

The Union

International Union Against
Tuberculosis and Lung Disease
Health solutions for the poor

THE UNION TOOLKIT FOR WHO FCTC ARTICLE 5.3

Guidance for governments on preventing
tobacco industry interference



TOBACCO CONTROL AT THE UNION

For the last 10 years we have been working with governments and civil society around the globe providing technical assistance to help introduce and implement policies that are proven to reduce tobacco use – and the disease and poverty it causes.

Since 2007 we have worked in more than 50 countries impacting two-thirds of the world's smokers.

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Factsheet 1

HOW DO I TAKE STEPS TO PREVENT INTERFERENCE BY THE TOBACCO INDUSTRY IN MY COUNTRY?

This fact sheet provides a road map for governments wanting to take steps to prevent the tobacco industry interfering with policy setting and law making in their countries.

STEP 1: FACT FINDING

Ensure familiarisation with Article 5.3 of the World Health Organization's Framework Convention on Tobacco Control (FCTC), which requires Parties to the FCTC to take steps to prevent interference by the tobacco industry in public health policies relating to tobacco control. For details see:

- Fact Sheet 2 of this toolkit: *The WHO Framework Convention on Tobacco Control: Preventing Interference by the Tobacco Industry*.
- The Guidelines on Implementation of Article 5.3 of the FCTC.ⁱ

Examine why the tobacco industry needs to be treated differently from other industries, due to the fundamental conflict between the goals of the tobacco industry and the goals of governments in promoting public health. For details see:

- Fact Sheet 3 of this toolkit: *Why do we treat the tobacco industry differently from other industries?*

Research strategies for mobilising communities and the government to prevent tobacco industry interference in tobacco control initiatives. Some useful resources include:

- Corporate Accountability International's web resources.ⁱⁱ
- The Campaign for Tobacco-Free Kids Industry Watch site.ⁱⁱⁱ

- The South East Asia Tobacco Control Alliance (SEATCA) and Health Justice Inc.'s Toolkit for policymakers and advocates on preventing tobacco industry interference.^{iv}

Speak with regional and international tobacco control organisations and to your counterparts in other countries to learn about tobacco industry tactics used in other locations.

STEP 2: EVALUATING

Assess tobacco industry activities in your country; for further information see:

- Fact Sheet 4 of this toolkit: *Monitoring the Tobacco Industry*.

Review your country's compliance with Article 5.3 of the FCTC and the guidelines developed to aid implementation of Article 5.3; for further information see:

- Fact Sheet 5 of this toolkit: *Template for assessing Parties' compliance with Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control*.

STEP 3: TAKING ACTION

Establish a government agency or committee, to oversee implementation of Article 5.3. This government body will be responsible for the following actions:

- Carry out a formal assessment of the country's compliance with Article 5.3 of the FCTC, perhaps using Fact Sheet 5 of this toolkit: *Template for assessing Parties' compliance with Guidelines for the Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control*.
- Establish guidelines for meetings and other interactions with the tobacco industry deemed necessary, including a requirement that they be made public; for more details see Fact Sheet 7 of this toolkit: *Model Process Guidelines for Interactions with the Tobacco Industry*.
- Develop and seek endorsement of a formal national policy and enforcement mechanism for public agencies' engagement with the tobacco industry, conduct of officials in dealings with industry, and management of conflicts of interest, see Fact Sheet 9 of this toolkit: *Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to the Tobacco Industry*.
- Establish a formal mechanism for monitoring and responding to the tobacco industry's activities; for more information see: Fact Sheet 4 of this toolkit: *Monitoring the Tobacco Industry*.

Seek support from civil society and build partnerships with non-governmental organisations (NGOs) to utilise their expertise and experience in monitoring and responding to tobacco industry interference.

Make use of the range of resources developed by the International Union Against Tuberculosis and Lung Disease (The Union) to support Parties to the FCTC.

Resources from other regional and international organisations that support Parties to the FCTC in achieving compliance with Article 5.3 include:

- The Campaign for Tobacco-Free Kids model tobacco control legislation includes detailed provisions on Article 5.3.^v
- World Health Organization resources^{vi}
- Corporate Accountability International^{vii}
- The SEATCA and Health Justice Inc. Toolkit for policy makers and advocates on preventing tobacco industry interference.^{viii}

- Sy D, Luna I. Tobacco Control Lawyers' Manual: Legislative Guide, Common Legal Questions, Case Studies. August 2011. Health Justice and SEATCA.^{ix}

STEP 4: SEEKING HELP

Seek guidance and assistance from regional and international organisations such as The Union, World Health Organization, Campaign for Tobacco-Free Kids, Vital Strategies, Corporate Accountability International, the South East Asia Tobacco Control Alliance and the Framework Convention Alliance.

The Union periodically updates its publications. Please alert us to additional resources you would find helpful at: tobaccofreeunion@theunion.org

HOW CAN NGOS HELP?

Non-governmental organisations can help governments by supporting them with information and promotion of good policy.

NGOs can:

- Find out what their government's policy is on engaging with the tobacco industry and whether they have carried out an assessment of Article 5.3 compliance.
- Ask the department/ministry of health in their country what it intends to do to encourage the implementation of Article 5.3 and its guidelines throughout the government.
- Establish a coalition of civil society organisations to educate the public about the tobacco industry's behaviour and to recommend to the government strong tobacco control actions, including legislation and increasing tobacco taxation.
- Encourage governments and hold them accountable for delivering the actions outlined in step 3, above.

NGOs may wish to consider developing a shadow report, reporting on the government's performance in implementing Article 5.3 and the FCTC. Sample reports are available on the Framework Convention Alliance's website.^x

NGOs should also draft and implement their own Code of Conduct for their members. An example is the Code of Practice on Tobacco Control for Health Professional Organizations.^{xi}

ⁱ http://www.who.int/fctc/guidelines/article_5_3.pdf

ⁱⁱ <http://www.stopcorporateabuse.org/>

ⁱⁱⁱ http://global.tobaccofreekids.org/en/industry_watch/

^{iv} <http://seatca.org/?p=5418>

^v http://global.tobaccofreekids.org/en/solutions/laws_litigation/resources/#drafting

^{vi} <http://www.who.int/tobacco/en/>

^{vii} <http://www.stopcorporateabuse.org/>

^{viii} <http://seatca.org/?p=5418>

^{ix} <http://www.healthjustice.ph/wp-content/uploads/2014/09/Tobacco-Control-Lawyers-Manual.pdf>

^x http://www.fctc.org/index.php?option=com_content&view=article&id=680:shadow-reporting-monitoring-fctc-implementation&catid=129:implementationmonitoring&Itemid=73.

^{xi} <http://www.who.int/tobacco/communications/events/codeofpractice/en/>

Factsheet 2

THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL: PREVENTING INTERFERENCE BY THE TOBACCO INDUSTRY

This fact sheet summarises what over 180 countries, Parties to the WHO Framework Convention on Tobacco Control (FCTC),ⁱ have agreed to do in response to tobacco industry efforts to undermine tobacco control internationally – and in WHO countries throughout every region of the world.

A GLOBAL TREATY FOR A GLOBAL PROBLEM

The tobacco industry is a global entity. It is made up of large trans-national companies, state-owned entities and domestic growers, manufacturers, importers, wholesalers and retailers of tobacco. It also includes a wide range of supporting consultancies specialising in such areas as marketing, legal services and lobbying.

Tobacco products available today are highly engineered during the production process. They are often made up of tobaccos sourced from several countries and may include a wide range of additives including sweeteners and flavourings. Tobacco products and tobacco smoke may contain over 7,000 chemicals: hundreds of these chemicals are hazardous, and at least 69 are known to cause cancer.ⁱⁱ

Despite the clear harms caused by their products, decades of evidence show that the tobacco industry actively and consistently acts to delay, dilute and defeat domestic tobacco control measures.

See Fact Sheet 3: *Why do we treat the tobacco industry differently from other industries?*

Individual countries find it difficult to know how to respond to an industry that sells a product that is highly addictive and hazardous to health. They may also find it hard to deal with an industry that may or may not have a significant presence within their borders but whose reach, in terms of lobbying power and influence, can be extensive and in many cases unchallenged. Cross-border trade, including illicit trade in tobacco and extensive tobacco advertising, promotion and sponsorship all contribute to making tobacco use – and the tobacco industry itself – a huge global challenge.

The global response to this global problem has been the WHO FCTC, which had 180 Parties as of 1 September 2017.

THE FCTC: CONFRONTING THE INDUSTRY

A strong feature of the FCTC is that it not only obligates Parties to take effective steps to reduce tobacco use in their countries and to collaborate internationally, but it also openly confronts the tobacco industry. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to “... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

In 2008, Parties to the FCTC collectively agreed to guidelines describing their obligations in support of Article 5.3 implementation.ⁱⁱⁱ

It is important to note that the Article 5.3 guidelines:

- were established to assist Parties in meeting their legal obligations under Article 5.3;
- were adopted by consensus by the Conference of the Parties; and therefore
- represent measures that the Parties agreed will help protect public health policies relating to tobacco control from tobacco industry interference.

In accordance with Article 31 of the Vienna Convention on the Law of Treaties 1969,^{iv} the Article 5.3 guidelines should be taken into account when interpreting the scope and content of Parties' treaty obligations in relation to Article 5.3 of the FCTC.

It should also be noted that Article 2.1 of the FCTC encourages Parties to implement measures beyond those required by the FCTC. The Article 5.3 guidelines also explicitly encourage Parties to implement measures beyond those set out in guidelines.

WHAT SHOULD COUNTRIES DO NEXT?

There are some simple steps that governments and NGOs can take, whether their country is a Party to the FCTC or not, to protect public health and the setting of tobacco control policy from the influence of the tobacco industry, using the guidelines for implementation of Article 5.3 of the FCTC.

Research industry interference and implement strategies to prevent interference by the industry. Fact Sheet 1 in this series *How do I take steps to prevent interference by the tobacco industry in my country?* highlights a number of resources that can assist in this regard.

Also see Fact Sheet 3 in this series: *Why do we treat the tobacco industry differently from other industries?* This provides the rationale as to why the international community has agreed to active steps that need to be taken to prevent interference by the tobacco industry, given the industry's past conduct, as well as more recent tactics.

i World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, accessed 15 September 2017.

ii See: Rabinoff M, et al. Pharmacological and chemical effects of cigarette additives. *American Journal of Public Health* 2007;97(11):1981-91; U.S. Department of Health and Human Services; How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. 2010. Atlanta, GA: U.S. Department of Health and Human Services.

iii FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva: World Health Organization. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, Accessed 15 September 2017.

iv Vienna Convention on the Law of Treaties, 1969. <http://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

THE KEY FEATURES OF ARTICLE 5.3 GUIDELINES ARE PRESENTED BELOW

WHO IMPLEMENTS THE GUIDELINES

The guidelines emphasise that Parties should implement measures to prevent tobacco industry interference in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

TO WHOM DO THE GUIDELINES APPLY?

The guidelines are applicable to all officials, representatives and employees at all levels of government and to public or semi-/quasi-public institutions or bodies within the jurisdiction of a Party to the FCTC. All those working on public health policies related to tobacco control should be subject to the guidelines. These include individuals working for the government on the broad range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke. This includes those working in areas such as the setting of taxation, price and illicit-trade-related policies and programmes.

WHAT ARE THE KEY PRINCIPLES UNDERPINNING THE GUIDELINES?

The guidelines present a set of four key guiding principles:

- **Principle 1:** There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.
- **Principle 2:** Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
- **Principle 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.
- **Principle 4:** Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.

WHAT DID PARTIES AGREE SHOULD BE IMPLEMENTED UNDER THE GUIDELINES?

The Article 5.3 guidelines present a series of eight recommendations. These are broad ranging, but the key steps Parties are encouraged to take include:

- Raise awareness about tobacco industry interference among all those working within all branches of government and among the public.
- Avoid any interaction with the tobacco industry except where necessary to enable them to effectively regulate tobacco products and the tobacco industry. Where interactions do take place, they must be conducted transparently.
- Reject partnerships, non-binding or non-enforceable agreements with the industry, including voluntary codes of conduct, industry-sponsored tobacco control initiatives or industry offers to assist with the development of tobacco control legislation or policy.
- Develop clear policies on avoidance of conflicts of interest for government officials, employees, consultants and contractors. A wide range of specific steps are recommended within the guidelines.
- Require disclosure of information by the tobacco industry to promote transparency. This must include tobacco production, manufacture, sales and content, as well as industry lobbying, philanthropy, political donations, etc.
- Denormalise and regulate activities described by the industry as “socially responsible” and expose the real intent – such as making the industry seem benevolent towards the population – behind these activities.
- Do not give any benefits, tax exemptions or other incentives to the tobacco industry.
- Treat any state-owned tobacco industry no differently from privately-owned tobacco companies.

Factsheet 3

WHY DO WE TREAT THE TOBACCO INDUSTRY DIFFERENTLY FROM OTHER INDUSTRIES?

This fact sheet explains why over 180 countries that are Parties to the WHO Framework Convention on Tobacco Control (the FCTC) determined that special rules were required to limit governments' interaction with the tobacco industry to protect public health policy and law-setting processes from the interference of the tobacco industry.

