the mandate of government health agencies. According to the WHO FCTC, education, product regulation, tax, tobacco smuggling, alternative crops and livelihood, transparency, among others, have an impact on public health policies with respect to tobacco. Thus, all agencies in charge of the above fields now have distinct roles in tobacco control and are bound to protect public health policies from tobacco industry interference.

To illustrate: in many cultures, tax is not viewed as a public health measure; however, since the WHO FCTC has included this as a primary tobacco control measure in the public health treaty, governments are now obliged to recognize tobacco taxation not only as a revenue measure but also as a public health measure. The fact that the power to tax is not normally vested in the Ministry of Health emphasizes the need to recognize the roles of other government agencies such as the Ministry of Finance in setting tobacco control policies.

Setting Policies

Legislative bodies of government generally have the authority to pass laws related to tobacco control. Legislative bodies can also be the key to the adoption of a comprehensive law on implementing WHO FCTC Article 5.3 that can include all the recommendations under the Guidelines. Because of their role in tobacco control, there needs to be a specific emphasis on protecting legislators from the influence of the tobacco industry. In fact, the internal documents of the tobacco industry show that legislators are the prime targets of tobacco industry interference. In many countries, legislators are elected officials. Thus, the Article 5.3 Guidelines recommend the prohibition of contributions to political parties to prevent the tobacco industry from influencing elected officials and their election.

The judiciary also has a role in looking into tobacco control policies through its rulings and decisions relating to controversies involving the tobacco industry. But the more apparent role belongs to specialized government agencies like Ministry of Health, Ministries of Education/Tax/Agriculture/Public Service/Customs, and other agencies that are deemed “competent authorities” to set policies relating to tobacco control, as defined by the WHO FCTC.

In addition, there are also agencies whose primary mandates are to protect specific marginalized populations or sectors. These are also endowed with the function to promote the health of the said sectors, such that they also have a strong role in setting tobacco control policies. These include the agencies responsible for the welfare of women, children, the urban

Philip Morris and Fortune Tobacco ask Senator Manuel Villar of the Philippines for a repeal of the 70% ceiling on value-added tax (VAT).
poor, indigenous peoples, the elderly, people with disabilities, or members of the labor sector. Typically, the charters or enabling laws of these agencies authorize them to “set” public health measures to protect these vulnerable sectors; such measures would invariably include those relating to tobacco control.

**Implementing Policies**

Government agencies that “contribute to implementing public health policies with respect to tobacco control” cover a very broad range of agencies spanning almost the entire bureaucracy. “Implementation of policies” is a broad function that involves all types of efforts meant to operationalize policies. This includes oversight and other committees, creation and running of related programs, administration and enforcement of laws.

All government agencies, entities, and instrumentalities, including local governments, have either an expressed or implied mandate to comply with and implement all laws and related policies. In particular, regulatory agencies require persons or establishments that are subject to their regulations to comply with all existing laws, including tobacco control laws. Therefore, most, if not all, government agencies would ultimately, be able to contribute to implementing public health measures with respect to tobacco control.

For instance, in the Philippines, the National Housing Authority (NHA) has the authority to impose a Smoke Free Housing policy. This puts the agency in a position to contribute directly to tobacco control.

If local governments are mandated to collect business taxes from and regulate tobacco retailers, they are also in a position to contribute significantly to tobacco control.

**Enforcing Policies**

Some government agencies specialize in the enforcement of all laws and would therefore be deemed as agencies that implement tobacco control laws. A good example is the police force in charge of enforcing laws such as smoking bans. Likewise, prosecutors in charge of the prosecution for violations of the law can be classified similarly. Ultimately, the role of the judiciary and the department of justice will be significant in ensuring enforcement.

Considering that practically all government agencies have a role in tobacco control, it would be ideal to enact a comprehensive law or policy on “Protecting Government from Tobacco Industry Interference” that should apply to all government agencies and all government personnel. In addition to this, more stringent measures can supplement such policies within government agencies or bodies that have a direct role in setting and implementing tobacco control measures.

**Government Agencies Involved in Tobacco Control**

All government agencies, unless they provide specialized and limited functions, have some level of contribution to tobacco control or at least a potential to contribute to it. As such, obligations under WHO FCTC Article 5.3 should be fulfilled by all government agencies.

In reality, however, there may be a compelling need to distinguish the level of involvement of each agency in order to distinguish varying degrees of restrictions in dealing with the tobacco industry. For instance, sanctions may differ if a public official from the Department of Trade failed to declare his tobacco industry holdings vis-à-vis a public official from the Department of Transportation who has done the same. This emphasizes the need to distinguish the different roles of each agency in setting and implementing public health policies relating to tobacco control (as discussed earlier).

**Centralized Bodies**

In many countries, monitoring of the implementation of government agency policies is done by a central administrative body or by another branch of government. In other
countries, the government agency or entity is supreme in its own jurisdiction or enjoys such autonomy and independence that bar administrative regulation unless it is questioned by other branches of government as part of the check and balance process.

For instance, in the Philippines, it is often the legislative body or judiciary which questions the anomalous transactions of administrative agencies. A separate body has also been established to investigate and try such transactions if it involves graft and corruption. These bodies are required to be independent and impartial and thus, have a policy to refrain from private sector partnerships and other transactions with the private sector. In the case of local governments, the Department of the Interior and Local Governments (DILG) has an oversight function over the local government units (LGUs), but it is required to respect the principle of local autonomy. No sanctions can be imposed by the DILG, but it can recommend the suspension of local officials, which only the President can approve. Other centralized bodies like the Commission on Audit are in a position to regulate sources of funding received by the government.

The centralized bodies and branches with oversight and regulatory function over other agencies should have specific policies and programs to implement WHO FCTC Article 5.3 within their jurisdictions.

On the other hand, each government agency should possess a sufficient level of awareness regarding tobacco industry interference in order to detect it and to resist it. They can do a quick self-assessment that will help them determine areas of Article 5.3 implementation that need attention.

### Agencies authorized to regulate the tobacco industry

There is a special class of agencies that have jurisdiction or regulatory authority over the tobacco industry and those representing its interests. These agencies must be identified very specifically to ensure that they adopt policies in accordance with the Article 5.3 Guidelines to require transparency from the tobacco industry.

In most countries, these include the Ministry of Trade, Ministry of Investments, Securities and Exchange Regulation Commission, Food and Drug Authority, Ministry of Agriculture, Ministry of Taxes and Ministry of Customs.

Because of the mandate given to these agencies to regulate certain industries, they are in the position to require the much needed information from the tobacco industry that will assist in implementing the whole range of tobacco control measures. These transparency measures are necessary to support tobacco control efforts. Consultations with the tobacco control community will provide guidance as to what information should be required from the tobacco industry. Some examples are already enumerated under the Guidelines for the Implementation of Article 13 of the WHO FCTC. These include information on their marketing, sales expenses, promotional and so-called CSR activities, as well as information about their affiliates and contractors.

These agencies also have the authority to require accountability from the tobacco industry with respect to any information they are required to submit. They can impose sanctions on the tobacco industry for any failure to submit complete and accurate information.
**Government Action**

The government can initiate action through the executive branch. This is an arena where changes are made through executive order, by changes in rules or administrative practices, and use of veto powers by elected executives.

Some government agencies under the executive branch are specifically mandated to “set” public health policies with respect to tobacco control. This primarily lies within the jurisdiction of the ministry of public health and related or similar bodies. In addition, government agencies with a specific role in tobacco control such as regulatory agencies are also in a position to impose more active measures such as requiring transparency from the tobacco industry or removing any privilege granted to the tobacco industry. Other government agencies contribute to tobacco control in varying levels and can adopt measures accordingly.

The government must also act through its legislature to enact or amend laws in order to fully implement Article 5.3 in accordance with its Guidelines.

The table below provides an illustration of the different measures appropriate for agencies that normally have a direct, indirect, or other role in contributing to tobacco control.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Relationship/example of measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Health</td>
<td><strong>DIRECT</strong>&lt;br&gt;• “No interaction, partnership, contribution policy” applies&lt;br&gt; • Disqualification due to tobacco industry relationship applies to all officials&lt;br&gt; • Officials disallowed to engage with tobacco industry within a reasonable number of years after leaving government service&lt;br&gt; • Strict monitoring and enforcement required, with high penalty for violations&lt;br&gt; • Should be in charge of mandatory monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Police Department</td>
<td><strong>INDIRECT</strong>&lt;br&gt;• “No interaction, partnership, contribution policy” applies&lt;br&gt; • Disqualification due to tobacco industry relationship may be applied to ranking officials&lt;br&gt; • Officials disallowed to engage with tobacco industry within a reasonable number of years after leaving police service&lt;br&gt; • Must have integrated the “no tobacco industry interference policy” in their existing monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Department of Interior and Local Governments</td>
<td><strong>CENTRALIZED BODY</strong>&lt;br&gt;• “No interaction, partnership, contribution policy” applies&lt;br&gt; • Disqualifications may apply in some positions to ensure impartiality&lt;br&gt; • Must have integrated the “no tobacco industry interference policy” in their existing monitoring, enforcement and awareness raising programs</td>
</tr>
<tr>
<td>Department of Fisheries</td>
<td><strong>REMOTE</strong>&lt;br&gt;• “No interaction, partnership, contribution” policy applies&lt;br&gt; • Disqualifications may not be applicable&lt;br&gt; • Awareness raising programs may be extended by other competent agencies</td>
</tr>
</tbody>
</table>
Policies and Laws

Government action can take the form of adoption of policies. Inter-agency support is essential to ensure effective coordination and implementation.

Based on the Article 5.3 Recommendations, the government should adopt, among others, the following:

1. State Policies on
   (a) No partnership, contribution, or interaction with the tobacco industry
   (b) No incentive to the tobacco industry
   (c) No investment in the tobacco industry

2. Laws to regulate the tobacco industry
   (a) mandatory disclosure of information by the tobacco industry
   (b) prohibition on publication of so-called CSR of the tobacco industry and other forms of advertising

Quick Self-Test

The questions below assist in taking stock of the available resources and mechanisms that can be utilized to implement policies relating to Article 5.3 of the WHO FCTC, as well as identify opportunities for improvement.

✓ Is there a codification of Government Agency Rules and Policies?
   •  How is the codification or law amended, interpreted, and implemented?
   •  What type of administrative or legislative policies need to be drafted to effect changes or add details to this Code or Law?
   •  Which agencies are in charge of:
     (a) Dissemination of revisions in the said code or law?
     (b) Monitoring the implementation of the said code or law?

✓ Is there a centralized national body in charge of monitoring the activities of all government agencies?

✓ Do the Constitution or other laws encourage the acceptance of private sector support or contribution?
   Or in case of State-owned tobacco companies, inter-agency contributions?
   •  What is needed to carve an exception to this rule?

✓ Does each government agency have the authority to issue its own policy relating to rejecting partnerships and contributions from the private sector?
   •  To what extent is it authorized to implement it?
   •  Are there any sanctions for non-compliance to its own policies?
   •  What is the compliance level in the absence of specific sanctions?

✓ Does the Code or Law and/ or related administrative or legislative documents provide for mechanisms for implementation like sanctions, complaint procedure, adjudication procedure?
   •  What are the procedures involved in cases of violations of said code or law?
   •  Which agencies or persons are in charge of adjudicating such cases? To which agency can this be appealed?
A. NO INTERACTION POLICY

The government, or any branch, agency or body thereof is implementing a firm policy to avoid interactions with the tobacco industry and interacts with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry. Ensuring that such interactions are conducted transparently and publicly, e.g. public hearings, public notice of interactions, disclosure of records of such interactions to the public.

In addition, the pertinent government agencies have a policy to prohibit any person employed by the tobacco industry or any entity working to further its interests from:

☑ being a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy,
☑ serving on delegations to meetings of the Conference of the Parties (COP), its subsidiary bodies or any other bodies established pursuant to COP decisions, or
☑ being awarded any contract for the carrying out of any work related to setting and implementing public health policies with respect to tobacco control. This refers to candidates, tenderers or bidders for government projects.

B. NO PARTNERSHIP POLICY

The government, branch, agency or body has clear, well-disseminated rules on prohibiting any partnerships with the tobacco industry, specifically:

☑ Not to accept, support or endorse partnerships and non-binding agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.
☑ Not to accept, support or endorse any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.
☑ Not to accept, support or endorse any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.
☑ Not to accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.
☑ Not to endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.
☑ Not to award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.

C. NO CONTRIBUTION POLICY

The government, branch, agency or body has laws/rules and corresponding sanctions on prohibiting the acceptance of any contribution from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or for legally binding and enforceable agreements.

The national government or the pertinent government agencies have rules and corresponding sanctions to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.
D. NO INCENTIVE POLICY
The government, branch, agency or body has established a policy
- Not to grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses
- Not to provide any preferential tax exemption to the tobacco industry
- To exclude the tobacco industry from any existing privileges, incentive or benefit scheme, or preferential exemptions, and to remove any such exemption or privilege granted, where legally feasible.

E. NO INVESTMENT POLICY
The government branch, agency, or body has established a policy not to invest in the tobacco industry and its related ventures. Government bodies should not have any financial interest in the tobacco industry unless they are responsible for managing the State’s ownership interest in a State-owned tobacco industry. In such cases, any investment in the tobacco industry should not prevent all other government bodies or agencies from fully implementing the WHO FCTC.

F. DISCLOSURE POLICY
The government, branch, agency or body has rules and regulations requiring the tobacco industry to submit information on:
- tobacco production and manufacture,
- market share,
- marketing expenditures,
- revenues, and
- any other activity, including lobbying, philanthropy, political contributions and any form of CSR, advertising, promotions and sponsorship.