WHAT MAKES THE TOBACCO INDUSTRY DIFFERENT FROM OTHER INDUSTRIES?

*"Tobacco is the only legally available consumer product which kills people when used entirely as intended."*ⁱ

There is a strong body of evidence from authoritative bodies demonstrating how tobacco is inherently deadly.ⁱⁱ Unlike any other consumer product, it cannot be used without risk. Despite this, decades of evidence show that the tobacco industry actively and consistently acts to delay, dilute and defeat domestic tobacco control measures.

As a result of two United States litigation settlements in 1998, tobacco corporations operating in the United States and abroad were forced to turn over millions of previously secret internal documents dating from the 1950s to the 1990s. Several U.S. tobacco companies remain legally obligated to continue to produce internal records in smoking and health-based litigation in the United States.ⁱⁱⁱ The industry documents, many now reviewed and cited in over 750 reports and peer-reviewed publications provide evidence of how the tobacco corporations operated. The findings of these reviews have shown that tobacco companies:

- knew their products were harmful and killed their consumers;^{iv}
- knew that nicotine was highly addictive;^v
- hid this knowledge while publicly denying the dangers of tobacco use and exposure to second-hand smoke and the addictiveness of tobacco;^{vi}
- targeted young people with advertising and promotions to perpetuate the use of their products;^{vii}
- relied on the illegal sales of cigarettes in Africa,^{viii, ix} Asia,^x Europe,^{xi} the Middle East,^{xii} South and Central America,^{xiii} and North America^{xiv} as part of their business strategy to increase their market shares.

A number of subsequent reports and investigations have shown how the industry has taken active steps over several decades to undermine efforts of independent researchers, policymakers and regulators to build an evidence base around tobacco use and harms. The industry also actively undermined (and continues to undermine) efforts to implement effective measures to discourage tobacco use and protect people from second-hand smoke.^{xv}

"[For nearly 50 years] each and every one of these Defendants repeatedly, consistently, vigorously – and falsely – denied the existence of any adverse health effects from smoking. Moreover, they mounted a coordinated, well-financed, sophisticated public relations campaign to attack and distort

the scientific evidence demonstrating the relationship between smoking and disease, claiming that the link between the two was still an “open question.” Finally, in doing so, they ignored the massive documentation in their internal corporate files from their own scientists, executives, and public relations people...”^{xvi}

The tobacco industry also initiated a decades-long campaign to undermine the World Health Organization’s tobacco control efforts in low- and middle-income countries and ultimately attempted to stop the WHO Framework Convention on Tobacco Control (FCTC) from coming into force.^{xvii}

The industry was unsuccessful in its efforts and the FCTC came into force in 2004. This international treaty has been explicitly created to discourage the use of tobacco products and openly confront the tobacco industry. Article 5.3 of the FCTC requires all Parties when setting and implementing their public health policies with respect to tobacco control to “. . .act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

WHAT DOES THIS MEAN FOR HOW GOVERNMENTS INTERACT WITH THE TOBACCO INDUSTRY?

It is common practice for government policy-makers and decision-makers to engage with affected industries and consult closely on matters of policy and regulation. This is a principle of good government endorsed by many international bodies such as the Organization for Economic and Social Development. However, the past (and ongoing) behaviour of the tobacco industry and the fact that there is no safe means of using tobacco products (unlike any other consumer product) have led governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.^{xviii}

This conflict therefore demands a unique approach to engagement with the tobacco industry to confront not only the industry’s direct strategies such as active lobbying, provision of financial incentives, advertising and corporate social responsibility initiatives, but also more subtle industry activities. These include building relationships with officials,

EXAMPLES OF TOBACCO INDUSTRY TACTICS

- **“We support sensible legislation, and we’re here to help.”** You receive an offer from a tobacco company to help with developing a national tobacco control policy or to draft tobacco control legislation for you. The company assures you that it supports ‘sensible’ and ‘effective’ policy and legislation. When you receive the draft policy or statement, it looks good at first, but then you start to notice some loopholes.
- **New lobby group out of the blue.** Your department/ ministry of health is proposing new legislation to restrict smoking in public places and work places. A new, previously unheard of lobby group for hospitality venue owners is suddenly established and runs a well-funded campaign against the legislation.
- **The invisible editing hand.** With no warning, you are suddenly directed to change draft tobacco policies or legislation by senior managers or ministers. You later find out that they have been meeting regularly with senior industry officials.
- **“We strongly support youth prevention programmes.”** A tobacco company offers funding for youth smoking prevention programmes, claiming they are very concerned that young people should not smoke. These campaigns, if accepted, turn out to be ineffective and raise concerns that they may even increase awareness about tobacco among young people. The industry’s emphasis that “tobacco is for adults” may actually have the opposite effect sparking young people’s interest in using tobacco.
- **The never-ending committee process.** A senior tobacco executive suggests establishing a tobacco control committee, or asks to join an existing one. The participation of the tobacco executive on that committee is strongly recommended by the executive because this person “can bring insights into tobacco use that could be helpful for government agencies in setting tobacco controls.” However, for some reason, the committee never agrees on implementing those measures that international health agencies recommend, such as strict legislation and increased tobacco taxation.
- **Money talks I:** Political donations. You hear that large campaign donations are being made to a political party that opposes certain tobacco control measures.
- **Money talks II:** Corporate social responsibility. Substantial donations are made to environmental or social causes in your country. Considerable publicity coverage is given to the fact that tobacco companies provided the funding, and you are surprised about how much this increases people’s acceptance of the tobacco industry as a caring industry and a normal part of society. It seems that people have forgotten, or perhaps don’t want to think about, the fact that thousands of people die each year from the products the tobacco industry promotes.

feeding decision-makers supposedly 'evidence-based' policy documents and building trust and confidence in what tobacco company representatives say.

Certain policy and legislative interventions necessary to prevent interference by the tobacco industry are generic. That is to say they are interventions that should be implemented in relation to all industries, including the tobacco industry (e.g. management of conflict of interest, transparency of engagements, public official codes of conduct, scrutiny to avoid bribery, etc). Other interventions beyond those deemed necessary for most other industries will need to be developed that deliberately target the tobacco industry.

This is not to say or imply that the tobacco industry should not be consulted on proposed policy or regulation that directly affects it. However, the industry should not have a seat at the table in deciding what tobacco control measures should be developed, implemented, funded or evaluated. Nor should any permitted engagements with the tobacco industry be conducted in secret: there should be full transparency

WHAT SHOULD GOVERNMENTS DO IN RESPONSE?

Governments should implement the FCTC. Article 5.3 of the FCTC requires Parties to take steps to protect public policy and legislation from the interference of the tobacco industry. For more details see:

- Fact Sheet 1 of this series: *How do I take steps to prevent interference by the tobacco industry in my country?*
- Fact Sheet 2 of this series: *The WHO Framework Convention on Tobacco Control: Preventing Interference by the Tobacco Industry.*

WHERE CAN I READ MORE ABOUT INDUSTRY TACTICS?

A number of agencies have developed fact sheets and resource documents on tobacco industry tactics, including case studies from around the world. These include:

- Corporate Accountability International's website, which profiles case studies of industry activities and supporting resources for responding to those activities, available at: <http://www.stopcorporateabuse.org>
- A report, prepared for the World Health Organization, outlining efforts undertaken by tobacco companies over a number of years to subvert WHO's efforts in the tobacco control area, available at: http://www.who.int/tobacco/en/who_inquiry.pdf
- The 2009 WHO report on tobacco industry interference in tobacco control, which summarises key tactics used by industry, available at: http://whqlibdoc.who.int/publications/2008/9789241597340_eng.pdf
- The Campaign for Tobacco-Free Kids' Industry Watch webpage, available at: http://global.tobaccofreekids.org/en/industry_watch/. This profiles case studies relating to tobacco industry interference, as well as providing a range of resources.
- The Legacy Tobacco Documents Library: a website that holds copies of tobacco company documentation, released under litigation in the United States. This can be searched for documents relevant to your country. See: <http://legacy.library.ucsf.edu/>. A useful fact sheet on searching tobacco industry documents online is available at: <http://www.tobaccofreekids.org/research/factsheets/pdf/0014.pdf>
- The Framework Convention Alliance has resources available on Article 5.3 on its website: <http://www.fctc.org/>.

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- i The Oxford Medical Companion. 1994. Oxford: Oxford University Press.
- ii For example, see: Peto R, et al. 2006. Mortality from smoking in developed countries 1950 – 2000 (2nd edition, revised June 2006) Available at: www.deathsfromsmoking.net, accessed 15 September 2017; U.S. Department of Health and Human Services. 2004. The Health Consequences of Smoking: A Report of the Surgeon General. US. Department of Health and Human Services, Centres for Disease Control and Prevention, National Centre for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- iii United States v. Philip Morris, et al. Final Order, paragraph. II(C) (2006) Available at: http://www.justice.gov/civil/cases/tobacco2/ORDER_FINAL.pdf; Order #27-Remand: Consent Order Between The United States, The Public Health Interveners, Philip Morris USA, Inc., Altria Group, Inc., And R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015; Order #28 – Remand: Consent Order Between The United States, The Public Health Interveners, And Lorillard Tobacco Company Concerning Document Disclosure Obligations Under Order #1015.
- iv See, for example: World Health Organization. 2004. Building Blocks for Tobacco Control: A Handbook. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/resources/publications/tobaccocontrol_handbook/en/, accessed 15 September 2017.
- v For example, see: World Health Organization / Norbert Hirschhorn. 2008. Evolution of the tobacco industry positions on addiction to nicotine: a report prepared for the Tobacco Free Initiative. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/resources/publications/tobaccocontrol_handbook/en/ accessed 15 September 2017.
- vi Ibid, and, for example, also see: Tong E, Glantz G. Tobacco Industry Efforts Undermining Evidence Linking Secondhand Smoke With Cardiovascular Disease. *Circulation (Journal of American Heart Association)*. 2007; 116: 1845-1854.
- vii See, for example: Campaign for Tobacco Free Kids. 2008. Tobacco Company marketing to Kids. Washington DC: CTFK. Available at: <http://www.tobaccofreekids.org/research/factsheets/pdf/0008.pdf>, accessed 15 September 2012.
- viii LeGresley E, et al. British American Tobacco and the “insidious impact of illicit trade” in cigarettes across Africa. *Tobacco Control* 2008; doi:10.1136/tc.2008.025999; U.K. Action on Smoking and Health. Submission to the House of Commons Health Select Committee. 16 September 2017.
- ix International Consortium of Investigative Journalists. Tobacco companies linked to criminal organizations in cigarette smuggling, Africa. Washington DC: Center for Public Integrity, 2001. Available at: <http://www.corpwatch.org/article.php?id=898>, Accessed 15 September 2017; Campbell D. Further Evidence By Duncan Campbell in Respect of Smuggling in Africa by British American Tobacco Plc, Obstruction of Access to Evidence. UK House of Commons Health Select Committee, Inquiry into the Tobacco Industry and the Health Risks of Smoking. London. January 15, 2000. Available at: http://duncan.gn.apc.org/bat/Health_Committee_Evidence_2.htm, accessed 15 September 2017.
- x International Consortium of Investigative Journalists. Tobacco Companies Linked To Criminal Organizations In Lucrative Cigarette Smuggling, China. March 3, 2001. Washington DC: Center for Public Integrity. Available at: <http://www.corpwatch.org/article.php?id=898>, accessed 15 September 2017; Collin J, et al. Complicity in Contraband: British American Tobacco and Cigarette Smuggling in Asia. *Tobacco Control* 2004;13((Supp II):ii96-ii111.
- xi Joosens L, Raw M. Cigarette smuggling in Europe: Who really benefits? *Tobacco Control* 1998;7:66-71; Gilmore A, McKee M. Moving east: How the transnational tobacco companies gained entry to the emerging markets of the former Soviet Union. Part I: Establishing cigarette imports. *Tobacco Control* 2004;13:143-150; The Campaign for Tobacco Free Kids. Illegal Pathways to Illegal Profits: The Big Cigarette Companies and International Smuggling. April 2001. Available at: http://www.tobaccofreekids.org/content/what_we_do/international_issues_illicit_trade/Smuggling.pdf, accessed 15 September 2017; Joosens L, Raw M. Turning off the tap: An update on cigarette smuggling in the UK and Sweden, with recommendations to control smuggling. Available at: http://www.sourcewatch.org/index.php?title=Turning_off_the_tap:_An_update_on_cigarette_smuggling_in_the_UK_and_Sweden,_with_recommendations_to_control_smuggling, Accessed 15 September 2017.
- xii World Health Organization. The cigarette “transit” road to the Islamic Republic of Iran and Iraq. Illicit tobacco trade in the Middle East. Cairo: WHO_EM/TFI/011/E/G/07.03/1000. Available at <http://www.emro.who.int/tfi/TFIiraniraq.pdf>, accessed 15 September 2017.
- xiii The Campaign for Tobacco-Free Kids. Illegal Pathways to Illegal Profits: The Big Cigarette Companies and International Smuggling. April 2001. Available at: http://www.global.tobaccofreekids.org/files/pdfs/en/Illegal_profits_to_illicit_profit_en.pdf, Accessed 15 September 2017.
- xiv Ibid, and Marsden W. How To Get Away With Smuggling Canada’s Billion-Dollar Deal for Big Tobacco. October 19, 2008. Available at: <http://www.icij.org/node/460/canadas-cigarette-smuggling-corridor>, accessed 15 September 2017.
- xv See, for example: World Health Organization. 2004. Building Blocks for Tobacco Control: A Handbook. Geneva: WHO. Available at: http://whqlibdoc.who.int/publications/2004/9241546581_eng.pdf, accessed 15 September 2017; and WHO. 2008. Tobacco industry interference with tobacco control. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/ , accessed 15 September 2017.
- xvi Judge Kessler, in United States v. Philip Morris, et al., 449 F. Supp. 2d 1 (D.D.C. 2006). Available at: <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip-morris-doj-lawsuit> at page 330-331, accessed 15 September 2017.
- xvii See: World Health Organization. 2008. Tobacco industry interference with tobacco control. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/, accessed 16 February 2012; and Hadii M, et al. Project Cerberus: Tobacco Industry Strategy to Create an Alternative to the Framework Convention on Tobacco Control. *Am J Public Health*. 2008 September; 98(9): 1630–1642. Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2509616/>, accessed 15 September 2017.
- xviii FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva: World Health Organization. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 15 September 2017.
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Factsheet 4

MONITORING THE TOBACCO INDUSTRY

This fact sheet sets out a rationale for every country to have: 1) active and ongoing monitoring of the tobacco industry, and 2) coordinated reporting on industry tactics. It also sets out a possible framework for countries to utilise when undertaking this monitoring and reporting.