In addition, the government, branch, agency or body, if it has a mandate to regulate industries, should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent.
- requires the tobacco industry and those working to further its interests to periodically submit information about the industry and its operations.
- requires rules for the disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists, with said rules applying to any person employed by the tobacco industry or any entity working to further its interests who is:
  (a) a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy,
  (b) serving on delegations to COP meetings, its subsidiary bodies or any other bodies established pursuant to COP decisions, or
  (c) awarded contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers.
- imposes mandatory penalties on the tobacco industry in case of the provision of false or misleading information
- ensures public access to a wide range of information on tobacco industry activities as in a public repository (e.g. website).
- does not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.
- prohibits the tobacco industry or any entity working to further its interests from contributing to political parties, candidates or campaigns, or requires full disclosure of such contributions.

Reference: Guidelines for the Implementation of Article 5.3 of the WHO FCTC (Recommendations 2, 3, 4, 5, and 7)
Code of Conduct Provisions

What is the role of the “Code of Conduct for Public Officials” in implementing Article 5.3 of the WHO FCTC?

A set of rules under the Article 5.3 Guidelines apply specifically to the conduct of government officials and employees. Recommendation 4 of the Guidelines states that the governments must ensure that their officials and employees avoid conflicts of interests and makes reference to the International Code of Conduct for Public Officials adopted by the United Nations General Assembly.

In order to effectively implement the Article 5.3 policies relating to conflicts of interest, the pertinent provisions would need to be introduced and incorporated into national legislation or administrative frameworks of countries’ Codes of Conducts. This might require adjustments of existing legal and administrative provisions or the addition of new ones in order to make the codes enforceable. Also, provisions containing requirements for the training of public officials may have to be introduced in the national legislation or administrative guidelines.

Institutional adjustments may also be required, including the appointment of focal persons or designation of bodies that will coordinate, provide technical assistance and training, and oversee implementation.

Integration in Codes of Conduct

The Article 5.3 Guidelines imply the recognition of the existence of codes of conduct and laws in many countries relating to public officials’ ethical standards.

Implementation of provisions relating to the Code of Conduct of government officials may be done through a systematic integration of the principles and recommendations of the Article 5.3 Guidelines into the existing codes of conduct. This is a more practical approach as opposed to creating and implementing a whole new Code of Conduct since most of the countries in the region already have in place comprehensive codes of conduct for all categories of public officials.

It must be noted that while some countries have distinct codes of conduct applicable only to high, medium or low-level officials respectively, others have codes of conduct for specific categories of public officials. Article 5.3 policies must be consistently integrated in each of these categories where applicable.

In most countries, codes of conduct are incorporated into both domestic laws and administrative policies. In such cases, corresponding amendments and adjustments must be made in these laws and corresponding policies to reflect the principles and recommendations found in the Article 5.3 Guidelines.

Fortunately, many countries had the opportunity to review their respective Codes of Conduct for public officials in conjunction with their adoption of the United Nations Convention against Corruption of 2003 (UNCAC), which entered into force on 14 December 2005. The ongoing reviews of the Codes of Conduct in compliance with the UNCAC present an opportunity to introduce provisions consistent with Article 5.3 of the WHO FCTC.
Checklist: Code of Conduct

Below is a set of Assessment Questions that will help in determining the extent of adjustments that need to be done to implement Article 5.3 of the WHO FCTC based on the recommendations embodied in the Article 5.3 Guidelines.

A. ESSENTIAL POLICIES

Does your agency have the following:

☑ A Code of Conduct that include measures specifically prohibiting partnerships, contributions and unnecessary transactions with the tobacco industry?

☑ A Code of Conduct and Policies on Accountability and/or Declaration of Interests include both high level aspirational statements and statements about behavioral expectations that provide a benchmark for dealing with tobacco industry interference?

☑ A Hiring Policy that ensures applicants are not associated with the tobacco industry or other entity that poses a conflict of interest?

☑ A Personnel Policy that prohibits government employees from working with the tobacco industry within a period of time after leaving government service?

B. AWARENESS OF PROCESSES RELATING TO THE CODE OF CONDUCT

☑ Is there a Code of Conduct for all Public Officials? Are there separate ones for each agency or for different types of officials?

☑ Is there a centralized national body in charge of the review and/or implementation of the Code of Conduct for all public officials? Are there separate bodies for each agency?

☑ Which agency or government sector is in charge of changes in the Code of Conduct? What type of administrative or legislative policies need to be drafted to effect changes or add details to the Code of Conduct?

☑ If the country has ratified the UNCAC, which agency was mandated to ensure compliance with the treaty?

☑ Which agency/ies are in charge of:

(a) dissemination of revisions in the Code of Conduct?

(b) monitoring the implementation of the Code of Conduct?

☑ If each government agency has the authority to issue its own Code of Conduct, to what extent is it authorized to implement it? Is it also authorized to monitor, receive complaints, or adjudicate?

☑ Does the Code of Conduct and/or related administrative or legislative documents provide for mechanisms for implementation like sanctions, complaint procedure, and adjudication procedure?

☑ What are the procedures involved in cases of violations of the Code of Conduct by the public officials?

☑ Which agency/ies is in charge of adjudicating such cases? To which agency can this be appealed?

C. ENFORCEMENT OF THE CODE OF CONDUCT

☑ Has the competent authority in government identified which agencies or staff positions must be required to declare and divest their interests in the tobacco industry?
Does your agency provide for accountability measures and specify sanctions to government personnel for the act of giving incentives or awarding partnerships or contracts to the tobacco industry or to those representing its interests?

Does your agency ensure that the rationale behind tobacco industry interference is communicated to the staff and public regularly? Does your agency have an induction for new staff at all levels that address the importance of protecting public health policies from tobacco industry interests? Are these values incorporated in other training programmes?

(a) Do the Human Resource processes of your agency (e.g. recruitment, promotion and performance management, etc.) take into account regard for the Codes of Conduct?

(b) Does your agency have a process for ensuring that all official communication (e.g. policies, guidelines, statements, publications, etc.) is in line with policies relating to conflicts of interest?

(c) Does your agency involve staff and key stakeholders in the development and review of the related policies to ensure their continued relevance?

Is there an evaluation of how well your agency’s policies in relation to WHO FCTC Article 5.3 have been promoted, understood and integrated into agency operations and decision-making? Does your agency measure the impact of the Article 5.3-related policies against agency reputation?

Are there firm reporting mechanisms, investigation procedures, and corresponding sanctions regime within the agency for breaches of codes of ethics or conduct? Are there clear and proportionate sanctions in case of violations, simple complaint and investigation procedure, whistle-blower provisions, and monitoring and reporting incentives? Are these well disseminated?

Is there allocated funding and other resources for the promotion of transparency and accountability within the agency?

Is there a coordinating and monitoring body with the corresponding budget that is in charge of implementing and enforcing the said policies and codes of conduct?

**Signs of Success**

Most countries have an existing Code of Conduct and corresponding enforcement mechanisms, but implementation often leaves much to be desired. The specific recommendations relating to the tobacco industry reinforces these Codes of Conduct and encourages governments to take specific immediate action to enhance implementation.

The government is successful in implementing WHO FCTC Article 5.3 among government employees and officials if it formulates, adopts, or incorporates:

- Code of Conduct provisions that take into account the peculiarity of the tobacco industry and those representing its interests
- Accountability measures to ensure that State policies to prohibit incentives, partnerships and interactions with the tobacco industry are followed
- Rules to require government employees and officials to execute a Declaration of Interests
- Sustained awareness-raising programs to ensure that the government personnel understands the need to protect themselves from tobacco industry influence.
- Enforcement measures that include protection of whistleblowers and involvement of civil society
A. CODE OF CONDUCT

The code of conduct has been revised to prescribe the standards with which public officials should comply with respect to possible dealings with the tobacco industry, including:

- avoiding interactions with the tobacco industry and limiting interactions with the tobacco industry only when and to the extent strictly necessary.
- ensuring transparency of all meetings, interactions with the tobacco industry.
- not allowing any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.
- not allowing such official to accept such contributions in behalf of government or private entities
- not endorsing, supporting, forming partnerships with or participate in activities of the tobacco industry.
- declaring any interests in the tobacco industry

B. ACCOUNTABILITY MEASURES

Government agencies have adopted policies to ensure that its officials or employees are accountable for and do not approve any transactions that:

- Allow the granting of incentives to the tobacco industry
- Allow or tolerate partnerships with the tobacco industry
- Allow any person employed by the tobacco industry or any entity working to further its interests:
  - (a) To be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.
  - (b) Serve on delegations to COP meetings, its subsidiary bodies or any other bodies established pursuant to COP decisions.
  - (c) To be awarded contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control.

C. DECLARATION OF INTERESTS

Government agencies or bodies with a role in setting and implementing public health policies with respect to tobacco control, are implementing a clear policy where their government personnel or public officials, including applicants to such positions, are required to declare interests in the tobacco industry, specifically:

- To inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.
- To declare any current or previous occupational activity with the tobacco industry whether gainful or not.
- To declare and divest themselves of direct interests in the tobacco industry.

The policy on disclosure and management of conflicts of interest extends to consultants and contractors.
D. ENFORCEMENT MEASURES

The Central Government Body in charge of overseeing the conduct of government personnel or implementing / enforcing provisions relating to the Code of Conduct as well as each government body adopting any of the above policies:

☑ Has provided adequate protection for whistleblowers.
☑ Is using enforcement mechanisms to ensure compliance with these policies, such as the bringing an action to court, and to use complaint procedures such as an ombudsman system.
☑ Has engaged the support of NGOs and other members of civil society not affiliated with the tobacco industry in the enforcement function.

E. SUSTAINED AWARENESS-RAISING EFFORTS

The government branch, agency or body continuously and consistently raises awareness of such codes and policies as well as:

☑ Informs and educates all government personnel about (a) the addictive and harmful nature of tobacco products, (b) the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and (c) the strategies and tactics used by the tobacco industry.
☑ Raises awareness about the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.
☑ Ensures that all are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.
☑ Encourages government personnel to monitor, report and exchange knowledge among pertinent agencies with respect to tobacco industry practices.

Reference: Guidelines for the Implementation of Article 5.3 of the WHO FCTC (Recommendations 2 to 4)

Other Personnel Policies

Other personnel policies may also be necessary to ensure full implementation of Article 5.3 of the WHO FCTC relating to government officials.

One example is a Hiring Policy to ensure that no member of the tobacco industry or anyone representing its interests is hired in a position that exerts influence on tobacco control policies.

Other policies and programs may also be useful such as a divestment program to ensure that all interests in the tobacco industry are divested.

These types of policies also serve to raise awareness about tobacco industry interference. The lure of high income from tobacco industry investments or employment can be offset by the prospect that such investment or employment creates a disqualification for certain types of public office in the future.
RECOMMENDATION 5
Require that information collected from the tobacco industry be transparent and accurate

*Information that tobacco companies should be required to disclose
(Based on the Guidelines for the Implementation of Article 5.3)

1. Production
2. Manufacture
3. Market share
4. Marketing expense
5. Revenues
6. Lobbying activities
7. Political contributions and activities
8. Philanthropic activities
9. Affiliated entities
10. Agents or individuals acting on their behalf, including lobbyists
11. Marketing and promotional activities, including product design features, retailer incentives, any financial or other support to events, groups or individuals (in accordance with the WHO FCTC Article 13 Guidelines)

This recommendation presumes that an interaction with the tobacco industry is strictly necessary or required by law. Its operation relies on government bodies or offices that have a specific task of regulating the tobacco industry directly or indirectly. Hence, the first step is to identify the “tobacco regulating government agencies”, then to:

a. **Raise awareness among tobacco-regulating government Agencies**

b. **Take stock** of information collected from the tobacco industry

c. **Identify** other tobacco industry information that need to be collected to help in setting and implementing tobacco control measures effectively

d. **Identify obstacles** to collecting and disseminating information such as confidentiality clauses and address these

e. **Adopt a policy or law to require additional information** as needed to implement tobacco control measures effectively. If possible, incorporate this policy in the laws pertaining to Freedom of Information or commercial/business/corporate laws.

f. **Establish a process and a database structure/system** to make the information easily accessible by the public.

g. **Ensure that proper sanctions are imposed** for failure to submit information or for providing false information and that these are properly publicized to serve as a deterrent.
RECOMMENDATION 6

Denormalize and regulate activities defined as “socially responsible” by the tobacco industry

There is an inherent contradiction when the tobacco industry, which makes its money by causing deaths and diseases, engages in activities that are “socially responsible.” The ultimate intention of the tobacco industry’s public relations strategy is to distance its image from the lethal nature of its products, and governments should not allow themselves to become an instrument to this. Furthermore, the tobacco industry uses its so-called CSR to promote, directly or indirectly, tobacco consumption. Hence, government sectors, especially those most likely to be targeted (agriculture, environment, education, social welfare, local governments) must:

a. **Raise awareness** of the tobacco industry’s ulterior motives for doing its so-called corporate social responsibility (CSR) activities. This includes monitoring and documenting such activities, as well as publicizing the policies that require stricter regulation for the tobacco industry or that limit interactions and relationships with them.

b. **Warn ranking public officials**, government agencies, and other related or affiliated entities about the impact of participating in such so-called CSR activities with a view to encouraging the return of past donations and avoiding future contributions.

c. **Publicly return, reject, or protest** the contribution or offer of contribution of the tobacco industry.

d. Ensure that “Tobacco Regulating Agencies” **emphasize in their internal and external communication** that their agencies will not deal with the tobacco industry and will take active measures to avoid any interactions with the tobacco industry other than those strictly necessary and mandated by law.

e. **Prohibit the tobacco industry from undertaking its so-called CSR activities** or, if this is not constitutionally possible, ban all publication of so-called CSR while imposing a strict requirement for the tobacco industry to submit reports as to the amounts and beneficiaries of their so-called CSR activities.

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Case Studies

**Singapore** has a law that prohibits the tobacco industry from publicizing their so-called CSR in the media.

In 2008, **Mauritius** passed its Public Health Act, prohibiting the offer of any scholarship or any form of sponsorship in relation to tobacco products, effectively banning so-called CSR by tobacco companies.

In the **Philippines**, the Health Secretary disseminated warning letters to the recipients of tobacco company donations highlighting possible violation of advertising laws and the obligation to protect public health from the vested interests of the tobacco industry.
Nature of the Tobacco Industry’s So-called CSR

Like most companies, the tobacco industry ventures into corporate social responsibility (CSR) activities to make their portfolio more appealing to investors. However, the tobacco industry is not like any other company. They thrive on peddling a product that is so lethal that it kills half of its consumers. Tobacco industry’s so-called CSR activities are a mere façade to detract the focus from the devastating health impact of its products. Internal tobacco industry documents reveal that the tobacco industry allots a small percentage of company profits to attempt to erase the negative publicity that results from the harmful effects of their products.

At the same time, the tobacco industry uses these same activities to shamelessly promote their products. Where there is an absolute ban of tobacco advertisement, the industry uses its so-called CSR activities to keep their name in the media. The tobacco industry also takes advantage of its so-called CSR activities to partner with government agencies in order that it may continue to have an influence on key persons in the government. The biggest negation is probably when the tobacco industry donates to projects benefiting public health and to programs that will help the youth. WHO points out the inherent contradiction in the tobacco industry’s so-called CSR arises from the fact that the industry’s core functions are in conflict with the goals of public health.

Policymakers, government agencies and non-governmental organizations should be more vigilant in dealing with the tobacco industry. The Article 5.3 Guidelines recommend that States prohibit government officials and employees from participating in the so-called CSR activities of the tobacco industry and to reject any contribution from the tobacco industry. The Guidelines further recommend that governments denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry. These so-called CSR activities are actually marketing and public relation strategies that fall within the definition of advertising, promotion and sponsorship, which should be banned under the WHO FCTC.

It is hard to ignore the so-called CSR activities of the tobacco industry when it has been an entrenched practice and harder to ignore the amount of money being offered to fund worthwhile projects, especially when there are many people relying on these projects. However, the government is responsible for promoting health and protecting the people from devastating effects of tobacco products and there is a clear conflict of interest and a greater disadvantage to public health if it would continue partnering with or receiving donations from the tobacco industry.

Raising Awareness

The best means to denormalize tobacco industry’s so-called CSR is to expose its true nature. And this is best done through awareness raising campaigns and media blitz. In Thailand, publications about the tobacco industry’s lies have been published in the vernacular to expose the tobacco industry’s motives. The protest of the tobacco control movement in Thailand against the global tobacco industry exhibit, Tab Expo, manifests the high level of public awareness of the tobacco industry’s ill motives. Initiatives to raise awareness about tobacco industry interference and motives also promote efforts to denormalize so-called CSR activities of the tobacco industry.

Another strategic measure to counter tobacco industry’s so-called CSR is by direct action such as publicly condemning or rejecting a donation by the tobacco industry. Direct action can also be done through a correspondence with the tobacco industry asking them to stop their so-called CSR activities to

Examine so-called CSR activities
avoid inadvertently advertising their companies or brands, avoid influencing the youth’s impression of their companies and brands, avoid enticing partnerships and interactions with government employees, and the like. A more sustainable measure would be adopting a policy banning so-called CSR activities by the tobacco industry and/or the publication thereof.

The biggest challenge in denormalizing the tobacco industry’s so-called CSR lies in the strong lure of money and resources. Many beneficiaries, including governments, find it difficult to resist the resources that the tobacco industry are donating, and hence, many will find it difficult to resist or to condemn such donations. There needs to be a systematic raising of public awareness in understanding how and why doing something as innocuous as CSR can actually be bad if this involves the tobacco industry.

The role of media cannot be overemphasized when it comes to denormalizing so-called CSR because this requires raising awareness of these two elements:

(a) the true nature of CSR
(b) initiatives or trends in rejecting or condemning so-called CSR activities of the tobacco industry

In countries that have successfully denormalized the tobacco industry’s so-called CSR, the public’s level of awareness of the true nature of the tobacco industry and their so-called CSR is high. In addition, action taken against the tobacco industry or that which exposes its true nature is well-publicized in the effective media channels.

In many of the said countries, civil society action was instrumental in denormalizing the so-called CSR. A recent example, resulting from the outcry of alliances of NGOs globally, was the declaration of the Bill and Melinda Gates Foundation to withdraw its support from the Canadian International Development and Research Centre (IDRC) due to the linkage between the chair of the IDRC Board and the tobacco industry.

State and Personnel Policies & Enforcement Systems

The governments act of issuing policies to implement Article 5.3 such as Code of Conduct specifying the protection from tobacco industry interference, policies to reject partnerships and contributions, laws to require transparency and information from the tobacco industry and the public’s support of these policies creates an environment that is ripe for denormalizing tobacco industry so-called CSR. It is important, however, that these policies are not treated as mere scraps of paper but are consistently enforced. The enforcement action on these policies would further contribute to the environment where tobacco industry so-called CSR is denormalized.

Once policies are adopted by the government, the role of civil society becomes even more vital. As with many transparency groups, there is much reliance on NGOs to serve as watchdogs and assist in enforcement of policies that bind the government and its personnel.

No Contribution Policies

The Article 5.3 Guidelines create a new opportunity for many other government agencies to contribute to denormalizing the tobacco industry’s so-called CSR activities, including those done with the private sector. Policies protecting the private sector, which is often targeted by the tobacco industry, will further boost the effort to denormalize the so-called CSR.

Many of the donations of the tobacco industry are coursed through the private sector, including philanthropic organizations or charitable institutions, and given to the public or private sector through research institutions, NGOs, universities, government agencies’ programs, etc. One way to ensure that the so-called CSR is denormalized is to encourage the private sector, through the government regulatory bodies, to reject tobacco industry contributions. An example is a declaration by the Commission on Higher Education to support WHO FCTC Article 5.3 and a request for all universities and higher education institutions to reject any contribution from the tobacco industry or those representing its interests.

Another potent area to adopt such policies is the Ministry for Youth or Ministry for Civil Society or Social Welfare. These agencies can urge those under their jurisdiction to refuse tobacco industry contributions and donations, and better yet, to make the receipt of such contributions illegal, such that receiving tobacco industry money will create a social stigma.

It bears stressing that, if prohibited, the equivalent of current donations by the tobacco industry may be recovered through earmarking of tobacco taxes. In Australia, tobacco taxes were dedicated for sports sponsorships when tobacco sponsorship of sports was banned. Not only has this removed this sector’s chains of dependence on the tobacco industry, it has also provided the sector with a more sustainable source of funding.
RECOMMENDATION 7
Do not give preferential treatment to the tobacco industry

This Recommendation addresses specific situations where the government, whether deliberately or inadvertently, encourages investments by the tobacco industry. This reflects a defiance of the treaty-based commitments to tobacco control. Hence, governments must:

(a) Enact laws that remove the tobacco industry from being a beneficiary of laws that provide business or investment incentives or privileges such as Foreign Investment Laws, Economic Zone laws, and even Free Trade laws.

(b) Repeal laws, orders, or policies that give preferential tax treatment to the tobacco industry

(c) Adopt policies to revoke, terminate and ensure non-renewal of contracts that bring the tobacco industry under certain benefits and privileges

(d) Divest investments in the tobacco industry. This includes adopting policies in Treasury to remove the tobacco industry from the investment portfolio/options for the government funds. Government owned and controlled corporations should also adopt the same investment policies.
Regardless of whether the tobacco industry is owned by the government or not, all the Recommendations should apply in the same manner. In a way, having a State-owned tobacco industry makes it easier for the government to regulate its own tobacco industry in accordance with the obligations embodied in WHO FCTC Article 5.3 and its Guidelines. For instance, depending on the level of control the government has over the tobacco industry, many of the measures listed above, such as the requirement of making certain information available can be adopted through well-disseminated inter-governmental policies. In addition, governments with a State-owned tobacco industry may focus on some distinct measures that need further consideration:

a. Remove tax exemptions or benefits that accrue to government entities. Most governments exempt government entities or corporations from certain taxes. The State-owned tobacco industry should be specifically excluded from this, as this provides undue benefit to the tobacco industry and is not consistent with the commitment to promote alternative livelihoods under Articles 17 and 18 of the WHO FCTC.

b. Adopt a policy to ensure that the State-owned tobacco industry does not undertake any so-called CSR activities and remits any excess money to the government, either as taxes or as part of the revenue stream, which may be earmarked for health promotion purposes.

c. Require the State-owned tobacco industry to set up a publicly accessible database of its transactions and operations in order to ensure transparency of information that is relevant to implementing tobacco control policies.

d. Create internal arrangements in government to create an environment where the influence and authority of the State-owned tobacco industry and its personnel, in relation to other government entities, are minimized or limited.
IV. POLICY TEMPLATES

Governments can adopt a national law covering the recommendations under the Article 5.3 Guidelines in order to ensure a comprehensive government policy; however, this should not bar any agency from issuing further rules and regulations on the matter.

On the other hand, even without a national law, government agencies that contribute to tobacco control can already start implementing specific measures related to Article 5.3 of the WHO FCTC in accordance with their respective mandates.

Each agency can adapt their respective Codes of Conduct, or their respective human resource departments can adopt a hiring policy and develop implementing guidelines to govern applicants or candidates to government positions. Agencies can also require the tobacco industry to submit certain information as a requirement for doing business.

To denormalize so-called CSR practices of the tobacco industry, the appropriate government agencies can take measures to ensure that the No Contribution policy is emphasized.

A. Comprehensive Government Policy

**Objective:** To ensure that the government agencies contributing to tobacco control are shielded against interference from the tobacco industry and those representing its interests.

**Coverage:** This policy applies to government agencies that can contribute to various aspects of tobacco control as well as to all the bureaus, offices, bodies, and government-owned or controlled corporations assigned to the said agency.

**Elements:**
1. Assigning and defining the duty to raise awareness about tobacco industry interference and to review Codes of Conduct as well as manage conflicts of interest
2. Prohibiting interactions with the tobacco industry unless strictly necessary for regulation
3. Defining measures to promote transparency (make any interaction with the tobacco industry known to the public)
4. Rejecting partnerships with and contributions from the tobacco industry
5. Requiring transparency from the tobacco industry
6. Prohibiting grants, incentives, and benefits in favor of the tobacco industry
7. Providing enforcement mechanisms and measures, including sanctions/disciplinary measures, and protection of whistleblowers
8. Providing for oversight mechanisms and sustainable awareness raising and integration programs, including integration with human resources programs.
9. Developing monitoring and surveillance mechanisms and systems, including encouraging civil society participation in monitoring.
10. Allocating resources for implementation.
**Mode:** This policy can be adopted as a national law or policy implementing the obligations under Article 5.3 of the WHO FCTC and incorporating it into existing systems. This can also be adopted by local governments.

In addition to a comprehensive government policy, there needs to be a strong advocacy to **ban the tobacco industry’s so-called CSR**, including those given to private institutions, as well as to **ban contributions to political parties and electoral candidates**. Such policies are strategic and extremely important; however, the templates for these are not discussed in this toolkit.

**B. Requiring Information from the Tobacco Industry**

**Objective:** To ensure that tobacco industry information relevant to tobacco control is available to the public.

**Coverage:** This policy applies to agencies that regulate or have jurisdiction over any organization comprising the tobacco industry.

**Elements:**

1. Identifying and gathering pertinent information that will help the government comply with its obligations under the WHO FCTC.
2. Disclosure of or registration of entities, organizations or individuals affiliated with or acting on their behalf.
3. Obliging agencies to share information with other agencies and with the public with the intention of promoting transparency and accountability in government. Civil society’s access to information is essential in encouraging its participation in monitoring the tobacco industry.
4. Requiring that documents submitted must be with the understanding that such contain true and accurate information, in order to ensure reliability of the documents and accountability from the tobacco industry.

**Mode:** This policy can be adopted through a law or an issuance by the pertinent ministry. The local government can also be required to gather pertinent business information. The Securities and Exchange Commission can require information relating to registration of tobacco industry affiliation.

**C. Code of Conduct**

**Objective:** To ensure that existing Codes of Conduct and related programs and initiatives take into account the State’s obligations under Article 5.3 of the WHO FCTC.

**Coverage:** This policy applies to all government personnel.

**Elements:**

1. Broad definition of the “tobacco industry” and its “contributions”
2. Emphasis on encouraging the reporting of violations including provisions on whistleblower protection
3. Includes provisions on divestment of interests in the tobacco industry
4. Other key elements/ provisions such as standards regarding dealing with tobacco industry, accountability measures, declaration of interest (refer to the detailed provisions in p36-37 under "Signs of SUccess")

**Mode:** This policy document contains proposed amendments to the Code of Conduct of government officials and employees. It may be enforced by the Central Government Body in charge of overseeing the
conduct of government personnel or implementing provisions related to the Code of Conduct. It may also be enforced by each agency, if it has the capacity to create or modify its own Code of Conduct, or to guide its officials and employees in their interaction with other officials, employees and the transacting public.

D. Hiring or Personnel Policy

Objective: To ensure that the Human Resources Department of agencies which contribute to tobacco control provide necessary measures to ensure that the public officials in said agencies do not have tobacco industry interests.