WHY DO WE NEED TO MONITOR THE TOBACCO INDUSTRY?

A number of reports and investigations have shown how the global tobacco industry has taken active steps over past decades to undermine the efforts of independent researchers, policy-makers and regulators building the evidence base around tobacco use and harms. The tobacco industry has manipulated the media to discredit scientific research and injected large philanthropic contributions into social programmes to create a positive public image of their ‘corporate social responsibility’ activities. The industry has also actively undermined (and continues to undermine) efforts to implement effective measures that discourage tobacco use and protect people from second-hand smoke.ⁱ

See Fact Sheet 3: *Why Do We Treat the Tobacco Industry Differently from Other Industries?*

The WHO Framework Convention on Tobacco Control (FCTC), an international treaty ratified by over 180 countries,ⁱⁱ openly confronts the tobacco industry, warning Parties to the FCTC to be alert to efforts by the industry to undermine or subvert tobacco control efforts.

Article 5.3 of the FCTC requires all Parties when setting and implementing their public health policies with respect to tobacco control to “... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.

Parties to the FCTC are required to exchange information regarding the practices of the tobacco industry under Article 21 of the FCTC. Under the same article, Parties to the FCTC are also required to make periodic reports to the FCTC Conference of the Parties (FCTC CoP) on a range of matters. The current reporting template agreed by the FCTC CoP asks whether strategies, plans or programmes ensure the protection of policies from the commercial and other vested interests of the tobacco industry. The template also provides an opportunity for Parties to report barriers to effective tobacco control, including industry activities.

See Toolkit Fact Sheet 2: *The WHO Framework Convention on Tobacco Control: Preventing Interference by the Tobacco Industry*

As a result of past evidence of the behaviour of the tobacco industry and international consensus that practices of the tobacco industry should be monitored and reported, Parties to the FCTC are now being encouraged to establish formal tobacco industry monitoring programmes.

WHAT ASPECTS SHOULD OUR MONITORING COVER?

The tobacco industry is a global industry made up of large trans-national companies, state-owned entities and domestic growers, manufacturers, importers, wholesalers and retailers of tobacco. It also includes a wide range of supporting consultancies specialising in such areas as marketing, legal services and lobbying.

When establishing a monitoring scheme, it is important to identify the full range of active and complicit players in the tobacco industry. This may include organisations, groups and people often not usually considered as part of the industry, but whose interests may well be aligned with or even directly support the industry's objectives. Some of these organisations, groups and people may need to be monitored to enable governments and civil society to anticipate and respond to any activities they engage in that might support the tobacco industry's interference in public health policies either directly or indirectly. For example:

- Retailer organisations may be used by the tobacco industry as front groups for campaigns against tobacco advertising bans or tobacco display bans in retail outlets.
- Hospitality and gaming interests may be used to front opposition to restrictions on smoking in workplaces.
- Charities and educational institutions that accept tobacco industry funding may inadvertently assist the tobacco industry to claim that they are 'socially responsible' and thus improve tobacco companies' reputation and access to policy-makers and decision-makers.

WHAT MONITORING IS ALREADY UNDERWAY?

The World Health Organization's Tobacco Free Initiative (TFI) monitors tobacco industry activities on a regular basis, compiling information from publicly available sources, in line with World Health Assembly resolution WHA54.18,ⁱⁱⁱ to keep member states and other parties informed of the tobacco industry's activities. WHO also produces periodic reports, including one produced in 2008 outlining the types of monitoring underway by WHO and others.^{iv} TFI also maintains a webpage focused on watching and countering the tobacco industry.^v

Although Parties periodically report to the FCTC CoP on, among other matters, tobacco industry activities in their countries,^{vi} few governments have thus far managed to establish systematic programmes for regular monitoring of the tobacco industry. As more governments adopt regular monitoring and reporting mechanisms on the tobacco industry, the guidance outlined in this fact sheet will assist in developing the framework and tools required to do so effectively.

NGOs and civil society organisations play an important role in monitoring their governments to ensure they comply with the FCTC and Guidelines on Implementation of the FCTC (e.g. guidelines on implementation of Article 5.3).^{vii}

Shadow monitoring of Parties to the FCTC has been proposed or is already underway in some countries.^{viii} Examples of shadow monitoring reports are available on the Framework Convention Alliance's website.^{ix}

HOW SHOULD WE MONITOR THE TOBACCO INDUSTRY?

There is published guidance on strategies for monitoring of the tobacco industry. For example, the 2008 World Health Organization report Building Blocks of Tobacco Control recommends that monitoring should include the following strategies:^x

- monitor media coverage of industry-related issues;
- review industry publications, including marketing and economic analyses on tobacco issues, and take note of the authors and institutions;
- frequently monitor local industry websites;
- identify organisations and activities sponsored by the industry;
- undertake political mapping, by reviewing ministers' and legislators' speeches and declarations, and any minutes from hearings and parliamentary committee meetings;
- interview ministry officials to identify those with pro-tobacco views; and
- review reports on the enforcement of tobacco-related laws and court cases that result from their infringement.

WHAT INDUSTRY ACTIVITIES SHOULD WE MONITOR?

The following list sets out some of the strategies and tactics used by the tobacco industry that require monitoring:

- **Intimidation and harassment** (e.g., litigation and legal threats; dire predictions of catastrophic economic effects or increased smuggling if tobacco control measures are implemented; selective interpretation of international treaties to argue measures cannot be implemented)
- **Reinvention of image** (e.g., public relations efforts; philanthropy and 'social responsibility' activities; promotion of voluntary agreements and partnerships with governments)
- **Keeping the product affordable** (e.g., campaigns opposing tax increases)
- **Influencing politicians** (e.g., support and funding for political parties)
- **Tobacco advertising, promotion and sponsorship activities**
- **Lobbying and influencing legislation** (e.g., providing drafts of so-called 'sensible', but ineffective, legislation)
- **Undermining the science** (e.g., commissioning supposedly 'independent' research and evidence)

- **Manipulation of the media** (e.g., incorrectly claiming that tobacco control policies in other countries have failed)
- **Creation of the illusion of support** (e.g., using prominent front people, supporting other groups to oppose effective tobacco control measures)
- **Evolving new strategies.**

For each of the above tactics, the monitoring template at the end of this factsheet can be used to present data sources, activities underway by the industry, and steps to respond or counteract industry activities and tactics.

HOW DO I ESTABLISH A PROGRAMME FOR THE MONITORING OF AND REPORTING ON THE TOBACCO INDUSTRY?

The steps required to establish a framework for monitoring the tobacco industry are detailed overleaf. Such a framework may be useful for governments planning to meet their obligations under the FCTC. It may also be useful for civil society organisations who want to gather data to inform their advocacy efforts and counter myths promoted by the tobacco industry.

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- i See, for example: World Health Organization. 2008. Tobacco industry interference with tobacco control. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/, accessed 15 September 2017; and: World Health Organization. 2004. Building Blocks for Tobacco Control: A Handbook. Geneva: World Health Organization. Available at: http://whqlibdoc.who.int/publications/2004/9241546581_eng.pdf, accessed 15 September 2017.
- ii See: World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, accessed 15 September 2017.
- iii World Health Assembly. 2001. WHA54.18 Transparency in tobacco control. Available at: http://www.who.int/tobacco/framework/wha_eb/wha54_18/en/index.html, accessed, 15 September 2017.
- iv World Health Organization. Tobacco industry interference with tobacco control. 2008. Geneva: World Health Organization. Available at: <http://www.who.int/tobacco/resources/publications/Tobacco%20Industry%20Interference-FINAL.pdf>, accessed 15 September 2017.
- v See <http://www.who.int/tobacco/industry/en/>, accessed 15 September 2017.
- vi See <http://www.who.int/fctc/reporting/en/>, accessed 15 September 2017.
- vii See: FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva: World Health Organization. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 15 September 2017.
- viii See: Framework Convention Alliance monitoring of implementation of the FCTC: http://www.fctc.org/index.php?option=com_content&view=article&id=136&Itemid=155 and http://www.fctc.org/images/stories/MONITOR_2010_WEB.pdf; Georgia: http://www.fctc.org/ge/index.php?lang=eng&go=news&action=archive&news_cat_id=&offset=5&order=tarigi%20desc.
- ix See: http://www.fctc.org/index.php?option=com_content&view=article&id=680:shadow-reporting-monitoring-fctc-implementation&catid=129:implementation-monitoring&Itemid=73.
- x WHO. 2004. Building Blocks for Tobacco Control: A Handbook. Geneva: WHO. Available at: http://whqlibdoc.who.int/publications/2004/9241546581_eng.pdf, accessed 18 September 2017, as reported in: World Health Organization. 2008. Tobacco Interference with Tobacco Control. Geneva: World Health Organization. Available at http://www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/index.html accessed 18 September 2017.

STEPS FOR IMPLEMENTING TOBACCO INDUSTRY MONITORING

STEP 1: MAP KEY TOBACCO INDUSTRY STAKEHOLDERS AND THEIR SUPPORTERS

- Identify all tobacco companies active in the country.
- Identify other supporting agencies and individuals (e.g., front groups, lobbyists, consultancies, etc).
- Outline the goals and modes of operation used by the above-mentioned groups, as well as their relationships and known allies.

STEP 2: DETERMINE AND MAP RELATIVE IMPORTANCE FOR MONITORING

- Tobacco companies are the number one priority and should be monitored at least monthly.
- Certain front groups may only need to be actively monitored at times (such as when a new law is being proposed that they actively oppose).
- All media should be monitored (e.g., through media monitoring reports), but greater attention should be paid to media that may support industry viewpoints. Other media, who are more objective in their reporting, can be monitored less frequently.
- As well as ranking the importance of the types of stakeholder to be monitored, it is also crucial to prioritise the kinds of data that will be the focus of monitoring. This data could include publicly promoted information (e.g., media statements), information compiled on political donations from the tobacco industry, and other information, such as which government officials are meeting with the industry.

STEP 3: DEVELOP A PLAN FOR MONITORING

- The monitoring template at the end of this factsheet may be a useful format, but it should be adapted to suit the needs in your country.
- Identify industry stakeholders' websites, media, reports, publications, and other sources of information that should be monitored.
- Identify how information that is less publicly available will be sourced (e.g., data on who the industry is meeting with, what proposals they are making to government agencies).
- Identify which agency will take the lead in managing industry monitoring.
- Identify which agencies, including government and civil society organisations, can contribute data.
- Identify available resources (people, funding) and, based on the level of resourcing, determine where monitoring efforts will be focused monthly, quarterly and annually.

STEP 4: DEVELOP A REPORTING PLAN

- Identify what will be reported, to whom, and when – for example:
- Some data collected will be for internal use only. This will be used to inform where policy efforts (in the case of governments) or advocacy efforts (in the case of civil society organisations) should focus.
- Most information collected should be made publicly available so that all interested parties are aware of tobacco industry activities and tactics.
- Some of the more significant industry activities should be collated and shared with key stakeholders (e.g., politicians and other decision-makers, regional and international organisations). This information can be included in the required biennial country reports to the FCTC CoP.