Coverage: This policy applies to government personnel in agencies or bodies that contribute to tobacco control

Elements:
1. Disqualifies applicants with interests in the tobacco industry or those representing its interests
2. Defines “interests” broadly
3. Specifies rules in dealing with applicants or candidates to public positions

Mode: This can be issued as a department memorandum or an order by the personnel agency of the government pursuant to State obligations under Article 5.3 of the WHO FCTC.

E. No Contribution Policy

Objective: To ensure that certain agencies that have jurisdiction over other institutions provide the necessary measures to shield these institutions from tobacco industry interests. This aims to denormalize the tobacco industry's so-called CSR activities.

Coverage: This policy applies to identified government agencies that contribute to tobacco control or have regulatory authority over certain institutions that are vested with public interest or that can significantly contribute to tobacco control. This can also apply to government agencies which regulate charitable or similar organizations which are often targeted by the tobacco industry for its so-called CSR activities.

Elements:
1. Broad definition of “contribution”
2. Strictly prohibits all public institutions from receiving contributions from the tobacco industry
3. Requires private institutions to report any contributions from the tobacco industry

Mode: This can be issued as an order for compliance of institutions concerned.

For more information on policy templates, please check out www.seatca.org for Protecting from Tobacco Industry Interference Templates, a compilation of draft templates described in this toolkit and actual examples of policies that have been adopted in accordance with Article 5.3 of the FCTC
Impact of Policies

The table below shows the list of template policies and the corresponding implementing agency expected to adopt them, as well as the expected output and impact of each.

This list of policies is by no means exhaustive and only illustrative. Policy templates on the ban on contributions to political parties and on so-called CSR of the tobacco industry, or laws removing privileges granted to the tobacco industry, for instance, are not discussed here.

<table>
<thead>
<tr>
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<th>Agency/Department</th>
<th>Implementation</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive Government Policy</td>
<td>Can be passed as part of national or local law or adopted by agencies that can contribute to tobacco control</td>
<td>Government agencies, instrumentalities and bodies are required to raise awareness and monitor tobacco industry interference. Contributions are not received from the tobacco industry and the industry is not given any benefits. Pertinent agencies will require information from the tobacco industry and make it publicly available Conflicts of interests are managed</td>
<td>Reduced conflict of interest situations with the tobacco industry Less opportunity for the tobacco industry to interfere with the setting and implementation of tobacco control measures</td>
</tr>
<tr>
<td>Requiring Information from the Tobacco Industry</td>
<td>Can be passed as part of national law or adopted and implemented by agencies that regulate the tobacco industry</td>
<td>Different agencies require the tobacco industry to regularly submit reports and these are publicly available</td>
<td>Improved monitoring of tobacco industry activities and enforcement of laws, more evidence to support decision making relating to tobacco regulation</td>
</tr>
<tr>
<td>Policy</td>
<td>Agency/Department</td>
<td>Implementation</td>
<td>Impact</td>
</tr>
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</tr>
<tr>
<td>Code of Conduct</td>
<td>Can be adopted as amendment to the Code or as a policy by any agency or the agency in charge of civil servants and/or those in charge of promoting transparency in government</td>
<td>Public officials are required to declare and divest financial interests in and contributions of the tobacco industry. Investigative procedure and appropriate sanctions are available for dealing with the tobacco industry in violation of the code. Whistleblowers are protected. The Tobacco Industry interference issues are integrated into the transparency programs of the pertinent agencies.</td>
<td>Reporting of violations are encouraged. Reduced conflict of interest situations with the tobacco industry. Less opportunity for the tobacco industry to interfere with the setting and implementing of tobacco control measures. Minimize expense from tobacco control budget through integration with mainstream transparency programs.</td>
</tr>
<tr>
<td>Hiring Policy</td>
<td>Can be adopted by the Human Resource Department of an agency</td>
<td>Government personnel working in tobacco control are not allowed to utilize their knowledge to support the tobacco industry. Tobacco industry interests of government personnel, as well as of applicants or candidates to government positions, are disclosed.</td>
<td>Less opportunity for the tobacco industry to interfere with the setting and implementing of tobacco control measures.</td>
</tr>
<tr>
<td>No contribution policy</td>
<td>Can be adopted by the agencies that have jurisdiction over other institutions, e.g. can apply to agencies that have authority over charitable institutions, academe, and research institutions</td>
<td>Institutions that are concerned with the welfare of certain sectors, including private institutions which are mandated to comply with State objectives, refuse tobacco industry contributions, including their so-called CSR activities.</td>
<td>So-called CSR activities of the tobacco industry are denormalized.</td>
</tr>
</tbody>
</table>
Southeast Asia Tobacco Control Alliance
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Bangkok 10300, Thailand
Website: www.seatca.org
Email: info@seatca.org

“working together to promote the implementation of effective evidence-based tobacco control measures in Southeast Asia”
Preventing Tobacco Industry Interference

To improve understanding of how small steps can be taken to fully implement Article 5.3 of the FCTC in accordance with its guidelines, this toolkit sets out a systematic approach to protecting government from the tactics of the tobacco industry.

The steps recommended are based on good practice and action.... Check out the key steps and see if your tobacco control policies are protected from tobacco industry interference.

Protecting from Tobacco Industry Interference

LEGISLATIVE & POLICY TEMPLATES

APRIL 2012

TOOLKIT REFERENCE
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Protecting from Tobacco Industry Interference

LEGISLATIVE TEMPLATES

Introduction

This set of Model Policy Templates is part of the Protecting from Tobacco Industry Interference Toolkit prepared based on the Guidelines for the Implementation of Article 5.3 (5.3 Guidelines) of the WHO Framework Convention on Tobacco Control (FCTC). These templates attempt to encode the 5.3 Guidelines into policy tools that aim to address the need for an integrative approach to implementing a general obligation mandated by the FCTC.

Assess the Legal Framework

The type and form of legislation that will be developed in a country will depend on its legal system. An assessment of one’s legal system should be undertaken before recommending reforms. It is possible that legal frameworks that cover the various areas of Article 5.3 (such as transparency, conflict of interests, code of conduct, regulation of corporate social responsibility, freedom of information, private sector relationships, etc.) already exist, but these could be outdated, unimplemented, or not specifically tailored for tobacco industry interference. In some cases, only minor amendments would be required to an existing legislation to address specific issues identified under Article 5.3 while in others, it is a matter of improving the implementation of an existing law.

Although public health is the main sector affected by the implementation of the treaty, support from the “whole of government” is critical to the success of implementing it. This is particularly crucial for Article 5.3 which focuses on principles of integrity, transparency, and avoiding conflict of interests that should apply to all aspects of tobacco control regulation.
such as health, trade, finance, investment, agriculture, customs, labor, labeling, advertising and promotion, etc.

**Start with the Constitution**
The first base that needs to be covered in assessing the existing legal framework is the constitution. This would define fundamental rights, obligations, and priority sectors that are designated to certain authorities, either national, local or constitutional bodies. In addition to the noting the usual tobacco control functions and authorities, one must take note of the authorities designated to adopt or administer laws relating to civil servants or to promoting integrity and transparency. The responsibility of the local and national government as well as the role of international laws must be taken note of.

**Assess National and Subsidiary Legislation**
Understanding the legal framework also involves taking account of the numerous pieces of related legislation, not only at the national level but also subsidiary legislation such as ministerial regulations. In some cases, laws enacted by local governments must also be considered.

**Identify the Proper Ministries/ Agencies**
The analysis of the existing framework will identify both the challenges and opportunities in adopting policies to implement Article 5.3. In addition, an analysis of the corresponding institutional framework will inform the health ministry and health advocates of critical partnerships that need to be made in order to effectively and efficiently implement Article 5.3. The identification of agencies or ministries that have some level of responsibility in implementing transparency and integrity measures is important to avoid duplication and to establish accountabilities.

Finally, the assessment of institutions in terms of policies, programs, and resources should also be considered in deciding on the roles of various ministries and divisions or in looking at legislative reforms that would address identified gaps.

**Implementation Considerations in Legislative Design**
It is ideal to gather best practices in the implementation of existing laws to ensure that the implementation strategies to be included in the policy have been seen to work on the ground.

**Resources:** Of particular concern is the availability and access to resources. Many failures in implementation are attributable to lack of resources. Nevertheless, there would be evidence of many small steps, low-cost measures that have gained a lot of success. The policy should take into account or make use of existing financing mechanisms and ensure
that cost recovery schemes are incorporated where possible. For instance, in cases where information submitted by the tobacco industry requires review and verification, an inspection fee should be charged and retained to ensure that the appropriate resources can be devoted to the proper review body. In case of collaborative work, it is ideal to pool resources from various sectors in the integrative team.

**Collaboration:** The potential for collaboration is enormous but in many cases, there is a need to overcome passive or active resistance from institutions and officials that arise from a variety of natural human behavior. Clear rules of collaboration reduce tensions in this area.

**Stakeholder Consultations:** More implementation inputs can be gathered through consultations with the stakeholders. The two key stakeholders in this form of policy are the civil society and the government officials.

- Government officials working on the ground provide the most practical feedback in the field of policy implementation.
- The role of civil society is essential in implementing Article 5.3 and the legislative design could include instituting a formal role for civil society in order to enable it to provide regular inputs and assist in implementation and monitoring.

**Assessing the Type of Legislation**
The final assessment involves an assessment of the reform that needs to be taken. The review of the legal and institutional framework will often yield many options as to the technical and political steps that need to be taken as well as the type of legislation that are feasible.

There is no perfect solution and no hard and fast rule. But from a public health advocacy standpoint, where there is an option, policies should be promoted at the level where it is most feasible and where gains can be visible at the soonest possible time since this indicates the number of lives saved at the soonest possible time.

**A Word About the Templates**

The sample templates below are based on a general assessment that a variety of laws exist to require government bodies to promote transparency and integrity. Hence, implementation of Article 5.3 should be integrated in these efforts.
For the reasons explained above, there can be no specific recommendation as to the type of legislation to be adopted. It can be national legislation, subnational, or adopted in a lower level government as long as the authority adopting the policy has the proper mandate, authority, and capacity to adopt and implement it.

**A. Comprehensive Government Policy**

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Sample Policy/Legislative Template

Title/Subject

An Act Protecting Public Health Policies with respect to Tobacco Control from the Commercial and Vested Interests of the Tobacco Industry, Appropriating Funds Therefore and for Other Purposes / Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC)

Preamble/Rationale/Explanatory Notes/State Policy

Tobacco is the single most preventable cause of death in the world today. The spread of the tobacco epidemic is a global problem with serious consequences for public health and calls for the widest possible international cooperation and participation of all countries in an effective, appropriate and comprehensive international response.

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is the world’s first global public health treaty which requires State parties to adopt a comprehensive range of measures designed to reduce the devastating health and economic impacts of tobacco. Parties to the treaty are under a positive legal duty to implement the measures stated therein.

The WHO FCTC recognizes that tobacco interference poses the single greatest threat to tobacco control. It has been documented that the tobacco industry has used strategies to subvert, hinder and prevent tobacco control efforts. Article 5.3 of the treaty obliges the Parties to protect public health policies with respect to tobacco control from the commercial and other vested interest of the tobacco industry.

It is the policy of the State to protect and promote the citizens’ right to health and to instill health consciousness among them. The State recognizes its obligation to safeguard the well-being of its citizens, particularly the youth, from the harmful effects of tobacco and, consistent with the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), to protect its public health policies with respect to tobacco control from the commercial and other vested interest of the tobacco industry. For these purposes, the government shall institute stricter requirements with regard to interactions with the tobacco industry. It shall further institute measures to promote transparency and accountability when dealing with the tobacco industry.

The State shall encourage the participation of non-governmental organizations and other members of the civil society not affiliated
with the tobacco industry to play an essential role in monitoring the activities of the tobacco industry.

Definitions

(a) Tobacco industry” - shall refer to organizations, entities, associations, and individuals that work for or in behalf or the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups and any other individual or organization that work to further the interests of the tobacco industry.¹

(b) “Agencies” – shall mean various units of the Government including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit thereof.

(c) “Public Officials” includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

(d) “Agencies or Public Officials with a role in setting and implementation of tobacco control policies” shall include, but are not limited to, the following:
   a. Providing health and related services or working with the health sector
   b. Promotion of the welfare of vulnerable sectors like the youth, women, and
   c. Enforcement of tobacco control laws
   d. Prosecution of the violators of tobacco control laws
   e. Regulation of the tobacco industry conduct and operations such as collecting taxes and tariffs, dealing with tobacco smuggling, regulating tobacco packaging and promotions and promoting alternative livelihood to tobacco farming
   f. Promotion of accountability and transparency, as well as, investigation and/or prosecution of graft and corrupt practices in the government

(e) “Conflict of interest” is created when an official or employee working in tobacco control has any interest in the tobacco industry. Conflict of interest arises from a situation in which public officials and employees have private interest which may influence, or appear to influence, the impartial and objective performance of their official duties.
For the purpose of this Act, interest in the tobacco industry means personal, financial or other interest, including, but not limited to:

a. having an existing ownership or investment in the tobacco industry
b. receiving any contribution from the tobacco industry or having received any contributions from the industry for the past five (5) years
c. being a member of the Board of Directors, an officer of the corporation or a partner in a partnership of any member of the tobacco industry

(f) “Divestment” means the transfer of title or disposal of interest in property by voluntarily, completely and actually depriving or dispossessing oneself of his right or title to it in favor of a person or persons other than his spouse and relatives within the fourth degree of consanguinity or affinity.

(g) “Gift” means a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.

(h) “Relatives” – shall refer to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity.