STEP 5: INITIATE THE INDUSTRY MONITORING AND REPORTING PROGRAMME

- Establish the monitoring and reporting programme.
- Publicise the programme and use that publicity to identify interested civil society organisations that may be able to help. They may be able to contribute and publicise data through online tobacco industry monitoring reports, media releases, facts sheets on tobacco industry myths, etc.
- Develop a communications plan for regular dissemination of significant findings.
- Schedule review of the monitoring and reporting programme to ensure it is well targeted, efficient, relevant and contributing to building a useful knowledge base about the tobacco industry and its allies, as well as contributing to public health policy development and effective advocacy.

MONITORING TEMPLATE

POSSIBLE TEMPLATE FOR TOBACCO INDUSTRY MONITORING AND REPORTING

Note: This table is an example only. The fourth column should be retained for internal use only, while the remainder of the table can be made publicly available to inform as many stakeholders as possible about tobacco industry activities.

Tactic	Source of information	What the industry is doing, when/how	Our response
Industry Strategy: Reinventing the image of the tobacco industry			
Public relations	Tobacco company A's website at [website address]	The company stresses its contribution to society and commitment to working with the government on 'sensible tobacco regulation'.	Hold forum for policy-makers on the industry's view of 'sensible regulation' and how industry proposals are not effective. Continue to support the government in the development of legislation based on the FCTC.
	Media release by Tobacco company B dated 1/1/11	The company is promoting itself as contributing 2% of national tax revenues and creating 10,000 jobs.	Issue a media release confronting the myths that tobacco is beneficial to the economy, highlighting evidence on economic and wider social harms caused by tobacco.
	Etc		
Philanthropy and 'socially responsible' activities	Tobacco company B's media release dated 1/1/11.	The company is promoting its \$1M campaign to oppose deforestation and its \$5M fund for educational scholarships. These will run over 2012/13.	Issue media release on industry's contribution to environmental harms. Highlight industry's continued contribution to socially responsible causes as a means of trying to promote their image and thus continue to sell deadly products.
	Etc		
Etc			
Industry Strategy: Influencing politicians			
Political support and funding	Political donation records from the Electoral Commission	Tobacco Company B contributed \$100,000 to Political Party X and \$2,000 to candidate John Smith over the past 3 months (\$120,000 / \$12,000 respectively over the past year).	Government to offer to brief Party X on the FCTC, industry tactics and tobacco control evidence. Advocates to publicly call on political parties to reject donations from the tobacco industry.

Factsheet 5

THE UNION TEMPLATE FOR ASSESSING PARTIES' COMPLIANCE WITH GUIDELINES FOR THE IMPLEMENTATION OF ARTICLE 5.3 OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

The template presented in this fact sheet is a simple tool for governments to use as the first stage in implementing the Article 5.3 guidelines. When the template has been completed, the information contained will provide an answer to the question: **Where are we now in our implementation of FCTC Article 5.3?**

THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

Over 180 countries are Parties to the WHO Framework Convention on Tobacco Control (FCTC). This global treaty sets out a range of evidence-based tobacco control interventions that Parties to the FCTC are in some cases required, and in other cases encouraged, to implement.

Article 5.3 of the FCTC requires all Parties when setting and implementing their public health policies with respect to tobacco control to “...act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.ⁱ

The FCTC Conference of the Parties has, by consensus, adopted guidelines on implementation of Article 5.3 of the FCTC for application by Parties. These set out a series of principles around preventing interference by the tobacco industry in public health policies relating to tobacco control, and a set of recommendations for action.ⁱⁱ

ABOUT THE COMPLIANCE ASSESSMENT TEMPLATE

The Compliance Assessment Template included in this factsheet provides a focus for systematic consideration of the eight core recommendations and specific sub-recommendations from the Article 5.3 guidelines in relation to the following:

1. Whether the government complies with that recommendation;
2. Which domestic agency is responsible for giving effect to the recommendation, i.e. setting policy and legislating for these policies; and
3. The specific steps required to enforce each recommendation.

The worked example of the template is an illustration of how one recommendation in the Compliance Assessment Template can be completed, based on a fictitious scenario.

Issues for consideration when carrying out an assessment of a country's compliance with the Article 5.3 guidelines include:

- The respective roles of various domestic agencies
- What can, or must, be given effect to through administrative procedures versus legislative means
- Resourcing requirements
- Identification of priority steps for action

Each of these issues is explained further.

Roles of various agencies: It may be ideal to have one government body (e.g., the department of health), or an inter-governmental committee, charged with oversight of implementation of the Article 5.3 guidelines. However all government bodies need to take steps to ensure the government as a whole complies with the FCTC Article 5.3 obligations. Whichever oversight body is established, it must have sufficient powers to direct, monitor and sanction government bodies for non-compliance.

Administrative procedures versus legislation: It will be necessary to identify steps needed to give effect to the FCTC Article 5.3 guidelines that may be taken administratively, i.e., developing and implementing policies or procedures, and those that can only be given effect through legislation by developing or amending the law and enforcing it.

Resourcing requirements: It is important to establish what human, financial or other resources might be required to give effect to the Article 5.3 guidelines, and where the resources will come from.

Identification of priority steps: It may be appropriate to introduce implementation of the Article 5.3 guidelines in phases. If so, the steps listed below could be considered as initial priorities:

- **Step 1:** Develop a national policy about the government's engagement with the tobacco industry. The Fact Sheet 6 of this toolkit: *Model Government Directive on Implementation of Steps to Prevent Interference by the Tobacco Industry* can be used to assist in this process.
- **Step 2:** Develop a code of conduct for officials and conflict of interest management policies. Fact Sheet 9 of this toolkit: *Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to the Tobacco Industry* can be used to assist in this process.
- **Step 3:** Establish a framework for monitoring and reporting on tobacco industry conduct. Fact Sheet 4 of this toolkit: *Monitoring the Tobacco Industry* can be used to assist in this process.

The toolkit also includes other relevant resources, such as Fact Sheet 8: *Guidance on Legislation to Give Effect to the FCTC Article 5.3 Guidelines* and Fact Sheet 7: *Model Process Guidelines for Interaction with the Tobacco industry*.

i World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, Accessed 18 September 2017.

ii FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on

the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva: World Health Organization. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, Accessed 18 September 2017.

COMPLIANCE ASSESSMENT TEMPLATE

Key activities in Art. 5.3 guidelines	Action / recommendations from Article 5.3 guidelines (Please refer to original clause for exact wording as the following text is often a summarised version.)	Current status	Role of relevant agencies	Potential steps to implement
(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.	1.1 Parties should inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies on tobacco control from the commercial and other vested interests of the tobacco industry, and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.			
	1.2 Parties should ... raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organisations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.			
(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of interactions that occur.	2.1 Parties should interact with the tobacco industry only where strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products. Any necessary interaction with the tobacco industry should avoid the creation of any perception of a real or potential partnership or cooperation. If the tobacco industry engages in any conduct that may create a perception of partnership or cooperation, Parties should act to prevent or correct this perception.			
	2.2 Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently, in public wherever possible (e.g., through public hearings, public notice of interactions, disclosure of records of such interactions to the public).			
(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.	3.1 Parties should not accept, support or endorse partnerships, non-binding or non-enforceable agreements or voluntary arrangements with the tobacco industry or entities working to further its interests.			
	3.2 Parties should not accept, support or endorse the tobacco industry organising, promoting, participating in, or performing youth or public education or any initiatives that are directly or indirectly related to tobacco control.			
	3.3 Parties should not 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.			
	3.4 Parties should not accept, support or endorse any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.			

COMPLIANCE ASSESSMENT TEMPLATE

Key activities in Art. 5.3 guidelines	Action / recommendations from Article 5.3 guidelines (Please refer to original clause for exact wording as the following text is often a summarised version.)	Current status	Role of relevant agencies	Potential steps to implement
(4) Avoid conflicts of interest for government officials and employees	4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.			
	4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.			
	4.3 Parties should not award contracts for carrying out any work on setting and implementing public health policies with respect to tobacco control to anyone with conflicts of interest with established tobacco control policies.			
	4.4 Parties should develop policies requiring public office holders with an existing or previous role in setting and implementing public health policies with respect to tobacco control to inform their institutions of any intention to engage in an occupational activity within the tobacco industry within a specified period of time after leaving service.			
	4.5 Parties should develop clear policies that require applicants for public office positions, 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 any tobacco industry, whether gainful or not.			
	4.6 Parties should require government officials to declare and divest themselves of direct interests in the tobacco industry.			
	4.7 Government institutions and their bodies should not have any financial interest in the tobacco industry, unless they are responsible for managing an ownership interest in state-owned tobacco industry.			
	4.8 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.			
	4.9 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.			
	4.10 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.			
	4.11 Parties should put in place effective measures to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or require full disclosure of contributions.			

COMPLIANCE ASSESSMENT TEMPLATE

Key activities in Art. 5.3 guidelines	Action / recommendations from Article 5.3 guidelines (Please refer to original clause for exact wording as the following text is often a summarised version.)	Current status	Role of relevant agencies	Potential steps to implement
(5) Require that information provided by the tobacco industry be transparent and accurate.	5.1 Parties should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent.			
	5.2 Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the Convention.			
	5.3 Parties should require rules for the disclosure or registration of the tobacco industry entities, affiliated organisations and individuals acting on their behalf, including lobbyists.			
	5.4 Parties should impose mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.			
	5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure public access, in accordance with Article 12(c) of the Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as in a public repository.			
	Article 20.4 of the Convention requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c) of the Convention, each Party should endeavour to cooperate with competent international organisations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.			
(6) Denormalise 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'.	6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.			
	6.2 Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as 'socially responsible'.			
	6.3 Parties should 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.			
	6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.			

COMPLIANCE ASSESSMENT TEMPLATE

Key activities in Art. 5.3 guidelines	Action / recommendations from Article 5.3 guidelines (Please refer to original clause for exact wording as the following text is often a summarised version.)	Current status	Role of relevant agencies	Potential steps to implement
(7) Do not give preferential treatment to the tobacco industry.	7.1 Parties should not grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses.			
	7.2 Parties that do not have a state-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a state-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the FCTC.			
	7.3 Parties should not provide any preferential tax exemption to the tobacco industry.			
(8) Treat state-owned tobacco industry in the same way as any other tobacco industry.	8.1 Parties should ensure that state-owned tobacco industry is treated in the same way as any other member of the tobacco industry with respect to setting and implementing tobacco control policy.			
	8.2 Parties should ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing the tobacco industry.			
	8.3 Parties should ensure that representatives of state-owned tobacco industry do not form part of delegations to any meetings of the FCTC Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.			
Enforcement	Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms to meet their obligations under Article 5.3 of the Convention and these guidelines. Parties should use and enforce mechanisms to ensure compliance with these guidelines, such as the possibility of bringing an action to court, and to use complaint procedures such as an ombudsman system.			
Monitoring	Monitoring implementation of Article 5.3 and the Article 5.3 Guidelines is essential. This should also involve monitoring the tobacco industry, for which existing models and resources should be used, such as the database on tobacco industry monitoring of the WHO TFI. NGOs and other civil society organisations not affiliated with the tobacco industry could play an essential role in monitoring activities of the industry.			
Other	Codes of conduct or staff regulations for all branches of governments should include a 'whistleblower function', with adequate protection for whistleblowers.			

COMPLIANCE ASSESSMENT TEMPLATE WORKED EXAMPLE

Key activities in Art. 5.3 guidelines	Action / recommendations from Article 5.3 guidelines (Please refer to original clause for exact wording as the following text is often a summarised version.)	Current status	Role of relevant agencies	Potential steps to implement
(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.	1.1 Parties should inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.	<p><i>Partially comply with the Guidelines.</i></p> <p><i>Limited government-led education of the State sector or the public regarding the need to protect public health policies from the tobacco industry, and specific strategies used by industry.</i></p> <p><i>Some reference in past mass media campaigns to tobacco industry tactics (on ad hoc basis, not led or encouraged by the government).</i></p>	<p><i>Ministry of Health (MOH) is obvious lead for this work, in conjunction with the Article 5.3 Oversight Body</i></p> <p><i>All departments, ministries, state-owned enterprises, educational bodies, etc. should be involved in a health-led education strategy.</i></p>	<p><i>Develop a government policy statement or information circular on past activities of industry, including the strategies and approaches used by the tobacco industry. This can link in or form part of formal notification to state sector of the government policy on non-engagement with industry (see section 2.1 of this template).</i></p> <p><i>Ministry of Health to run seminars for all state sector staff involved in research, policy development, education programs, tax policy, economic policy, etc. that touch on tobacco use and control.</i></p> <p><i>Incorporation of reference to tobacco industry strategies in government funded media campaigns and resources (MOH to provide guidance to providers of mass media and education services regarding incorporation of key messages).</i></p>
	1.2 Parties should raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organisations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.	<p><i>Non-compliant in relation to the Guidelines. No government-led action in this area; left to NGOs and researchers to identify and publicise any such linkages.</i></p>	<p><i>Ministry of Health lead.</i></p>	<p><i>Include as one of the industry strategies in the government policy statement or information circular, and in training (see above), based on evidential review of tobacco industry documents relating to [this country].</i></p> <p><i>Consider the establishment of a tobacco industry monitoring function, perhaps in partnership with academic institution or other provider.</i></p>

Factsheet 6

MODEL GOVERNMENT DIRECTIVE ON IMPLEMENTATION OF STEPS TO PREVENT INTERFERENCE BY THE TOBACCO INDUSTRY

This fact sheet is designed to be used by Parties to the WHO Framework Convention on Tobacco Control (FCTC) who wish to give effect to provisions in the Guidelines on Implementation of Article 5.3 that can be done through administrative decree, to be overseen by a national oversight body charged with ensuring effective implementation. It will also be of use to non-parties to the FCTC who similarly wish to implement steps to prevent the tobacco industry interfering in public health policy.