(i) “Whistleblower” - refers to any person, believing that an employee or group of employees and/or official/s of the agency is engaged or has engaged in improper conduct that constitutes violation of these rules, makes a disclosure, in good faith, through the filing of a complaint against the respondents.

**Government Officials Rights & Duties**

**Focal Points / Structures (OPTIONS)**

OPTIONAL PROVISIONS for the creation of a council or committee OR assigning the task to an existing agency or body:

**OPTION A: Designation of an Existing Division**

1. Agency X shall directs a Division Y to be headed by A with qualifications Y to oversee the implementation of this
2. Division Y will provide technical assistance to agencies in the implementation of this policy.

**OPTION B: Creation of the 5.3 Committee**

*Committee* shall be formed to oversee the implementation of the policies and programs set forth under this Order.

Roles and functions of the *Committee*:

1. Ensure that this policy and other related rules are implemented.
2. Formulate and recommend policies, standards, guidelines and approaches on subprograms.
3. Coordinate and provide technical assistance to different subcommittees for implementation of the programs.
4. Approve the programs and budget for the sub-committees.

**OPTION C: Creation of the 5.3 Council and Specification of its Structure**

Creation of 5.3 Council – A 5.3 Council is hereby created and attached to the Department/Ministry of Health under its administrative supervision. It shall have the primary responsibility for the enforcement of this Act and coordination among different agencies. It shall transmit all cases for prosecution arising from violations of this Act to the proper authorities for appropriate action:

Provided, however, that it may institute such administrative actions and disciplinary measures as may be warranted in accordance with law.

Composition - The Council shall be composed of representatives, whose ranks shall not be lower than director (or an equivalent position based on each country’s national law) to be designated by the concerned heads of the following departments or agencies:

(a) Ministry/Department of Health
(b) Ministry/Department of Social Welfare and Development
(c) Ministry/ Department of Education
(d) Ministry/Department of Interior Government (Local Government)
(e) Ministry/ Department of Human Rights/ Commission on Human Rights
(f) Agency Dealing with Children/Youth/ National Youth Commission
(g) Ministry/Department of Justice
(h) Ministry/Department or Agency dealing with Anti-Graft and Corrupt Practices/Ethics
(i) Two (2) representatives from Non-Governmental Organizations dealing with Tobacco Control, to be designated by the Secretary of the Ministry/Department of Health

Creation of a Secretariat – The 5.3 Council is hereby authorized to establish a secretariat to be headed by an Executive Director who shall be appointed by the Council for a term of x years. He must be a (specify characteristics, age, qualifications) e.g. of good moral character, unquestionable integrity and known probity.

Duties and Function of the 5.3 Council
The 5.3 Council shall have the following duties and functions:

(a) To oversee the implementation of this Act;
(b) To advise the President/Prime Minister on all matters and policies related to protection of public health policies against tobacco industry interference;
(c) To coordinate the implementation of programs and activities by the national government agencies;
(d) To collect relevant information from different government agencies related tobacco industry interference and other information about the tobacco industry which are relevant in implementing its mandate;
(e) To assist the concerned agencies in the review and redrafting of existing policies/regulations or the formulation of new policies in compliance with the provisions of this Act;
(f) To develop policies and programs related to the implementation of this Act;
(g) To perform such other functions as may be necessary to implement the provisions of this Act.

Adoption of Rules and Regulation – Within thirty (30) days from the effectivity of this Act, the 5.3 Council shall promulgate rules and regulations and its internal rules of procedure to implement the provisions of this Act.

Avoid Conflict of Interest/ Disclosure and Management

Obligation to disclose interest - All public officials, shall disclose their direct or indirect interest in the tobacco industry.

Obligation to divest - All public officials, who directly or indirectly, through the agencies they are affiliated with, have a role in setting an implementing tobacco control policies, shall divest himself of his
shareholding or interest in the tobacco industry or resign from his position in the government within 30 days from the time the conflict of interest arises.

Limit/ Prohibit Interaction with the Tobacco Industry

Public officials shall not interact with the tobacco industry, subject to the exception under the subsequent provisions.

Public officials of the following agencies may interact with the tobacco industry only when strictly necessary for its effective regulation:

1. Ministry/Department of Agriculture
2. Ministry/Department of Labor
3. Bureau of Internal Revenue
4. Bureau of Customs
5. Ministry/Department of Trade and Industry

(Add other relevant government agencies)

Meetings within the context of “effective regulation” are limited to instances related to the purpose or mandate of the agency. (Enumerate instances when meetings are allowable which should be tailored with the purpose and/or mandate of the agency in regulating the tobacco industry, for example – Agencies responsible for tax collection should limit their meetings with the industry for the purpose of enforcing collection of taxes on tobacco;)

In the event that a meeting is strictly necessary, officials, employees and representatives of the department or agency shall abide by the following rules

(1) Any proposed meeting with the tobacco industry must be made known to all officials concerned and approved by the head of the agency.
(2) All stakeholders in tobacco control, including non governmental organizations, must be notified of the proposed meeting.
(3) As much as possible, interactions with the tobacco industry must be conducted through public forums.
(4) The department or agency shall set the meeting agenda. The agency shall ask the industry about what they want to discuss in writing – then, it shall decide whether to agree with the meeting or not. The agency shall stick to the agenda and make the meeting brief.
(5) Clarify the goal and structure of the meeting. Before the
meeting, it must be made clear that such interaction does not imply partnership, dialogue or collaboration and indicate in writing to the tobacco industry that they may not mischaracterize the nature of the meeting.

(6) Decide the meeting location and hold it the premises of the department/institution/agency. iv

(7) Predetermine the meeting participants by asking for the names and positions of those who will attend the meeting. v

(8) Moderate the meeting. A lawyer must be present and must closely advise the agency official/employee/representative during the meeting. vi

(9) Write the official minutes. vii Transcript of the meeting must be filed for record purposes and be made available to the public upon request.

(10) Maintain the right to terminate the meeting at any point. viii

(11) Distribute information on the meetings as appropriate. Publicly correct any misinformation regarding the meeting. ix

(12) Decide on follow up questions that must be answered after the meeting.

(13) All non-mediated exchanges (in person, phone or email) between officials, employees and representatives of the agency should be avoided.

 Reject Contributions of/ Partnerships with the Tobacco Industry

Prohibition against contributions – All public officials and employees shall not take advantage of their position for their own private interests. They shall not demand or receive any contributions from the tobacco industry for themselves, their families, relatives, friends, or any other persons or organizations. Contributions shall include, but are not limited to, payments, gifts and services, monetary or in-kind, research funding, financial aid, policy drafts and legal advice.

Prohibition against receipt of contributions for election campaign – Candidates for public positions are prohibited from receiving any direct or indirect contribution from the tobacco industry. Acceptance of contribution from the tobacco industry either directly or indirectly shall be a ground for disqualification for the elective position (as well as a ground for rejecting a petition for a certificate of candidacy).

Whistleblower Protection

Reporting of violation of any provision of these rules shall be considered protected disclosure and the whistleblower shall be accorded protection from intimidation and reprisals.

The protection provided by this rule does not require that the whistleblower’s report/complaint lead to final determination that a
violation has occurred.

To be considered a whistleblower and accorded with the rights and privileges under this act, the complainant:

a. Shall execute a statement outlining, in sufficient detail, the participation of the respondent/s and the act committed constituting violation of the rules. The disclosure must be made voluntarily, in writing and under oath.

b. In the event that he or she has taken part in the violation, he/she must not be the most guilty of all the respondents concerned or in instances where he or she is, such disclosure is compelling against one in higher authority.

To be qualified as protected disclosure, the following requisites must be met:

a. The disclosure is not yet the subject of an existing or filed complaint or inquiry, or it introduces new evidence of a case earlier dismissed/archived, or it strengthens the case or the conduct of an investigation or inquiry.

b. The disclosure is made before persons, offices, or agencies designated or mandated to receive the complaint (ex. officials of the agency, heads of other public offices)

c. The whistleblower assists or participates in the proceedings commenced to enforce the provisions of the rules in connection with the subject matter of his disclosure.

d. Where appropriate, the information provided can be supported by other material evidence.

X Committee/Department shall be appointed within each Agency to implement the rules concerning Whistleblower protection.

The head of the agency, upon the recommendation of X Committee/Department, shall certify that the person, having fulfilled all the requirements, is qualified to be a whistleblower and entitled to whatever rights and privileges attributed thereto.

Protection accorded to Whistleblowers. --
a. Protection against retaliation.

Retaliation shall mean any direct or indirect detrimental action recommended, threatened, or taken because the protected disclosure.

Retaliatory acts against the whistleblower, such as but not limited to discriminatory actions, reprimand, punitive transfer, and undue poor performance reviews, are prohibited. The proper administrative action shall be taken against the person/s committing such retaliatory act/s.

b. He/she shall not be subject to any liability, whether administrative, civil, criminal or any other proceedings, for making a protected disclosure and no action, claim or demand may be taken or made of, or against the whistleblower for making the disclosure.\textsuperscript{xii}

c. He/she shall have as defense in any other inquiry or proceeding, the absolute privilege with respect to the subject matter of the disclosure or information given to a qualified person, office or agency.\textsuperscript{xiii}

d. If he/she has made a protected disclosure and a provision of law, regulation, issuance, practice or other convention, imposes a duty on him/her to maintain confidentiality with respect to any information disclosed, he/she is considered not to have committed a breach thereof.\textsuperscript{xiii}

Rights and Benefits of a protected whistleblower. --

a. He/she shall not be liable to disciplinary action for making such protected disclosure. Refusal to follow orders of his/her immediate superior/supervisor outside of his/her regular functions that would cause him/her to violate any provision of this rules shall likewise be protected from reprisals and retaliatory action in the workplace.

b. The whistleblower and his/her immediate family shall be given free medical treatment, hospitalization and medicines for any harm, injury and illness incurred or suffered by reason of the protected disclosure.
c. The agency shall assist the whistleblower in relocation and/or in obtaining means of livelihood

d. For the whistleblower, who is also an employee of the agency, to obtain a possible reassignment to other place of work with his/her consent

e. The whistleblower shall be accorded interim protection as necessary during the course of review or investigation regarding the violation of these rules.

f. The whistleblower shall be informed of the outcome of the investigation including whether disciplinary measures or sanctions have been imposed.

Role of Government Agencies

The head of the agencies shall be in charge of implementing provisions herein that involve imposing obligations on agencies including the following:

1. Agencies shall not award contracts for the carrying out of any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have direct or indirect financial interest with the tobacco industry.\textsuperscript{xiv}

2. Agencies shall not receive any contributions from the tobacco industry, including, but not limited to, payments, gifts and services, monetary or in-kind, research funding, financial aid, policy drafts and legal advice.\textsuperscript{ xv} This provision shall not include amount awarded by court or administrative bodies.

3. Agencies shall not have any financial interest in tobacco companies.\textsuperscript{xvi} They shall not invest in the tobacco industry and related ventures.

4. In case of governments with State-owned tobacco industries, any investment in the tobacco industry should not prevent governments, bodies, or agencies from fully implementing the WHO Framework Convention on Tobacco Control.

5. Agencies shall amend the hiring policy to include applicant's disclosure of material and financial interest in the tobacco industry including, but not limited to, current or previous occupational activity. Applicants who have interest in the tobacco industry shall not be hired in positions where they
will have a role in setting or implementing tobacco control policies, as enumerated in the preceding section.

6. Agencies shall amend its policy on disclosure and management of conflict of interest to comply with the guidelines implementing article 5.3 of the FCTC.\textsuperscript{xvii}

7. Ministry/Department of (insert name of designated agency) shall monitor and prevent the tobacco industry from serving on delegations to meetings of Conference of Parties and its subsidiary bodies.\textsuperscript{xviii}

8. Agencies shall not accept any agreements &/or arrangements with the tobacco industry, regardless of binding effect, enforceability or voluntariness on the part of the said industry.\textsuperscript{xx} It shall not endorse, support, or participate in any activity of the tobacco industry, including, but not limited to, corporate social responsible activities.\textsuperscript{xx}

9. Agencies shall not accept, support, or endorse tobacco industry organizing, promoting, participating in or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control,\textsuperscript{xxi} as well as, other activities funded directly or indirectly by the tobacco industry.

10. Agencies that regulate the tobacco industry shall require transparent and accurate information from the latter\textsuperscript{xxii}

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**Tobacco Industry Regulation**

<table>
<thead>
<tr>
<th>Ban/ Prohibit Publication of so-called CSR</th>
<th>Option A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ban of CSR:</strong> So-called CSR activities, donations or similar contributions that credit tobacco companies, its affiliates, as well as entities related to and carrying the names and brands of tobacco companies, are prohibited</td>
<td></td>
</tr>
</tbody>
</table>

| Option B |
| **Ban of Publication of CSR:** The publication of so-called CSR activities, donations or similar contributions that credits tobacco companies, its affiliates, as well as entities related to and carrying the names and brands of tobacco companies, is prohibited. Both the tobacco-related entity and the persons in charge of publishing shall be held liable. |
Accurate Information– All reports required to be submitted to the agency must be with the undertaking that such documents contain true and accurate information. Any person who submits documents with false information will be subject to prosecution for submission of false documents *(or other applicable penalties, in accordance with national law)*.

Subject to reasonable conditions prescribed by national law, the agencies shall make sure that the documents or information shall be available for public knowledge, scrutiny, copying or reproduction.

To promote public disclosure and transparency, *X Department* of the agency is mandated to record or document all requests for information made before their office. The logbook shall contain the information about the requesting party, the document requested and the corresponding action made. On a *(regular/cite specific frequency)* basis, the *X Department* shall submit copies of the documentation to the head of the agency and the list of documents submitted/not submitted by the tobacco industry.