OVERSIGHT OF IMPLEMENTATION

It is important that one agency be charged with overseeing implementation of a directive on preventing tobacco industry interference and ensuring that all government bodies take active steps to comply. This body would ideally be an existing national agency with a mandate for overseeing the performance of the government/state/public sector and implementation of government-wide policies and directives. Alternatively, some governments may choose to establish cross-governmental committees to specifically implement Article 5.3. However, if such a committee is established, it must be given powers to direct, monitor and report on government bodies' compliance with the directive. A lack of mandate or powers on the part of that oversight body will severely limit the effectiveness of the directive in ensuring compliance with Article 5.3.

USE OF LEGISLATION, AND OTHER POLICY INSTRUMENTS

Some or all of the measures outlined in the following model directive could be implemented through legislation. This will provide a stronger mandate for full implementation. Fact Sheet 8 of this toolkit: *Union Guidance on Legislation to Give Effect to the FCTC Article 5.3 Guidelines* has been developed to support Parties in this regard. This resource also includes discussion of provisions of the Article 5.3 guidelines that can only be implemented via legislation. Some provisions in the following Model Directive, related to conduct expectations of government officials and management of conflicts of interest, are expanded upon in Fact Sheet 9 of this toolkit: *Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to the Tobacco Industry*.

It should be noted that international agencies, such as the Organization for Economic Development, have developed guidance on transparent, accountable and corruption-free government. The following model directive and the model policy statement (Fact Sheet 9 of this toolkit) draw on these resources.

In addition, The Union has developed Fact Sheet 7 of this toolkit: *Model Process Guidelines for Interaction with the Tobacco Industry*, which provides suggested guidelines for how governments should hold meetings and other engagements with the tobacco industry. Country-specific guidelines of this nature could be attached to a government directive based on this Model Directive, as in Annex 2.

FLEXIBILITY AND PRIORITISING ACTION

It is also important to note that, while certainly desirable, some Parties may not find it possible to introduce all measures contained in this Model Directive in one step; for example, the establishment of a monitoring body will require resources as well as a recognised mandate from the government. However, it is hoped that over time Parties will be able to introduce the majority of these measures, either through a government directive as proposed, or through legislation (or both).

Acknowledgement

This Model Directive builds on work undertaken by other agencies. In particular, The Union wishes to acknowledge the following source documents which were used heavily:

- Republic of the Philippines, Department of Health. 2010. Department Memorandum No. 2012-0126. Protection of the Department of Health, including all of its Agencies, Regional Offices, Bureaus or Specialized/Attached Offices/Units against Tobacco Industry Interference. Manila: Republic of the Philippines Department of Health. Available at: <http://www.tobaccocontrollaws.org/files/live/Philippines/Philippines%20-%20DOH%20Dept%20Memo%20on%20Industry%20Interference%20-%20national.pdf>
- Republic of the Philippines, Civil Service Commission and Department of Health. 2010. Joint Memorandum Circular No.2010-01. Protection of the Bureaucracy Against Tobacco Industry Interference. Manila: Republic of the Philippines Civil Service Commission and Department of Health. Available at: <http://www.tobaccocontrollaws.org/files/live/Philippines/Philippines%20-%20JMC%202010-01%20-%20national.pdf>
- Campaign for Tobacco-Free Kids. Draft Tobacco Control Act Template. Available at: http://global.tobaccofreekids.org/en/solutions/laws_litigation/resources/#drafting
- Campaign for Tobacco-Free Kids. 2012. Essential Elements of FCTC Article 5.3 Implementing Measures. Available at: http://www.tobaccocontrollaws.org/files/Essential%20Elements%20of%20FCTC%20Article%205_3_FINAL.pdf

DIRECTIVE TO ALL [GOVERNMENT/STATE/PUBLIC] BODIES ON IMPLEMENTATION OF STEPS TO PREVENT INTERFERENCE BY THE TOBACCO INDUSTRY (FCTC ARTICLE 5.3 GUIDELINES)

1. BACKGROUND

1.1 The WHO Framework Convention on Tobacco Control ('the FCTC') was developed in response to the globalisation of the tobacco industry and tobacco use and the ensuing harms. It sets out the necessary principles, obligations and tobacco control measures that are required in order to combat the global tobacco epidemic. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to:

"... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law".

1.2 This mandate has been expanded further in the FCTC Conference of the Parties' Guidelines for Implementation of Article 5.3.ⁱⁱ These emphasise through guiding principles and recommendations that Parties should implement measures to prevent interference by the tobacco industry in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

1.3 These measures are necessary due to the behaviour of the tobacco industry aimed at undermining tobacco control efforts – in many cases successfully – and the fact that, unlike other consumer products, there are no safe ways of using tobacco products. This has led governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.ⁱⁱⁱ

1.4 Other provisions of the FCTC, and guidelines developed to guide their implementation, govern other aspects of industry behaviour that Parties to the FCTC have agreed should be prohibited or limited. For example, the Guidelines on Implementation of Article 13 of the FCTC^v propose a ban on all contributions from tobacco companies to any other entity for 'socially responsible causes' as it constitutes advertising and promotion.

See Fact Sheet 3: *Why Do We Treat the Tobacco Industry Differently from Other Industries?*

2. PURPOSE OF THIS DIRECTIVE

2.1 As a Party to the FCTC, the government has an obligation to take steps to protect its policy setting and law making from the commercial and other vested interests of the tobacco industry. This Directive sets out how the government intends to do this, by imposing specific obligations with which all government agencies and bodies, as well as all persons working for or acting on behalf of those agencies and bodies, must comply.

3. COVERAGE

3.1 This Directive constitutes a binding obligation on all government ministries, departments, agencies, bodies, quasi- or semi-governmental institutions, boards, committees, commissions and other in-whole or in-part state-run or state-funded bodies in all branches and at all levels of government.

4. IMPLEMENTATION OF THIS DIRECTIVE

4.1 This Directive shall come into force on [date].

4.2 The [Ministry/Department/Committee/ ... of ... ('the Article 5.3 oversight body')]^v is responsible for overseeing the implementation of this Directive, and ensuring implementation of the Directive is consistent with the Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control.^{vi}

4.3 The [Article 5.3 Oversight Body] will:

- Promote public awareness, including awareness within the tobacco industry, of this Directive so that there is a clear understanding of the obligations of government bodies with respect to implementation of this Directive.
- Monitor compliance with this Directive by all government bodies.
- Raise any incidents of alleged or actual breaches of this Directive with the relevant heads of government bodies.
- Monitor progress with investigation and/or resolution by the heads of government bodies of any incidents of alleged or actual breaches of this Directive.

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- Impose appropriate sanctions for breaches of this Directive.
 - Report annually to the [Minister of ... / Executive Arm of Government / Parliament] on the implementation of, and compliance with, this Directive, including the number of breaches of the Directive and by which government bodies.
 - Periodically review and update this Directive to ensure it keeps pace with changes in tobacco industry tactics designed to influence public policy setting, or any deficiencies in implementation, monitoring and enforcement of the Directive.
- 4.4 The [Article 5.3 Oversight Body] may issue further advice and supporting materials from time to time in support of government bodies' compliance with this Directive. This may include determining sanctions for breaches of this Directive by the government body and/or personnel concerned, including outlining specific sanctions that will be imposed for initial and ongoing breach of specific provisions.
- 4.5 The [Article 5.3 Oversight Body] may also establish and oversee a central web-based repository for registering government bodies' engagements with the tobacco industry in accordance with section 6.2.4 of this Directive. If it does not, the [Article 5.3 Oversight Body] will promote public access to individual government bodies' web-based repositories of information on tobacco industry engagements.
- 4.6 The head of each government body must:
- Take active steps to meet all obligations under this Directive.
 - Actively promote the existence of the Directive and compliance by all personnel with it.
 - Implement agency-specific policies and procedures to give effect to the Directive.
 - Put in place, and take, appropriate disciplinary steps against personnel who breach this Directive.
 - Establish, maintain and publicly promote an accurate and up-to-date web-based record of all interactions with the tobacco industry in accordance with section 6.2.4 of this Directive.
 - Investigate, and report within 30 calendar days, any alleged breach of the Directive by that government body or its officials, employees, or agents.
 - Establish a mechanism for its officials, employees or agents to report alleged breaches of the Directive without fear of reprisal.
- 4.7 The [Tobacco Industry Monitoring Agency]^{vii} is charged with:
- Reporting to the [Article 5.3 Oversight Body], in line with Annex 1.
 - Supporting tobacco industry monitoring efforts by [the Tobacco Industry Monitoring Agency].
 - Reviewing all reported interactions between government bodies and the tobacco industry, recorded and publicised in line with section 6.2.4 of this Directive and reports on breaches of the Directive submitted by government bodies.
 - Monitoring the activities of lobbyists, front groups and others working to further the interests of the tobacco industry.
 - Reviewing industry publications, including marketing and economic analyses on domestic tobacco issues, taking note of the authors and institutions.
 - Monitoring and recording all so-called corporate and social responsibility activities by the tobacco industry that come to light ^{viii}.
 - Regular monitoring of local industry websites.
 - Identifying organisations and activities sponsored by the industry domestically.
 - Reviewing reports on the enforcement of tobacco related laws and court cases that result from their infringement.
 - Monitoring tobacco industry interactions, contacts, and communications with other parts of government, if not reported by some other mechanism.
 - Monitoring any other industry activities and tactics that may come to light.
 - In partnership with the [Article 5.3 Oversight Body] – if that body is a separate agency from the Tobacco Industry Monitoring Agency – publicly reporting on tobacco industry conduct on a regular (at least monthly) basis, as well as producing an annual summary report of significant tobacco industry strategies and tactics aimed at influencing public health policy with respect to tobacco control.

See Fact Sheet 4: *Monitoring the Tobacco Industry*

5. DEFINITIONS

5.1 The following definitions shall apply:

- **‘Conflict of interest’** shall mean a situation where there is a conflict between the public duties and private interests of a public office holder – or a close family member – having responsibility for tobacco control, where the public office holder has or is subject to tobacco-related interests which could improperly influence the performance of his or her official duties and responsibilities. A close family member includes [at least the spouse or life partner, parent, child or sibling] of the public office holder. Interest includes any personal, financial, or any other interest in the tobacco industry, such as having an existing ownership or investment therein, or income derived from services provided to the tobacco industry; being an officer or a member of the board of directors of a corporation (including its subsidiaries, affiliates, branches) or a partner in partnership engaged therein, and receiving any contribution therefrom. This includes receiving or accepting any offer or contribution from the tobacco industry, even if a promise of favourable consideration is not given in exchange. A conflict of interest shall be deemed to exist where a perception of conflict of interest may exist or arise.
- **‘Contributions’** shall mean anything given, whether monetary or in-kind, in favour of an official or employee of government, or an agency or institution he/she is affiliated with, other than those required by law. This includes, but is not limited to, any act, right, charity, payment, gift, service, gratuity, favour, perquisite, entertainment, loan, funding, and technical, financial, legal and other resources or support.
- **‘Government body’** includes all government ministries, departments, agencies, bodies, quasi- or semigovernmental institutions, boards, committees, commissions, and other state-run or state-funded bodies in all branches and at all levels of government. Where obligations are imposed on government bodies by this Directive, those obligations become the obligations of all personnel of such bodies.
- **‘Interaction’** with the tobacco industry includes, without limitation, any of the following: telephone, email, social media or face-to-face communication, including meetings, conversations and the submission of written or recorded materials. It includes both formal and informal or social interactions.
- **‘Personnel’** in relation to a government body, means all employees, contractors, providers or other persons acting on behalf of, or providing services for, that government body, whether such activities, work, or service are gainful or not.
- **‘So-called corporate social responsibility activities’** shall mean activities of the tobacco industry with the aim, effect or likely effect of promoting, enhancing or marketing the corporate brand, product, public relations, or related image. These may include any youth, public education, political, social, financial, educational, or community contributions of any kind or any other activity to promote, enhance or market the corporate brand, product, public relations, or related image of the tobacco industry.^{ix}
- **‘Tobacco control’** means a range of supply, demand, and harm reductions strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke.
- **‘Tobacco control policies’** or **‘public health policies with respect to tobacco control’** includes policies relevant or related to tobacco control, such as tax, price, trade, business and employment policies.
- **‘Tobacco industry’** includes all organisations, entities, associations, and individuals that engage in work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesalers, distributors, importers of tobacco products, growers, tobacco retailers, front groups and any other individuals or organisations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.
- **‘Tobacco industry interference’** refers to a broad array of tactics and strategies used directly or indirectly by the tobacco industry to interfere with, or influence, the setting and implementation of effective tobacco control measures.