**Submission of Information to Agency/ Council** *(specify a particular agency which will serve as the focal point for this law or a council that is to be established under this law)* - The tobacco industry is required to submit the following information to the ABC, subject to the requirement of Section __ *(note: refer to preceding provision)*:

a. Reports for disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists

b. Information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, such as lobbying, philanthropy, political contributions without prejudice to trade secrets or confidential information protected by law

c. Information about tobacco advertising, promotions and sponsorship, such as but not limited to:

   (1) The kind of advertising, promotion or sponsorship, including its content, form and type of media

   (2) The placement and extent or frequency of the advertising, promotion or sponsorship

   (3) The identity of all entities involved in the advertising,
promotion and sponsorship including advertising and production companies

(4) In case of cross-border advertising, promotion or sponsorship originating from a Party’s territory, the territory or territories in which it is intended to be or may be, received

(5) The amount of financial or other resources used for advertising, promotion or sponsorship

d. Any other information necessary to support tobacco control measures as may be defined by Agencies/ Council

Disclosure of Information to the public and pertinent government agencies

a. The Agency/Council shall notify the tobacco industry of the pertinent documents needed to be submitted and the corresponding deadlines for submission.

b. Subject to reasonable conditions prescribed by national law, the Secretariat of Council/ Focal Point shall make sure that the documents shall be available for public knowledge, scrutiny, copying or reproduction.

c. If the information or document is readily and immediately available and accessible, there being no patent justification to deny access, it shall be provided to the requesting party within five (5) working days from the receipt thereof.

d. In case of denial of request in whole or in part, the Secretariat of ABC shall notify the requesting party within five (5) working days from receipt of the request. The agency shall cite the grounds or reasons for denying the request.

e. The requesting party may appeal the denial of request to the next person or office higher in authority. He/she may also contest the denial of request by filing the proper remedy before the proper court, subject to the procedures provided by national law.

f. ABC may impose reasonable fees to cover verification and reproduction cost.
No Preferential Treatment

Agencies and public officials shall serve the public interest and are prohibited from granting incentives, privileges, or benefits to the tobacco industry.\textsuperscript{xvii}

Subject to Constitutional limitations, pertinent agencies shall review previous incentives and benefits granted to ensure that these are not renewed or immediately curtailed.

Agencies shall not have any financial interest in tobacco companies,\textsuperscript{xviii} or invest in the tobacco industry and related ventures.

OR

(Alternative Provision for countries with State-owned tobacco industry)

“Any investment in the tobacco industry should not prevent governments, bodies, or agencies from fully implementing the WHO Framework Convention on Tobacco Control.”

Offenses, Sanctions, and Enforcement

Sanctions and actions for violations of provisions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law.

\textbf{Penalties:} Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of xxx but not more than xxx or suffer imprisonment of not less than ___ years but not more than ___ years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Penal Code or special laws.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who have failed to prevent its commission. The court may also suspend or revoke its license.

If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed.

\textbf{Liabilities of Public Officials:} If the offender is a public officer or employee, he/she shall, in addition to the penalties imposed in the pertinent laws governing Public Officials (\textit{Specify which laws should apply, express amendments of such laws may be required in order for it to apply}), be held administratively liable and shall suffer the penalty of perpetual absolute disqualification. \textit{(or other applicable/related provisions under the law of each country)}
Any public official or employee who is called upon to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.

In case of failure of the agency to comply with the duties and prohibitions stated under this act, the liability shall be imposed on the responsible official or employee and the head of the office, department or agency which failed to comply with the duty or committed the violation.

**Miscellaneous Provisions**

**Programs: Awareness Raising**

Agencies shall encourage its personnel to monitor, report and exchange knowledge with respect to tobacco industry practices with different agencies and civil society representatives working on tobacco control.

Agencies (with a role in tobacco control) shall assign a focal department to conduct information dissemination about the addictive and harmful nature of tobacco products, tobacco industry interference with tobacco control policies, and the true purpose and scope of activities described as “socially responsible”.

The information shall include awareness of the industry practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interest of the tobacco industry.

X shall be tasked with raising awareness among public officials and the transacting public. Resources shall be allocated for:

- Organizing seminars/forums
- Coordinating with the Department/Ministry of Health for development of information, educational and communication materials
- Making the materials available for the officials, employees and the transacting public

**Programs: Monitoring & Reporting**

X shall develop a surveillance program to monitor the enforcement of the policies in the central office and each sub-agency, bureau, offices and government-owned and controlled corporation under the control of the agency or department.

X shall coordinate with focal persons in each sub-agency who will
monitor and report compliance with the rules.

X shall cooperate with international bodies in creating and updating a database intended for this purpose.

**Programs:**

**Human Resource:** Y shall be created/appointed to ensure the capacity of focal persons in each agency in implementing the provisions of this Order. It shall provide capacity-building services and activities and shall assure the availability and access to training programs by the persons who will implement the programs.

**Research:** Z shall be formed/appointed to analyze available data and address research gaps including conducting surveillance or monitoring of industry activities and practices. It shall recommend updates on the policies or program to the X in order to incorporate new information and new strategies of the tobacco industry.

**Programs:**

**Partnership:** Y shall be formed/appointed to implement this component which shall focus on creating and maintaining linkages at the national, regional and local levels to help facilitate the implementation of the program. It shall also engage the assistance of non-government organizations and other members of the civil society to help monitor the activities of the tobacco industry.

**Funding:** All costs incident to the implementation of this policy shall be sourced from the budget of X Department. Where possible, tobacco industry shall bear the burden of the costs of monitoring.

(Where CSR is not prohibited, a specific monitoring fee may be imposed based on the amount of the CSR/donation given. Proceeds can be allocated to the implementation of this law)

**Savings and Repeal**

Other related issuances inconsistent with the provisions of this order are hereby revised, modified, amended or rescinded accordingly. All other provisions of existing issuances which are not affected by this order shall remain valid and in effect.

**Effectivity**

Note: It is suggested that the policy be made effective after it complies with the publication requirement to inform affected persons about the new rules of the agency, subject to the national laws of each country.)
B. Requiring Information from the Tobacco Industry

This policy can be adopted through a law or an issuance by the pertinent ministry. For instance, the local government can be required to gather pertinent business information. The Securities and Exchange Commission or its equivalent can require information relating to registration of tobacco industry affiliation; while the division in charge go promoting investments can gather information relating to the investment benefits that the tobacco industry has received.

Sample Policy Template

Requirement of Information from the Tobacco Industry

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) obligates the State to protect its public health policies against the commercial and other vested interest of the tobacco industry. The guidelines for the implementation of Article 5.3 recommend that Parties develop policies requiring transparent and accurate information about the activities and practices of the tobacco industry to facilitate regulation. The WHO FCTC further encourages that Parties implement measures beyond those recommended by the treaty and its guidelines.

In view of these objectives, the following rules are, hereby, promulgated:

The term “tobacco industry” shall refer to organizations, entities, associations, and individuals that work for or in behalf or the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups and any other individual or organization that work to further the interests of the tobacco industry.

1. The agency shall require transparent and accurate information from the tobacco industry.xxx that will support tobacco control measures. The information can be identified by the pertinent agency along with civil society representatives or organizations with no relationship with the tobacco industry. Some of the basic information include:

   a. Reports for disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists.xxxi
b. Information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, such as lobbying, philanthropy, political contributions,

c. Information about tobacco advertising, promotions and sponsorship, such as but not limited to:

1. The kind of advertising, promotion or sponsorship, including its content, form and type of media
2. The placement and extent or frequency of the advertising, promotion or sponsorship
3. The identity of all entities involved in the advertising, promotion and sponsorship including advertising and production companies
4. In case of cross-border advertising, promotion or sponsorship originating from a Party’s territory, the territory or territories in which it is intended to be or may be, received
5. The amount of financial or other resources used for advertising, promotion or sponsorship

d. Any information required to support the tobacco control measures.

a. The agency shall make sure that the documents submitted by the tobacco industry will be accessible to the public for scrutiny, copying or reproduction.

b. All reports from the tobacco industry required to be submitted to the agency must be with the undertaking that such documents contain true and accurate information.

c. Any person who submits documents with false information will be subject to prosecution for perjury or other applicable penalties. (cite existing law, if any) In case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer-in-charge and employee/s responsible for the violation

II. Enforcement Mechanism

1. The agency shall notify the tobacco industry of the pertinent documents needed to be submitted and the corresponding deadlines for submission. In the absence of a deadline, the reports shall be submitted at the end of each year.

2. There shall be no exemption from the submission of reports. If nothing is to be reported, the tobacco industry must file a statement alleging the same.

3. The agency shall impose appropriate sanctions for the failure of the tobacco industry to submit its reports. Significant fines shall be imposed for each day that the tobacco industry fails to submit the report.

(if allowed by law, list specific fines or sanctions under the title “Penalty” )
4. Documents submitted to the agency shall be received and processed by the X Department. It shall be responsible for verifying the accuracy of the contents of the documents.

5. X Department shall make sure that the documents shall be available for public knowledge, scrutiny, copying or reproduction.

III. Monitoring
On a quarterly basis, the X Department shall submit copies of the documentation to the agency and the list of documents submitted/not submitted by the tobacco industry.

To promote public disclosure and transparency, X Department is mandated to record or document all requests made before their office. The logbook shall contain the information about the requesting party, the document requested and the corresponding action made.

IV. Integration in the Program
The agency shall integrate the policy in its programs related to the promotion of public disclosure of transactions involving public interest and transparency in the government.
(Specify all known programs here)

V. Sustained Awareness-Raising Program
a. The agency shall inform and educate all government personnel about the industry practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interest of the tobacco industry.

b. It shall encourage government personnel to monitor, report and exchange knowledge among pertinent agencies and civil society representatives with respect to tobacco industry practices.

VI. Funding
All costs incident to the implementation of this policy shall be sourced from the budget of X Department. (or subject of annual budget allocation)

VII. Effectivity
(Note: It is suggested that the policy be made effective after it complies with the publication requirement to inform affected persons about the new rules of the agency, subject to national laws)
C. Code of Conduct (Amendments to)

A template for Amendments to the Code of Conduct can be found in the annex of the CSC-DOH Joint Memorandum Circular for Protecting the Bureaucracy against Tobacco Industry Interference (CSC DOH JMC, attached herein as Annex A) as well as the DOH Department Memorandum on Protecting the Bureaucracy against Tobacco Industry Interference (DOH DM). This annex pertains to Code of Conduct provisions recommended for government agencies in the Philippines. Like most countries, each government agency in the Philippines has a Code of Conduct and hence, the policy adopted is one that calls for the amendment of the code of conduct, not the development of a new one.

Sample Template (based on CSC –DOH JMC)

Rules which shall be included in the Amendment of the Code of Conduct of Each Agency

(i) Public officials and employees shall limit interactions with the tobacco industry to those strictly necessary for its regulation and to ensure the transparency of those that occur.

(ii) In the event that a meeting is strictly necessary, officials and employees shall abide by the following rules:

1. Set the meeting agenda.
2. Ask the industry about what they want to discuss– in writing – then decide whether to agree with the meeting or not. Stick to the agenda and make the meeting brief.
3. Clarify the goal and structure of the meeting.
4. Before the meeting, it must be made clear that such interaction does not imply partnership, dialogue or collaboration and indicate in writing to the tobacco industry that they may not mischaracterize the nature of the meeting.
5. Hold the meeting at the premises of the department/institution/agency/local government. Ensure that any photograph taken of this meeting is strictly for documentation purposes only and not for the public relations activities of the tobacco industry.
6. Predetermine the meeting participants by asking for the names and positions of those who will attend the meeting.
7. Moderate the meeting. A lawyer must be present and must closely advise the official/employee/representative during the meeting.
8. Write the official minutes. A voice recording of the meeting may be made to assist the staff in preparing the transcript of the meeting. Transcript of the meeting must be filed for record purposes and be made available to the public upon request.

9. Maintain the right to terminate the meeting at any point.

10. Distribute information on the meetings as appropriate. Publicly correct any misinformation regarding the meeting.

11. Decide on follow up questions that must be answered after the meeting.

12. All non-mediated exchanges (in person, phone or email) between officials, employees and representatives of the agency should be avoided.

(iii) Public officials and employees shall declare any interest in the tobacco industry. They shall resign from his/her position in the tobacco industry within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.

For the purpose of this rule, interest in the tobacco industry means personal, financial or other interest, including, but not limited to:

1. having an existing ownership or investment in the tobacco industry;
2. being a member of the Board of Directors, an officer of the corporation or a partner in a partnership in the tobacco industry;
3. receiving any contribution from the tobacco industry.

(iv) Public officials and employees shall not demand or receive any contribution from the tobacco industry for themselves, their families, relatives, friends, or any other persons or organizations. Contributions shall include, but are not limited to, payments, gifts and services, monetary or in-kind, research funding, financial aid, policy drafts and legal advice.

(v) Public officials and employees shall avoid the creation of any perception of real or potential partnership or cooperation with the tobacco industry, and shall publicly correct any perception of partnership that may have been created.

(vi) Public officials and employees of agencies which have a role in setting and implementing public health policies with respect to tobacco control, shall inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service; and to require applicants for such public office positions to declare any current or previous occupational activity with any tobacco industry whether gainful or not.
Aware of the higher level of risk and responsibility with respect to tobacco industry interference, the Philippine Department of Health went a step further than the Civil Service initiative on amending the Code of Conduct and provided specific guidelines on how the health officials should take action to denormalize tobacco industry's CSR activities. It appointed a division to take charge of this function in order to assist the rest of the department as well as other civil servants in implementing the policies geared towards implementing Article 5.3. Below is a sample template based on what is required under the DOH-DM.