6 OBLIGATIONS

6.1 Raising awareness

6.1.1 The head of each government body, with information and support provided by the [Article 5.3 Oversight Body], shall conduct a sustained campaign to raise awareness among all personnel, but especially focussed on those personnel likely to be involved in, or contribute to, the development, implementation or evaluation of public health policies with respect to

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tobacco control, about:

- the addictive and harmful nature of tobacco products;
 - the need to protect tobacco control policies from the commercial and other vested interests of the tobacco industry;
 - the strategies, tactics, and front groups used, openly or covertly, by the tobacco industry to undermine and subvert the development and implementation of effective tobacco control policies and advance its influence, including the true purpose and scope of so-called corporate social responsibility activities ^x; and,
 - this Directive and obligations on all personnel under it.
- 6.1.2 The focus of the sustained awareness campaign is to create a clear understanding of tobacco industry interference strategies and the implications of that interference, and their obligations under the Directive. The awareness campaign shall be designed to be consistent with the government's obligations under Article 12 of the FCTC.^{xi}
- 6.1.3 The head of each government body shall be responsible for:
- Ensuring that all relevant personnel participate in the campaign.
 - Ensuring that any information gathered from the campaign is actively used to continue to develop and improve tobacco control policy.
- 6.2 Limiting interactions and ensuring transparency
- 6.2.1 Government bodies' interactions with the tobacco industry shall be limited to only those strictly necessary for the effective regulation, supervision or control of the tobacco industry and tobacco products.
- 6.2.2 Necessary tobacco industry-government interactions will include, for example, those having to do with:
- licensing
 - compliance inspections
 - identifying contraband tobacco products ^{xii}
 - enforcement actions
 - proactive or defensive litigation
 - mandated tobacco industry reporting
 - constitutionally-required consultation with affected parties on proposed new policy and legislation.
- 6.2.3 Prohibited interactions include the following examples:
- Working with the tobacco industry or accepting its assistance to draft legislative or policy proposals and other forms of lobbying by the tobacco industry.
 - Participation in, or attendance at, industry-initiated or industry-funded policy meetings, seminars, dialogues, and other forums.
 - Allowing the tobacco industry to play any role that is properly a government function in carrying out monitoring or enforcement.
 - Partnering with the tobacco industry or accepting or endorsing tobacco industry involvement in any tobacco control or public health programmes, such as public education and youth tobacco use prevention campaigns.
 - Any other interaction, in either a formal or informal setting, that is not strictly necessary for effective regulation of the tobacco industry or tobacco products.
- 6.2.4 Where interactions with the tobacco industry are necessary, government bodies must:
- Ensure that all such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings.
 - Require minutes to be taken at all meetings, or otherwise record details of any other interaction with the tobacco industry, providing sufficient detail to establish, at a minimum, the parties involved, matters discussed or considered, any decisions taken, any follow up activity planned or anticipated, the date, location, method of the interaction or contact, and any other details as may be prescribed in law and/or policies.
 - Disclose all minutes or other records of interactions to the public in a timely manner. Where possible this should be undertaken through placing such records on the website of the government body or, if established by the [Article 5.3 Oversight Body], the central web-based repository for registering government bodies' engagements with the tobacco industry.

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- 6.2.5 All interactions will be conducted according to the Guidelines for Interactions with the Tobacco Industry (Annex 2).
- See Fact Sheet 7: Model Process Guidelines for Interactions with the Tobacco Industry*
- 6.2.6 Where an unsolicited interaction with the tobacco industry occurs (for example, a telephone call or correspondence from a member of the tobacco industry), the government body representative receiving that approach must immediately notify the industry representative of the existence of this Directive and rules of engagement between government bodies and the tobacco industry, and cease interaction until those rules of engagement are properly followed. The interaction shall be recorded as per the requirements set out in section 6.2.4 of this Directive.
- 6.2.7 All necessary interactions with the tobacco industry shall 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, government bodies must immediately, and publicly, take steps to prevent or correct this perception.
- 6.3 Rejecting partnerships with the tobacco industry
- 6.3.1 No government body shall, directly or indirectly, accept, support or endorse:
- Any potential or real partnership or cooperation of any kind, other than that which is legally mandated, with the tobacco industry.
 - Any initiatives or activities of the tobacco industry described, characterised, implied, or likely to be perceived as socially responsible, including youth-based initiatives, public education, or any initiatives that are directly or indirectly related to tobacco control or public health.
 - Any voluntary, non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement, or tobacco industry code of conduct, position paper, policy or instrument drafted by or in collaboration with the tobacco industry in the place of legally enforceable tobacco control measures.
 - Any proposals, drafts, or offers of assistance with the development or implementation of policies, legislation, regulations, or programmes for, or relevant or related to, tobacco control.
- Any direct or indirect financial or resource contributions or involvement in any manner in any initiative, campaign, or programme directly or indirectly related to tobacco control or public health, including but not limited to, youth access and education programmes, public education campaigns, and other initiatives from the tobacco industry.
 - Any voluntary contribution of any kind, financial or otherwise, unless such contribution results from legal action.
- 6.3.2 Any government body that receives any offer of partnership or contribution by the tobacco industry along the lines of those listed in section 6.3.1 shall respond to and record that offer in accordance with section 6.2.6 of this Directive.
- 6.3.3 If, at the time of commencement of this Directive any government body is engaged in any partnership or other interaction with the tobacco industry that is inconsistent with Section 6.3.1 of this Directive, that government body shall take immediate steps to exit that arrangement. Where legal (for example, contractual) obligations exist that may prevent immediate exit, the government body shall report those obligations to the [Article 5.3 oversight body] and work with the [Article 5.3 oversight body] to exit the arrangement at the soonest opportunity.
- 6.4 Conduct of government bodies and their personnel in managing conflicts of interest
- 6.4.1 The [Article 5.3 oversight body] shall develop a government policy statement on codes of conduct and management of conflict of interest in relation to the tobacco industry. All government bodies shall adopt and implement the provisions of this Policy Statement within, or alongside, their existing code(s) of conduct and conflict of interest procedures, ensuring that all personnel comply with all provisions.
- See Fact Sheet 9: Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to the Tobacco Industry*
- 6.4.2 All government bodies must take, and must ensure their personnel take, all necessary steps to avoid where possible any perceived or actual conflicts of interest with respect to the tobacco industry, and to disclose and manage any conflicts of interests that do arise.
- 6.4.3 Government body personnel who have a role in setting and implementing public health policies with respect to tobacco control shall inform the government

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body about any intention on their part to engage in an occupational activity with or within the tobacco industry, whether gainful or not, within one year of their planned departure from the government body.

6.4.4 Any persons applying to join a government body that has a role in setting and implementing public health policies with respect to tobacco control must declare any current or previous work for, or on behalf of, the tobacco industry, whether gainful or not.

6.4.5 Former government body personnel who have joined the tobacco industry after employment with the government body are strictly prohibited after resignation/separation or retirement from engaging, directly or indirectly, with incumbent government body personnel, on any matter/case pending with the government body, for a period of [6/12/24/36] months after departure.

6.4.6 Government bodies shall not award any contracts for work to, engage or otherwise retain any individuals or institutions to work or serve in any capacity with responsibility for setting and implementing public health policies with respect to tobacco control if that person or institution is also working on behalf of the tobacco industry, or has done so within the previous [6/12/24/36] months, or if that person has or could have any other conflict of interest with the tobacco control responsibilities of the position, contract award, or service appointment due to current or past affiliation of any kind with the tobacco industry.

6.4.7 Officials and employees of government bodies shall be required, in all contracts with consultants and contractors, prior to any engagement with the government body, to execute a declaration of interest in the tobacco industry and a stipulation providing for the cancellation or termination of the contract in the event it is discovered that such consultants or contractors have an existing interest in the tobacco industry or a past undeclared interest.

See the Conflict of Interest Disclosure Form (Fact Sheet 9: Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to the Tobacco Industry)

6.4.8 Government bodies, including those managing government or shared public investment portfolios, shall ensure that all investments exclude tobacco industry interests. Where government investment portfolios existing at the time of commencement of this Directive do include tobacco industry investments, or where it is unclear whether investment portfolios do or do not include

investments in the tobacco industry, government bodies have 12 months to adopt responsible investment principles that exclude investments in the tobacco industry.^{xii}

6.4.9 Any personnel within government bodies that have a role in setting or implementing public health policies with respect to tobacco control are prohibited from personally investing in any business in the tobacco industry. Any such personnel who hold personal investments in the tobacco industry at the date of commencement of this Directive or on subsequently joining the government body must divest themselves of these investments within sixty calendar days.^{xiv}

6.4.10 Government bodies shall ensure that no person with a tobacco-related conflict of interest shall be a member on any government board, commission, committee, advisory group, or other working group with responsibility for developing or implementing public health and tobacco control policies. This includes both domestically and in international forums where the government is represented. Where an individual with a tobacco-related conflict of interest is an existing member of such a government board, commission, committee or group at the time of the commencement of this Directive, the overseeing government body shall take steps to remove that person within [3/6/12] months or, if this is not immediately possible due to legal or contractual reasons, shall consult with the [Article 5.3 Oversight Body] over possible steps to remove or manage the conflict of interest.

6.4.11 Government bodies and their personnel must not solicit or accept, directly or indirectly, any gift, gratuity, favour, 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. Any such offer by the tobacco industry of a gift, gratuity or other offering must be reported to the [Article 5.3 Oversight Body] and recorded in accordance with section 6.2.6 of this Directive.

6.4.12 While not subject to this Directive, [ministers and members of parliament/the executive/the judiciary/elected representatives] may face similar perceived or actual conflicts of interest in relation to the tobacco industry (e.g. through political party donations). Such matters are dealt with [under separate codes of conduct/cabinet protocols/expectations of conduct/legislation]. If a government body or any person working for or on behalf of a government body is

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concerned over tobacco industry interference in relation to any [elected/appointed state representative] not covered by this Directive, they should raise this with the [Article 5.3 Oversight Body] which shall, if warranted, raise that matter with [that body's minister or other body to which it is accountable].

6.5 Transparent and accurate information

6.5.1 Where interactions are held with the tobacco industry, government bodies should always seek to verify through reputable and independent sources the veracity of any information provided by the tobacco industry.

6.5.2 When government bodies are designing and implementing tobacco control policy and legislation, the imposition of requirements on the tobacco industry to supply information for policy and legislative development should be a key consideration. Any information provided through legislation should be made readily available to the public by government bodies.

6.6 Denormalising 'socially responsible' activities

6.6.1 Government bodies should report to [the Tobacco Industry Monitoring Agency], any activities by the tobacco industry which are undertaken as part of tobacco companies' so-called corporate social responsibility activities. These may include financial or other resource contributions to non-governmental organisations or individuals for community and social development, environmental, poverty alleviation or disaster relief purposes.^{xv}

6.6.2 Government bodies shall not, directly or indirectly, endorse, support, form partnerships with, or participate in the so-called corporate social responsibility activities sponsored and promoted by the tobacco industry and shall not accept contributions from the tobacco industry except for compensations due to legal settlements or mandated by law.

6.6.3 In case any perception or impression of a real or potential partnership or cooperation with the tobacco industry, or support for or participation in the tobacco industry's so-called corporate social responsibility activities is created, the government body concerned shall remove and/or publicly correct such perception immediately.

6.7 Preferential Treatment

6.7.1 Government bodies are prohibited from providing incentives, privileges, benefits or exemptions to the tobacco industry to run or promote their businesses domestically or internationally. This prohibition includes, but is not necessarily limited, to any form of

subsidies, investment incentives, direct investments or loans, tax exemptions or reductions or any other form of favourable tax treatment, and research and development grants or loans.

6.7.2 In relation to existing incentives, privileges or other benefits being provided to the tobacco industry, contrary to section 6.7.1 of this Directive, at the time of commencement of this Directive, all government bodies must:

- Review, document, and make publicly accessible information relating to any government incentive, privilege or other benefit that may have been extended or allowed to be extended to the tobacco industry.
- Monitor to ensure that any such incentives, privileges, or benefits granted, even if applied to businesses at large, are removed in the case of the tobacco industry as soon as practicable.
- Promote legislation to remove any incentives, privileges or other benefits that are guaranteed under law.
- Where incentives, privileges or other government-sponsored benefits will not be able to be removed within 12 months of commencement of this Directive, notify the [Article 5.3 Oversight Body] and agree a timeframe for removal of that benefit.

6.8 State-owned tobacco industry

6.8.1 Government bodies must ensure that:

- They treat state-owned tobacco industry, and its representatives, in exactly the same manner as any other member of the tobacco industry when it comes to government bodies' setting and implementing tobacco control policies and legislation and in strict conformity with all provisions of this Directive.
- Setting and implementing tobacco control policy are separated from the oversight or management of the state-owned tobacco industry.
- Representatives of the state-owned tobacco industry do not sit on or participate in any government tobacco control committees, boards or other bodies, domestically or internationally, including on any delegations, committees, working groups or other subsidiary bodies of the FCTC Conference of the Parties.
- Any investment in the state-owned tobacco industry does not prevent the government from fully implementing the FCTC and meeting all its obligations under it.