GUIDELINES TO DENORMALIZE THE SO-CALLED CSR ACTIVITIES OF THE TOBACCO INDUSTRY

1. The so-called “corporate social responsibility” (CSR) activities of the tobacco industry include the involvement of the tobacco industry in any youth, public education, political, social, financial, educational, community or other tobacco control initiative and, in any manner, of initiatives directly or indirectly related to tobacco control.

2. The tobacco industry shall not be allowed to make public disclosures of activities described as “socially responsible” or the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.¹

3. The (Division) shall conduct an awareness raising and information campaign on the true purpose and scope of activities described as “socially responsible” performed by the tobacco industry.² The campaign shall likewise explain how these so-called CSR activities harm tobacco control policy development and implementation.

4. When officials are approached about, or become aware of, so-called CSR activities, they shall promptly document and report the same, not later than 15 days from knowledge, to the officials of the (various offices) and the heads of local government units. Upon receipt of such report, the officials shall:

   a. issue a public admonition in writing to the tobacco industry representative/s responsible for so-called CSR activities being sponsored and promoted, directly
or indirectly, by the tobacco industry, including public disclosures of such activities and the expenditures therefor;

b. **issue a letter to the particular office, entity, or unit** that received, about to receive, or approached by the tobacco industry for so-called CSR activities, reminding the latter that such is prohibited and they are required to document and report in accordance with these Guidelines; and

c. **promptly document and report the same** to the (Ministry of Justice) or other appropriate agency in order to commence the appropriate prosecution of the party responsible therefor.

5. The officials, in coordination with heads of local government units, shall immediately **report to the Office of the Minister / Secretary** all instances of so-called CSR activities sponsored and promoted by the tobacco industry, including offers to sponsor and promote the same, in their respective territorial jurisdictions. The report shall specify the actions taken by such officials and heads in response to such activities or offers.

6. Officials shall **include the following statement in all issuances, contracts, public documents, communications, exchanges and interactions directly or indirectly involving tobacco:**

>`The Department of Health does **NOT** deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate the tobacco industry and tobacco products.”`

7. The (Division) shall utilize the information and other details obtained in the course of or as a result of enforcing this policy in updating and revising the awareness raising and information campaign. *(emphasis supplied)*

*This provision is included in a separate annex in the DOH-DM*
D. Hiring Policy

Guidelines for hiring and firing of government personnel are often documented in memos or human resource manuals. Such a policy can be issued as a department memorandum or an order by a centralized personnel agency of the government.

Sample Memorandum Template:

MEMORANDUM ORDER
No. _____
Series of 2012
TO:
FROM:
SUBJECT: Revised Guidelines for Hiring of Personnel

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) obligates the State to protect its public health policies against the commercial and other vested interest of the tobacco industry. The Guidelines for the Implementation of Article 5.3 recommend that Parties develop clear policies requiring applicants for public office which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with the tobacco industry and for public officials to declare and divest their direct interest in the tobacco industry. The WHO FCTC further encourages that Parties implement measures beyond those recommended by the treaty and its guidelines.

In view of the foregoing, the agency, hereby, issues the following guidelines:

Section 1. The agency, as an agency which can contribute to tobacco control, shall not hire applicants who have direct or indirect interest in the tobacco industry.

For the purpose of this rule, interest in the tobacco industry means personal, financial or other interest, including, but not limited to:

a. having an existing ownership or investment
b. receiving or having received any contribution from the tobacco industry within three (3) years prior to his/her application with the agency
c. being a member of the Board of Directors, an officer of the corporation or a partner in a partnership
Section 2. The Personnel Department shall screen the candidates for the vacant positions and ensure that disclosure of tobacco industry relationship, including current or previous occupational activity, is included in the applicant's data sheet.

It shall be the responsibility of the Personnel department to check or verify previous employment and other information stated in the applicant's data sheet.

It shall also require all applicants to sign an "Undertaking" or "Oath" stating that in case they are accepted, they will not receive any contribution or have any interest in the Tobacco Industry for x years after leaving service.

Section 3. Applicants previously employed by the tobacco industry and are not disqualified under Section 2 will not be assigned to positions where they will be tasked with the creation, implementation, administration or enforcement of tobacco control policies.

Section 4. For the purpose of this rule, the term “Tobacco industry” shall apply to organizations, entities, associations, and individuals that work for or in behalf or the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups and any other individual or organization that work to further the interests of the tobacco industry.

Section 5. The Personnel Department shall submit a report, signed by its head, on a quarterly basis stating its action in compliance with this order.

Section 6. Any costs incurred related directly or indirectly to the implementation of this Order shall be sourced from the funding of X Department.

Section 7. Effectivity
(Note: It is suggested that the policy take effect immediately after its adoption, subject to other requirements the national laws of each country)

E. No Contribution Policy

A good example of the No Contribution Policy that can be issued by a ministry is enshrined in Annex B, a policy adopted by the Department of Education of the Philippines which specifies that none of the schools will be allowed to receive any form of donations or contributions from the tobacco industry. Such a policy stems from principles aimed at maintaining integrity of public officials in accordance with Article 5.3 hence it applies only to public schools. A broader policy can be made to apply to private schools and below is a sample template:
MEMORANDUM ORDER
No. _____
Series of 2012

TO: Presidents of State Universities and Colleges
    Heads of Public and Private Education Institutions

FROM:

SUBJECT: PROHIBITION FROM RECEIVING ANY CONTRIBUTION FROM THE TOBACCO INDUSTRY

As Party to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), the treaty that reaffirms the right of all people to the highest standard of health, the State has an obligation to enforce the provisions stated therein. Article 5.3 of the WHO FCTC states “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from the commercial and other vested interests of the tobacco industry in accordance with national law.” In compliance with the guidelines implementing article 5.3, the government should reject any contribution from the tobacco industry in order to avoid the creation of a real or perceived partnership.

In view of these directives and pursuant to the principles which obligate the State to protect and promote the right to health of the people and requires that the State promote and protect the youth's physical, moral, spiritual, intellectual, and social well-being, all public educational institutions are hereby prohibited from accepting any contributions from the tobacco industry.

Government personnel in the educational institutions are encouraged to monitor, report and exchange knowledge among pertinent agencies with respect to tobacco industry practices.

All private educational institutions are enjoined to adopt the same policy in order to fulfill the mandate of protecting the welfare of the youth. Any contribution accepted by any private educational institution must be reported to this office along with its annual report.

It is further directed that the schools integrate in its programs, in cooperation with the Department/Ministry of Health, awareness-raising about the addictive and harmful nature of tobacco products and the strategies and tactics used by the tobacco industry.

All costs incident to the implementation of this Memorandum shall be taken from the X budget.

For strict compliance.
F. Declaration of Interest

One of the ways to jumpstart monitoring for tobacco industry interference is to mandate agencies to require a declaration of interests to be filled up as a standard operating procedure in all meetings, events or as a requirement for all employees.

Declaration of Interest

O Consistent with the principle that there is an irreconcilable conflict of interest between the tobacco industry and its representatives on the one hand and public health on the another, the undersigned hereby declares that he/she is, at present*, not knowingly representing or receiving any contribution or compensation, directly or indirectly, whether financial or otherwise, from any tobacco or tobacco product manufacturer, wholesale distributor, importer of tobacco products, tobacco retailers, or any parent, affiliate, branch, or subsidiary of a tobacco or tobacco product manufacturer, wholesale distributor, importer or retailer, front group, or any other individual or organization, such as an interest group, advocacy organization, lawyer, law firm, scientist, lobbyist, advertising agency, business, or foundation, that represents or that works to further the interests of the tobacco industry.

O I have interests to declare at present (Describe the interest, e.g. identity of tobacco-related commercial entity, nature of interest or relationship etc.)

O In case of any past interests related to the tobacco industry, please list the details of such interest in the blank provided (name of tobacco company or of person or entity representing the tobacco industry, date of involvement, details of involvement):

Signed on this 22nd day of April, 2012.

Name:

I represent that the information given above is correct, accurate, and complete.
Signature:
Annex A

Civil Service Commission-Department of Health Joint Memorandum to Protect the Bureaucracy from Tobacco Industry Interference
JOINT MEMORANDUM CIRCULAR NO. 2010-01

TO: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL GOVERNMENT, LOCAL GOVERNMENT UNITS, GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS AND STATE UNIVERSITIES AND COLLEGES

SUBJECT: PROTECTION OF THE BUREAUCRACY AGAINST TOBACCO INDUSTRY INTERFERENCE

Pursuant to Article IX-B, Section 3 of the Constitution, the Civil Service Commission, as the central personnel agency of the government, is responsible for the promotion of morale, efficiency, integrity, responsiveness, and courtesy in the civil service and the institutionalization of management climate conducive to public accountability.

Pursuant to Section 2, Title IX, Chapter 1 of the Administrative Code, the Department of Health is primarily responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health, whereas Section 3 (4) thereof gives the DOH the power to administer all laws, rules and regulations in the field of health.

Pursuant to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which was ratified by the President on September 25, 2003 and concurred in by the Senate on April 25, 2005, specifically under the title General Obligations, Article 5.3; the Parties, in setting and implementing their public health policies with respect to tobacco control, shall act to protect these policies from commercial and vested interests of the tobacco industry.

Pursuant to the Article 5.3 Guidelines, which was adopted by the Conference of the Parties in November 2008 to assist Parties in implementing Article 5.3, government personnel must avoid interaction with the tobacco industry and if any dealing is necessary for the latter’s regulation, supervision and control, it must be transparent and accountable.

Further, in relation to the WHO FCTC and Article 5.3 Guidelines, the Civil Service Commission, pursuant to Section 12 of RA 6713, shall have the primary responsibility for the administration and enforcement of the ‘Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees’.
The WHO FCTC encourages Parties to implement additional measures in consonance with those required by the treaty and its guidelines.

NOW, THEREFORE, the Civil Service Commission and the Department of Health hereby promulgate this policy on Protection of the Bureaucracy against Tobacco Industry Interference.

1.0 Coverage

This policy covers all government officials and employees, regardless of status, in the national or local government including government-owned and controlled corporations, with original charters, state colleges and universities.

2.0 Definition of Terms

2.1 Tobacco Industry shall refer to organizations, entities, associations, and individuals that work for or in behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, front groups and any other individuals or organizations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.

2.2 Tobacco Industry Interference refers to a broad array of tactics and strategies used by the tobacco industry to interfere with the setting and implementing of tobacco control measures.

3.0 Prohibitions

3.1 Unnecessary Interaction with the Tobacco Industry

Public officials and employees shall interact with the tobacco industry only when strictly necessary for the latter’s effective regulation, supervision or control. Transparency in all interactions with the tobacco industry shall be observed. Any necessary interaction with the tobacco industry should be carried out in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such a perception, public officials and employees shall act to prevent or correct this perception.

3.2 Preferential Treatment to the Tobacco Industry

Public officials and employees shall serve the public interest and are prohibited from providing incentives, privileges, benefits or exemptions to the tobacco industry, except as otherwise provided by law.

3.3 Accepting Gifts, Donations and Sponsorship

Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity favor, entertainment, loan or anything of
monetary value in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office from any person or business related to the tobacco industry.

3.4 Financial Interest in the Tobacco Industry

Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction involving the tobacco industry requiring the approval of their office. In relation to this, public officials and employees shall declare any interest in the tobacco industry in their annual declaration of assets and liabilities.

3.5 Accepting Other Favors Analogous to those mentioned above, like, but not limited to the following:

Public officials and employees shall not accept or have any member of his/her family accept employment or recommend any one to any position in any private enterprise connected with the tobacco industry which has a regular or pending official transaction with their agency.

3.6 Conflict of Interest with the Tobacco Industry

Public officials or employees, regardless of status, shall avoid conflicts of interest with the tobacco industry at all times. When a conflict of interest arises, he/she shall resign from his position in the tobacco industry within thirty (30) days from his/her assumption of office and/or divest himself/herself of his/her shareholdings or interest within sixty (60) days from assumption.

3.7 Engaging in an Occupational Activity within the Tobacco Industry

Public officials and employees of agencies that have a role in setting and implementing public health policies with respect to tobacco control, shall inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving the service; and to require applicants for such public office positions to declare any current or previous occupational activity with any tobacco industry whether gainful or not.

4.0 Responsibilities of the Head of Agency

The head of agency shall be responsible for the following:

4.1 Informing officials and employees of this policy against tobacco industry interference, and;

4.2 Amending their respective Codes of Conduct by incorporating the rules provided for in Annex A of this Joint Memorandum Circular.
5.0 Information Dissemination Program

5.1 Agencies are enjoined to disseminate information about the addictive and harmful nature of tobacco products, tobacco industry interference with tobacco control policies, and the true purpose and scope of activities described as "socially responsible".

5.2 They shall give information about any type of agreement with the tobacco industry or any information that would facilitate the enforcement of policy against tobacco industry interference. Information shall include reports on any interaction with the tobacco industry, any preferential treatment given to the tobacco industry and any offer of donation to the public official or employee by the tobacco industry. To encourage transparency and accountability, the agency shall make sure that copies of these documents will be accessible to the public.

6.0 Implementation of the Program

6.1 Submission of Annual Reports. Agencies shall include in its Annual Report their compliance with this Joint Memorandum Circular.

6.2 Funding & Technical Assistance. The Department of Health shall provide a start-up fund and technical assistance to assist the Civil Service Commission in its capacity-building and advocacy programs for the different agencies of the government. Each agency is enjoined to allocate resources for its own monitoring and advocacy campaign to ensure sustainability of the programs.

6.3 Participation of Civil Society
Each agency shall encourage the participation of civil society not affiliated with the tobacco industry in achieving the objective of this Joint Memorandum Circular.