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The contact person for any queries over implementation of this Directive, or for submission of reports required under it, is: [add details]

.....

ANNEX 1

REPORT ON BREACHES OF THE DIRECTIVE ON IMPLEMENTATION OF STEPS TO PREVENT INTERFERENCE BY THE TOBACCO INDUSTRY (FCTC ARTICLE 5.3 GUIDELINES)

All government bodies are required to report all breaches of the Directive as well as the actions taken to remedy the alleged or actual breaches within 30 calendar days of the breach or alleged breach occurring.

Please report the following information in relation to each breach of the Directive.

Name of submitting government body:				
Name and contact details of person submitting the report:				
Name of authorising senior manager:				
Date of breach	Section of the Directive breached	Nature of the breach	Steps taken to resolve the breach, including any sanctions imposed for serious misconduct	Any ongoing breach or unresolved matter requiring discussion with the [Article 5.3 Oversight Body]

ANNEX 2

GUIDELINES FOR INTERACTIONS WITH THE TOBACCO INDUSTRY

[Consider adoption, with country-specific modifications, of the model guidelines set out in Fact Sheet 7 of this toolkit: *Process Guidelines for Interaction with the Tobacco Industry*]

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- i See: World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, accessed 18 September 2017.
- ii See: FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017.
- iii Ibid. See Principle 1, p2.
- iv FCTC Conference of the Parties. Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship). In: Guidelines for implementation of the WHO FCTC. Geneva: World Health Organization. Available at: http://www.who.int/fctc/guidelines/article_13.pdf, accessed 18 September 2017.
- v Explanatory Note: It is important that one agency be charged with overseeing implementation of this directive and in ensuring that all government bodies take active steps to comply with it. This body is ideally an existing national agency with a mandate for overseeing the performance of the government/state/public sector and implementation of government-wide policies and directives. Alternatively, some governments are establishing cross-governmental committees specifically to implement Article 5.3. However, if this is intended, such a committee must be given powers to direct, monitor and report on government bodies' compliance with this directive. A lack of mandate or powers on the part of that oversight body will severely limit the effectiveness of this directive in ensuring compliance with Article 5.3.
- vi See: FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017.
- vii Explanatory Note: One domestic agency should be charged with this role. It may be the ministry/department of health or the ministry/department responsible for business regulation. Alternatively, the [Article 5.3 Oversight Body] might take on this role as part of its implementation function.
- viii This sub-clause is only required where a government has not yet banned corporate social responsibility activities by the tobacco industry.
- ix This definition is only required where a government has not yet banned corporate social responsibility activities by the tobacco industry. Note: the Guidelines for Implementation of Article 13 of the FCTC recommend that parties ban all forms of corporate social responsibility activities. Where a Party has not yet taken steps to ban CSR, the government should ensure that it at least disassociates itself from all such activities by the tobacco industry.
- x This sub-clause is only required where the government has not yet banned corporate social responsibility activities by the tobacco industry.
- xi World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>, accessed 18 September 2017.
- xii Determination of what constitutes 'contraband product' will remain a government role but engagement with the tobacco industry may be required to enable an effective response to allegations of contraband product.
- xiii Explanatory Note: If a government has holdings in a state-owned tobacco industry, then this clause should be modified to exclude this interest
- xiv An exception may be made by the [Article 5.3 Oversight Body] for named official(s) to hold a nominal number of shares to facilitate their access to shareholder meetings for the purpose of a) attending those meetings for information gathering purposes and b) where possible presenting or clarifying the government's opposition to intended tobacco company initiatives.
- xv This clause is only required where a government has not yet banned corporate social responsibility activities by the tobacco industry.
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Factsheet 7

MODEL PROCESS GUIDELINES FOR INTERACTION WITH THE TOBACCO INDUSTRY

These process guidelines are designed to be used domestically by Parties to the WHO Framework Convention on Tobacco Control (FCTC) when implementing their obligations under Article 5.3. Adoption of the process guidelines will enable parties to give effect to those provisions of the Guidelines on Implementation on Article 5.3 of the FCTCⁱ calling on Parties to limit interactions with the tobacco industry to those necessary for effective regulation and to ensure the transparency of such interactions. The process guidelines will also be of use to non-parties to the FCTC who wish to take similar steps.

Fact Sheet 6 of this toolkit: *Model Government Directive on Implementation of Steps to Prevent Interference by the Tobacco Industry* for use by Parties will also be of use in this process. If adapted and adopted by governments, this directive would set specific requirements for all government bodies that interact, or could interact, with the tobacco industry. The attached process guidelines are designed to complement and support the Model Directive by providing a simple checklist for government bodies to follow when holding meetings or other interactions with the tobacco industry.

Acknowledgement

The following Model Process Guidelines elaborate on previous work undertaken by other agencies. In particular, The Union wishes to acknowledge the following source documents:

- South East Asian Tobacco Control Alliance. 2001. *Proposed Ethical Guidelines On How a Tobacco Control Advocate Should Respond*. Thailand: SEATCA. Adapted from: Ethical Guidelines developed by Judith Mackay and Mary Assunta. Available at: http://www.ctcpak.org/docs/ngo/Ethical_Guidelines.pdf
- Republic of the Philippines, Department of Health. 2010. Department Memorandum No. 2012-0126. *Protection of the Department of Health, including all of its Agencies, Regional Offices, Bureaus or Specialized/Attached Offices/Units against Tobacco Industry Interference*. Manila: Republic of the Philippines Department of Health. Available at: <http://home.doh.gov.ph/dm/dm2010-0126.pdf>
- Republic of the Philippines, Civil Service Commission and Department of Health. 2010. Joint Memorandum Circular No. 2010-01. Manila: Republic of the Philippines Civil Service Commission and Department of Health. Available at: <http://www.tobaccocontrol.org/files/live/Philippines/Philippines%20-%20DOH%20Dept%20Memo%20on%20Industry%20Interference%20-%20national.pdf>
- Campaign for Tobacco-Free Kids. 2012. *Essential Elements of FCTC Article 5.3 Implementing Measures*. This will be made available at: http://global.tobaccofreekids.org/en/solutions/laws_litigation/resources/

MODEL PROCESS GUIDELINES FOR INTERACTION WITH THE TOBACCO INDUSTRY

INTRODUCTION

Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC) requires all Parties to the FCTC, when setting and implementing their public health policies with respect to tobacco control, to:

*“... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.*ⁱⁱ

To assist Parties, the Conference of the Parties to the FCTC developed guidelines on implementation of Article 5.3. The guidelines state that Parties should establish measures to limit interactions with the tobacco industry to only those necessary for effective regulation of tobacco products and the tobacco industry and to ensure that such interactions are conducted transparently. The guidelines apply to all branches and all levels of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

Measures to limit interaction with the tobacco industry are necessary due to past (and ongoing) behaviour of the tobacco industry aimed at undermining tobacco control efforts. They are also necessary because, unlike any other consumer product, tobacco products kill when used as directed. This has led many governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.ⁱⁱⁱ

The following guidelines should be followed by all government bodies^{iv} in all instances of interaction^v with the tobacco industry,^{vi} regardless of how minor those interactions might appear to be.

APPROVAL FOR INTERACTIONS

All requests by the tobacco industry for meetings or other forms of interaction with government bodies must be submitted in writing, clearly spelling out the nature and purpose of the proposed interaction, the outcomes sought, and with whom a meeting is sought or to whom materials (e.g., written submissions) will be provided.

All such requests must be submitted for approval to [Designated Senior Official (DSO)] and recorded. This should be published in a web-based register of tobacco industry interactions maintained either by the

government body itself or a central government authority, if such a central web-based register exists.

The [DSO] will decide whether the requested interaction is necessary. In making that judgment, the [DSO] will take into account whether the purpose of the interaction meets either of the following tests:

- The interaction is strictly necessary for the effective regulation, supervision or control of the tobacco industry and tobacco products.
- The interaction is necessary for the purpose of giving the tobacco industry the opportunity to provide comment on proposed new tobacco control policy, legislation or programmes, in order to meet the government's consultation obligations.

All proposals by officials for engagement with the tobacco industry shall be submitted to [DSO] for approval and judged on the same tests.

No interaction shall be approved that concern any of the following:

- Proposals to work with the tobacco industry or accept its assistance to draft legislative or policy proposals.
- Participation by officials in, or attendance at, tobacco industry-initiated or industry-funded policy meetings, seminars, dialogues and other forums.
- Allowing the tobacco industry to play any role that is properly a government function in carrying out monitoring or enforcement of public health policy related to tobacco control.
- Partnering with the tobacco industry or accepting or endorsing tobacco industry involvement in any public health programme related to tobacco control.

In making a decision on whether an interaction should take place, the [DSO] may determine what manner of interaction is appropriate. Where possible it shall require the tobacco industry to present their views or queries in writing, rather than agreeing to more direct interactions, such as meetings.

The [DSO] will also determine whether any meeting or other form of interaction with the tobacco industry shall be held in public. In making such a judgment, the [DSO] should place emphasis on all interactions being held publicly unless there is a convincing reason why they

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should not be, for example, because they relate to legal action underway.

The tobacco industry representatives will be notified by the government body, as to whether the requested interaction has been approved and if the interaction will be public. Tobacco industry representatives should also be supplied with a copy of these process guidelines, so that they are aware of what will be done with any information supplied to the government body by them, as well as with the formal record of the interaction.

The government body shall also inform any tobacco industry representatives, in advance of any meeting or other interaction, that agreeing to such an interaction must not be taken to imply that the government body is entering into any partnership or collaboration with the tobacco industry, and that the tobacco industry cannot publicly represent the interaction as such.

The tobacco industry representatives should also be advised that all written materials submitted by them to the government body, and any transcript of any meeting or other form of direct interaction with the industry, will automatically be made public by posting it to the government web-based register of tobacco industry interactions. Accordingly, if there is any information that the tobacco industry representatives wishes to submit under an obligation of confidence, the broad proposed content of that information, and the justification for that material not being made public, should be submitted to the [DSO] for consideration in advance. If the [DSO] approves the submission of information under an implied obligation of confidence, any such approval will be subject to [Freedom of Information legislation/any decision or ruling by an ombudsman or court].

PREPARATION FOR INTERACTIONS

Any approved interaction with the tobacco industry must be recorded in the government body's web-based register of interactions with the tobacco industry so that the public can be aware (in advance) of the intended interaction, its purpose, the form of interaction, the date it will be held, who will attend, whether the public is welcome to attend and what information will be released after the meeting (including when and in what form).

At least two government officials must attend any meeting, telephone or video conference or other form of direct interaction with the tobacco industry. One of those officials must be a senior official. It may be appropriate to include a lawyer to guide or oversee the interaction.

In advance of any meeting, telephone or video conference or other form of direct interaction, the government body shall set the agenda (in writing) and make this publicly available on its web-based register of interactions with the tobacco industry, so that civil society observers may attend if they wish.

The names and roles of all tobacco industry representatives intending to attend the meeting, telephone or video conference or other form of direct interaction shall be supplied in advance of the meeting.

If the interaction is to take place publicly, this shall be well publicised by the government body, giving a reasonable time for non-governmental organisations and other interested stakeholders to make arrangements to attend.

Any meeting or other form of direct interaction shall take place at the offices of the government body unless another location is approved by the [DSO]. Any offer of hospitality by the tobacco industry (for example, an offer to host a meeting at a tobacco company's offices) shall not be accepted unless necessary for the government body's effective regulation, supervision or control of the tobacco industry and tobacco products.

MANAGING DIRECT INTERACTIONS

The agenda agreed in advance shall be followed, deviations will not be permitted.

Direct interactions should be kept brief.

Before the interaction, the government body officials shall declare that they will exercise the right to terminate the interaction at any point if they are concerned over the nature of the interaction for whatever reason (e.g., any deviation from the agenda, or any issues raised that require consideration by the government body and/or consultation with other agencies before further discussion).

The interaction shall ideally be video or audio recorded. A written transcript of the interaction should also be produced by the government body and shared between all parties for verification of content. It shall then be placed on the government body's web-based register of tobacco industry interactions. Where there is a difference of opinion between the government body and the tobacco industry representatives over what was discussed, this difference of opinion over what was discussed or concluded shall be reflected in the transcript.

No commitments, whether written or oral, shall be made or agreed to by the government body during the meeting but shall instead (as appropriate) be communicated to the tobacco industry representatives in writing after the

MODEL POLICY GUIDELINES

meeting. Such commitments will also be made public, in writing to any persons attending the meeting as observers (for example, non-governmental organisations), as well as through the government body's web-based register of tobacco industry interactions.

If any photograph is taken of the interaction, this may only be used for recording purposes. Such photograph(s) must not be used by the tobacco industry in any manner.

MANAGING INDIRECT INTERACTIONS

All approved interactions that do not involve meetings or other direct forms of interaction – for example, the submission of written proposals – whether solicited or not, will be recorded on the government body's web-based register of tobacco industry interactions. All such information supplied will be made public through that register unless the [DSO] has agreed in advance that certain information may be supplied under an obligation of confidence.