Any violation of this Circular shall be considered a ground for administrative disciplinary action pursuant to Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292, without prejudice to the filing of criminal as well as civil actions under existing laws, rules and regulations.

This Circular shall amend all issuances inconsistent herewith.

This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation.

FRANCISCO T. DUQUE III, MD, MSc.  
Chairman  
Civil Service Commission

ESPERANZA I. CABRAL, MD  
Secretary  
Department of Health

CERTIFIED TRUE COPY  
JUN 29, 2010  
MAYVEN V. AGUIRRE  
Chief, Records Section - IMS  
Department of Health
ANNEX A

Rules which shall be included in the Amendment of the Code of Conduct of Each Agency

(i) Public officials and employees shall limit interactions with the tobacco industry to those strictly necessary for its regulation and to ensure the transparency of those that occur.

(ii) In the event that a meeting is strictly necessary, officials and employees shall abide by the following rules:

1. Set the meeting agenda.
2. Ask the industry about what they want to discuss— in writing — then decide whether to agree with the meeting or not. Stick to the agenda and make the meeting brief.
3. Clarify the goal and structure of the meeting.
4. Before the meeting, it must be made clear that such interaction does not imply partnership, dialogue or collaboration and indicate in writing to the tobacco industry that they may not mischaracterize the nature of the meeting.
5. Hold the meeting at the premises of the department/institution/agency/local government. Ensure that any photograph taken of this meeting is strictly for documentation purposes only and not for the public relations activities of the tobacco industry.
6. Predetermine the meeting participants by asking for the names and positions of those who will attend the meeting.
7. Moderate the meeting. A lawyer must be present and must closely advise the official/employee/representative during the meeting.
8. Write the official minutes. A voice recording of the meeting may be made to assist the staff in preparing the transcript of the meeting. Transcript of the meeting must be filed for record purposes and be made available to the public upon request.
9. Maintain the right to terminate the meeting at any point.
10. Distribute information on the meetings as appropriate. Publicly correct any misinformation regarding the meeting.
11. Decide on follow up questions that must be answered after the meeting.
12. All non-mediated exchanges (in person, phone or email) between officials, employees and representatives of the agency should be avoided.
(iii) Public officials and employees shall declare any interest in the tobacco industry. They shall resign from his/her position in the tobacco industry within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.\textsuperscript{xiii}

For the purpose of this rule, interest in the tobacco industry means personal, financial or other interest, including, but not limited to:\textsuperscript{xiv} \textsuperscript{ xv}

1. having an existing ownership or investment in the tobacco industry;
2. being a member of the Board of Directors, an officer of the corporation or a partner in a partnership in the tobacco industry;
3. receiving any contribution from the tobacco industry.\textsuperscript{xvi}

(iv) Public officials and employees shall not demand or receive any contribution from the tobacco industry for themselves, their families, relatives, friends, or any other persons or organizations. Contributions shall include, but are not limited to, payments, gifts and services, monetary or in-kind, research funding, financial aid, policy drafts and legal advice.

(v) Public officials and employees shall avoid the creation of any perception of real or potential partnership or cooperation with the tobacco industry, and shall publicly correct any perception of partnership that may have been created.

(vi) Public officials and employees of agencies which have a role in setting and implementing public health policies with respect to tobacco control, shall inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service; and to require applicants for such public office positions to declare any current or previous occupational activity with any tobacco industry whether gainful or not.
The Guidelines for the Implementation of Article 5.3 were adopted by the Conference of Parties last November 2008. The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.

Paragraph 11. Guidelines for the implementation of Article 5.3 of the WHO FCTC

The broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures, such as those that Parties to the Convention are required to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.

Paragraph 20 Guidelines for Implementation of Article 5.3 of the WHO FCTC

In setting and implementing public health policies with respect to tobacco control, any necessary interaction with the tobacco industry should be carried out by Parties in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such a perception, Parties should act to prevent or correct this perception.

Judith Mac Kay and Mary Assunta, Ethical Guidelines for Meeting with the Tobacco Industry.

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Ibid"

"Rep. Act 6713, Sec. 9"

"Divestment. - A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption."

"Rep. Act 6713, Sec. 7 (b)"

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

"Rep. Act 6713, Sec. 3 (i):"

"(i) "Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty."

"Recommendation 4.10, Guidelines implementing Article 5.3 of the FCTC

Parties should not allow any official or employee of government or of any semi/quasi governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry."
Annex B

Guideline of the Adoption and Implementation of Public Health Policy on Tobacco Control and Protection against Tobacco Industry Interference,
Department of Education
JAN 18 2012

DepEd ORDER
No. 6, s. 2012

GUIDELINES ON THE ADOPTION AND IMPLEMENTATION OF PUBLIC HEALTH POLICIES ON TOBACCO CONTROL AND PROTECTION AGAINST TOBACCO INDUSTRY INTERFERENCE

To: Undersecretaries
Assistant Secretaries
Bureau Directors
Directors of Services, Centers and Heads of Units
Regional Directors
Schools Division/City Superintendents
Heads, Public and Private Elementary and Secondary Schools
All Others Concerned

1. The Department of Education (DepEd) has issued the enclosed Guidelines on the Adoption and Implementation of the Public Health Policies on Tobacco Control and on Protection Against Tobacco Industry Interference in compliance with the following:

1.a. Republic Act (RA) No. 9211 known as Tobacco Regulation Act of 2003;
1.b. Joint Memorandum Circular 2010-01 issued by the Civil Service Commission (CSC) and the Department of Health (DOH) entitled “Protection of the Bureaucracy Against Tobacco Industry Interference”; and

2. These Guidelines aim to:

a. raise the awareness of the public particularly the pupils and students by advocating the adverse effects of cigarettes smoking on health, productivity, the cost of health service, and the economy;
b. avoid all forms and manner of cooperation or partnership with the tobacco industry; and
c. ensure tobacco control and protection against commercial and other vested interests of the tobacco industry.

3. Any violation of these Guidelines shall be considered a ground for administrative disciplinary action pursuant to Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of Executive Order No. 292, without prejudice to the filing of criminal as well as civil actions under existing laws, rules, and regulations.

4. Immediate dissemination of and strict compliance with this Order is directed.

BR. ARMIN A. LUSTRO FSC
Secretary
Encl.:  
As stated

Reference:  
None

To be indicated in the Perpetual Index  
under the following subjects:  

EMPLOYEES  
OFFICIALS  
POLICY  
RULES & REGULATIONS  
SCHOOLS

MCR, DO- Adoption and Dissemination of CSC-DOH-2nd version  
Jan. 11, 2012/1-12-11
GUIDELINES ON THE ADOPTION AND IMPLEMENTATION OF PUBLIC HEALTH POLICIES ON TOBACCO CONTROL AND PROTECTION AGAINST TOBACCO INDUSTRY INTERFERENCE

Coverage

These Guidelines cover all officials and employees of the department, regardless of status of employment.

1. Definition of Terms

   a. Tobacco Industry - shall refer to organization, entities, association, and individuals that work for and in behalf of the tobacco industry, such as but not limited to tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, front groups and/or organizations, including but not limited to lawyers, scientists and lobbyists who work to further the interests of the tobacco industry.

   b. Tobacco Industry Interference – refers to a broad array of tactics and strategies used by the tobacco industry to interfere with the setting and implementation of tobacco control measures.

2. Prohibitions

   a. Unnecessary Interaction with the Tobacco Industry

      Public officials employees shall interact with the tobacco industry only when strictly necessary for the latter’s effective regulation, supervision or control. Transparency in all interaction with the tobacco industry should be carried out in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such perception, public officials and employees shall act to prevent or correct this perception.

   b. Preferential Treatment to the Tobacco Industry

      Public officials and employees shall serve the public interest and are prohibited from providing incentives, privileges, benefits or exemptions to the tobacco industry, except as otherwise provided by law.

   c. Accepting Gifts, Donations and Sponsorship

      Public officials and employees shall not solicit or accept, directly or indirectly any gifts, gratuity, favor, entertainment loan or anything of monetary value in the course of their official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of their office from any person or business related to the tobacco industry.

      This prohibition covers the donation of funds or anything of monetary value, including, but not limited to, the conduct of refurbishing and restoration programs, construction of classrooms, school stages and other facilities, school feeding programs, provision of school supplies and
other facilities, school feeding programs, provision of school supplies and materials, installation of facilities for multi-media programs, sponsorship of medical and dental check-ups and other activities.

d. Financial Interest in the Tobacco Industry

Public officials and employees shall not directly or indirectly have any financial or material interest in any transactions involving the tobacco industry requiring the approval of their office. In relation to this, public officials and employees shall declare any interest in the tobacco industry in their annual declaration of assets and liabilities.

e. Accepting Other Favors Analogous to those mentioned above, like but not limited to the following:

Public officials and employees, regardless of status, shall avoid conflicts of interest with the tobacco industry at all times. When a conflict of interest arises, he/she shall resign from his position in the tobacco industry within thirty (30) days from his/her assumption of office and/or divest himself/herself of his shareholdings or interest within sixty (60) days from assumption.

f. Engaging in an Occupational Activity within the Tobacco Industry

Public officials and employees that have a role in setting and implementing public health policies with respect to tobacco control, shall inform the Department about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within one (1) year after leaving the service, and to require applicants for such public office positions to declare any current or previous occupational activity with any tobacco industry whether gainful or not.

3. Information Dissemination Program

a. Public officials and employees are required to report any form of activity of the tobacco industry which are dubbed as part of their "corporate social responsibility" such as activities employed by the industry as part of their marketing and public relations strategy that circumvents the prohibitions on tobacco advertising, promotion and sponsorship.

b. Officials and employees shall give information about any type of agreement with the tobacco industry or any information that would facilitate the enforcement of policy against tobacco industry interference. Information shall include reports on any interaction with the tobacco industry, any preferential treatment given to the tobacco industry and any offer of donation to the public official or employee by the tobacco industry. To encourage transparency and accountability, this information shall be accessible to the public.
Protecting from Tobacco Industry Interference

ENDNOTES

1 Par. 11 Guidelines for the implementation of Article 5.3 of the WHO FCTC: “The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.”

ii Judith Mackay and Mary Assunta, Ethical guidelines for meeting with the tobacco industry

iii Ibid

iv Ibid

v Ibid

vi Ibid

vii Ibid

viii Ibid

ix Ibid

x DOH Code of Conduct, Rule VII, Section 2 (3), DOH Administrative Order No. 2009-0004

xi DOH Code of Conduct, Rule VIII, Section 1, DOH Administrative Order No. 2009-0004

xii DOH Code of Conduct, Rule VIII, Section 2, DOH Administrative Order No. 2009-0004

xiii DOH Code of Conduct, Rule VIII, Section 3, DOH Administrative Order No. 2009-0004

xiv Recommendation 4.3, Guidelines for Implementation of Article 5.3 of the WHO FCTC

“Parties should not award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies”

xv Par. 23, Guidelines for Implementation of Article 5.3 of the WHO FCTC

“Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United nations general Assembly and by several governmental and regional economic integration organizations.”

xvi Recommendation 4.1, Guidelines implementing Article 5.3 of the WHO FCTC

xvii Recommendation 4.9, Guidelines implementing Article 5.3 of the FCTC

xviii Recommendation 3.1, Guidelines for Implementation of Article 5.3 of the WHO FCTC

“Parties should not endorse, support, form partnerships with or participate in the activities of the tobacco industry described as socially responsible.”

xix Recommendation 5.1, Guidelines implementing Article 5.3 of the FCTC

xx Recommendation 5.3 Guidelines for Implementation of Article 5.3 of the WHO FCTC

xxi Recommendation 6.2 Guidelines for Implementation of Article 5.3 of the WHO FCTC

xxii Par. 41, Guidelines for implementation of Article 13 of the WHO FCTC

xxiii Recommendation 7.1, Guidelines implementing Article 5.3 of the WHO FCTC

xxiv Par. 17.7 Guidelines for Implementation of Article 5.3 of the WHO FCTC

xxv Recommendation 4.7, Guidelines implementing Article 5.3 of the WHO FCTC

xxvi Par. 33 Guidelines for the Implementation of Article 5.3 of the FCTC

“Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could play an essential role in monitoring the activities of the tobacco industry.”

xxvii Recommendation 5.1, Guidelines implementing Article 5.3 of the WHO FCTC

xxviii Recommendation 5.3 Guidelines for Implementation of Article 5.3 of the WHO FCTC

xxix Recommendation 6.2 Guidelines for Implementation of Article 5.3 of the WHO FCTC

xxx Par. 41, Guidelines for implementation of Article 13 of the WHO FCTC
Based completely on the CSC-DOH JMC adopted jointly by the Philippine Civil Service Commission and Department of Health.

Judith Mackay and Mary Assunta, Ethical Guidelines for Meeting with the Tobacco Industry.

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Rep. Act. 6713, Sec. 9

“Divestment. - A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.”

Rep. Act. 6713, Sec. 7 (b)

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

Rep. Act. 6713, Sec. 3 (i):

“(i) "Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.”

Recommendation 4.10, Guidelines implementing Article 5.3 of the FCTC

Parties should not allow any official or employee of government or of any semi/quasi governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.

Based completely on the actual department memo adopted by the Philippine Department of Health

Recommendation 6.3, Guidelines for the implementation of Article 5.3 of the WHO FCTC.

Recommendation 6.1, Guidelines for the implementation of Article 5.3 of the WHO FCTC.

Rep. Act. 6713, Sec. 7 (b)

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

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Rep. Act. 6713, Sec. 9

“Divestment. - A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.”
Southeast Asia Tobacco Control Alliance

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“working together to promote the implementation of effective evidence-based tobacco control measures in Southeast Asia”