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- i FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017
 - ii See: World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: WHO. Available at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf, Accessed 18 September 2017.
 - iii See: FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, Accessed 18 September 2017.
 - iv The guidelines apply to all persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, and administration of public health policies with respect to tobacco control.
- 'Government body' is taken in these process guidelines to include all government ministries, departments, agencies, bodies, quasi-or semi-governmental institutions, boards, committees, commissions, and other state-run or state-funded bodies in all branches and at all levels of government. Where obligations are imposed on government bodies, those obligations become the obligations of all personnel of such bodies.
 - v 'Interaction' with the tobacco industry includes, without limitation, any of the following: telephone, email, social media or face-to-face communication, including meetings, conversations and the submission of written or recorded materials. It includes both formal and informal or social interactions.
 - vi 'Tobacco Industry' includes all organisations, entities, associations, and individuals that engage in work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesalers, distributors, importers of tobacco products, growers, tobacco retailers, front groups and any other individuals or organisations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.

Factsheet 8

GUIDANCE ON LEGISLATION TO GIVE EFFECT TO THE FCTC ARTICLE 5.3 GUIDELINES

THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

The WHO Framework Convention on Tobacco Control (the FCTC) is an international treaty ratified by over 180 countries.ⁱ As well as setting out a series of evidence-based tobacco control measures that Parties to the FCTC are in some cases obligated, and in other cases encouraged, to implement, the FCTC also openly confronts the tobacco industry, warning Parties to the FCTC to be alert to the industry's efforts to undermine or subvert work done in tobacco control.

Article 5.3 of the FCTC requires all Parties when setting and implementing their public health policies with respect to tobacco control to “...act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

The FCTC Conference of the Parties has developed a set of guidelines to support Parties' implementation of Article 5.3. These guidelines set out a series of guiding principles, as well as detailed recommendations for Parties.ⁱⁱ It is important to note that the Article 5.3 guidelines:

- were established to assist Parties in meeting their legal obligations under Article 5.3;
- were adopted by consensus by the Conference of the Parties;
- and therefore represent measures that the Parties agreed will ensure that regulatory efforts to protect public health policies related to tobacco control, are protected from tobacco industry interference.

Further, in accordance with Article 31 of the Vienna Convention on the Law of Treaties 1969,ⁱⁱⁱ the Article 5.3 guidelines should be taken into account when interpreting the scope and content of Parties' treaty obligations in relation to Article 5.3.

It should also be noted that Article 2.1 of the FCTC encourages Parties to implement measures beyond those required by the FCTC, and the Article 5.3 guidelines encourage Parties to implement measures beyond those set out in the guidelines.

See Fact Sheet 2: *The WHO Framework Convention on Tobacco Control: Preventing Interference by the Tobacco Industry*

POLICY VERSUS LAW

Each Party to the FCTC will have different rules and conventions regarding how that Party prefers to give effect to international obligations and guidance. Depending on the context, Parties may codify the steps necessary to give effect to the Article 5.3 guidelines in legislation, whereas others may give effect to them through government policy instruments, such as government directives, policy statements or guidelines. Some governments will prefer to use a mix of policy and legislation in a mutually-supporting fashion. For example, legislation may include broad statements stating expectations of government bodies and the tobacco industry, with policy statements setting out requirements and further guidance materials providing the detail.

The Union has developed this toolkit as a resource for Parties to use to ensure effective implementation of their FCTC obligations under Article 5.3 through policy instruments. See:

- Fact Sheet 6: *Model Directive on Implementation of Steps to Curb the Influence of the Tobacco Industry*: setting out provisions for government bodies relating to engagement with the industry, refusal of partnerships, etc.
- Fact Sheet 7: *Model Process Guidelines for Interaction with the Tobacco Industry*
- Fact Sheet 9: *Model Code of Conduct Provisions and Conflict of Interest Protocols in Relation to Tobacco Industry Interference*: specifically relating to how officials must conduct themselves, management of conflicts of interest, etc.
- Fact Sheet 4: *Monitoring the Tobacco Industry: providing a framework for governments' monitoring of, and reporting on, the conduct of the tobacco industry*.

The purpose of this resource is to provide direction to FCTC Parties on options for effectively implementing Article 5.3 and its guidelines through legislation and/or policy. Non-parties to the FCTC may also find the resource useful as a means of identifying how to prevent tobacco industry interference in their countries. There is considerable overlap between this resource and the policy-focused resources listed above. Governments are encouraged to consider this key question: what should go into legislation, and what should be implemented through policy and how can they both mutually support each other?

AN EXAMPLE OF GIVING EFFECT TO THE ARTICLE 5.3 GUIDELINES THROUGH LEGISLATION AND POLICY

LAW

BROAD STATEMENT OF EXPECTATIONS OF GOVERNMENT BODIES

E.g., no engagement is permitted with the tobacco industry except where strictly necessary, and any necessary engagement must be conducted transparently.

NATIONAL POLICY DIRECTIVE / POLICY STATEMENT

REITERATES EXPECTATIONS SET OUT IN LAW (OR ARTICULATES THOSE IN ABSENCE OF LAW)

PROVIDES DETAIL ON HOW TO GIVE EFFECT TO THOSE BROAD EXPECTATIONS

E.g., what forms of engagement are considered necessary, under what circumstances; to whom non-engagement refers; framework for monitoring and directing government bodies' compliance; administrative sanctions; reporting requirement.

POLICIES AND GUIDELINES

GIVES DETAILED GUIDANCE ON PROCESSES TO BE FOLLOWED

E.g., managing requests for engagement from the tobacco industry, approval processes, recording and publicising engagements, setting the agenda, minute taking, reporting outcomes.

LEGISLATING TO PREVENT TOBACCO INDUSTRY INTERFERENCE

The Article 5.3 guidelines call on Parties to take a wide range of steps, including some that require legislation.

Recommended core and broad legal requirements that should be put into place in line with the Article 5.3 guidelines are included in the list of *Comprehensive and effective legislative measures for preventing tobacco industry interference*, below. The list also includes details that could be included in either legislation (including subordinate legislation, such as regulations) or in policy documentation. It is important to balance the need to set clear expectations in a manner

that will ensure compliance, while providing flexibility for implementation and amendment as necessary.

Monitoring and evaluation of legislation is an important further step that is often neglected. However it is important to ensure that legislation is 'fit for purpose' and able to respond to new tobacco industry strategies and tactics.

In addition to including provisions in legislation that give effect to specific obligations, it is also crucial that provisions ensuring effective implementation are also in place, e.g., the establishment of an oversight body, enforcement powers for officers and sanctions for non-compliance.

Acknowledgement

The following guidance draws heavily on:

- draft model tobacco control legislation developed by the Campaign for Tobacco Free Kids^{iv}
- the Tobacco Control Lawyers Manual developed by Health Justice Philippines and the South East Asian Tobacco Control Alliance^{vi}

A further useful resource is the World Health Organization Tobacco Free Initiative Legislation page which provides links to key resources related to tobacco control legislation and the legislative process.^{vii}

DEFINITIONS

In developing tobacco control legislation, it is crucial that key definitions are included and carefully framed. The definition of ‘tobacco industry’, for example, must be defined broadly to include not only manufacturers, importers and other sellers of tobacco products, but also all those entities that work to further the interests of those sellers, e.g., front groups, law firms, scientists and lobbyists.

Many of the obligations discussed below for inclusion in legislation would be imposed on the government. Accordingly, it is important to define the government in an inclusive manner to ensure that all government ministries, departments, agencies, bodies, quasi- or semi-governmental institutions, boards, committees, commissions and other state-run or state-funded bodies in all branches and at all levels of government are covered. This is to ensure that they are all subject to those obligations. The definition must also make it clear that all officials, employees, consultants and contractors working for or on behalf of those government bodies are also subject to the law.

Since the focus of Article 5.3 of the FCTC is on protecting public health policies relating to tobacco control from the tobacco industry’s vested interests, it is also important to define what those policies include. This will clarify that obligations fall on a broad range of government bodies and employees, officials, consultants and contractors. The obligations would apply to those working on economic development, trade, tax policy and agricultural policy. They would also apply to a wide range of other areas of government directly or indirectly relevant to tobacco control. All those working in these areas should also be explicitly required to comply with legislation and policies relating to Article 5.3.

The legal resources referred to here as well as the toolkit policy resources listed under *Policy versus law*, provide guidance on inclusive definitions for these and other relevant terms.

ARTICLE 5.3 LEGISLATION

COMPREHENSIVE AND EFFECTIVE LEGISLATIVE MEASURES FOR PREVENTING TOBACCO INDUSTRY INTERFERENCE

General implementation provisions

Legislation should:

- Identify one agency to provide an oversight role that would guide, monitor and enforce the legislation. This will provide a mechanism for ensuring that government bodies comply with the requirements discussed below. It will also enable action to be taken with respect to government officials, employees, consultants or contractors who breach conduct requirements. The oversight body will require appropriate powers to enable it to do its job properly. The oversight body would ideally be an existing national agency with a mandate for overseeing the performance of the government/state/public sector and implementation of government-wide policies and directives. Alternatively, some governments are establishing cross-governmental committees to specifically implement Article 5.3. However, if this is intended, such a committee must be given powers to direct, monitor and report on government bodies' compliance with the measures put in place in relation to an Article 5.3 directive. A lack of mandate or powers on the part of that oversight body will severely limit the effectiveness of government efforts to ensure compliance with Article 5.3 generally, and legislation specifically.
- Provide for a whistleblower function, whereby individuals, who notice breaches of the legislation or policies developed in support of the legislation, are able to notify the central authority of alleged breaches without fear of retaliation.

Note: an example of 'whistleblower' legislation is the New Zealand Protected Disclosures Act 2000, which promotes public interest by facilitating the disclosure and investigation of matters of serious wrongdoing.^{viii}

A provision within the legislation was also put in place to protect employees that do make disclosures of information about serious wrongdoing. It also sets out formal procedures by which allegations must be reported and managed, which provides some protection for those agencies against which complaints may be made.

- Provide for sanctions, both for government bodies and for their officials, employees, contractors and consultants, as well as the tobacco industry and entities acting to further its interests. Sanctions should range from administrative penalties, imposed on government bodies and their employees, through to fines and court proceedings for the tobacco industry and for more

serious breaches of the legislation by government bodies or their employees, consultants and contractors.

- Provide for a mechanism to record and report industry engagements and tactics. This could be a requirement imposed on all government bodies to record all engagements with the tobacco industry and submit an annual report on such engagements to the oversight body.
- Provide a mechanism for civil society to report alleged breaches of the legislation and to have access to relevant information collected from the tobacco industry.

Engagement with the tobacco industry and transparency of engagements that might occur

Obligations to require that:

- Government bodies may interact with the tobacco industry only when, and to the extent, strictly necessary to enable them to effectively monitor and regulate the tobacco industry or tobacco products.
- Where interactions with the tobacco industry are necessary, government bodies must ensure that all such interactions are conducted transparently.
- When engaging with industry, government bodies must avoid any perception of real or potential partnership or cooperation with the industry. They should publicly correct such a perception immediately if one arises or is promoted by industry.

Note: The following should also be included in legislation or, as appropriate, could be included in policy and guidance materials: industry engagement application and approval processes; a requirement for engagements to be held in public except where there is good reason not to do so; types of interaction acceptable; provision of advance and public notice for meetings; agreement of formal agenda in advance with no deviation from agenda permitted; information required to be provided by the industry in advance; minute taking; publication of meeting discussions; processes to be taken to avoid perception of partnership, etc.

Prohibition of partnerships between government bodies and the tobacco industry/No endorsement of industry initiatives

Obligations to require that government bodies must not accept, support or endorse:

- Any partnerships, memoranda of understanding, non-binding or non-enforceable agreements, voluntary arrangements or codes of conduct with the tobacco industry, where legally enforceable tobacco control measures can be developed and implemented instead.
- Any offer of assistance from the tobacco industry for the development of, or funding assistance for, tobacco control legislation, policy or programmes.

ARTICLE 5.3 LEGISLATION

- The forming of partnerships with, or participating in ('socially responsible') activities of the tobacco industry with the direct or indirect aim or effect of promoting a positive image of the tobacco industry or their products.

Note: Under Article 13 of the FCTC and the guidelines developed by the Conference of the Parties to guide implementation of that Article,^{ix} such 'socially responsible activities' should be banned.

- The tobacco industry's organisation, promotion, participation in, or performance of initiatives with a youth, public education or other focus directly or indirectly related to tobacco control.

Prohibition of voluntary contributions by industry

Obligations to:

- Ban the tobacco industry offering, and ban government bodies accepting, any voluntary contribution financial or otherwise. Note: This ban should not preclude government bodies legislating for tax increases, or initiating litigation and thus securing funds through those mechanisms.
- Prohibit the tobacco industry offering or making any contribution financial or otherwise to any individual or any organisation or other entity with the aim, effect or likely effect of directly or indirectly promoting its corporate image or products.^x Also see recommended provisions relating to corporate and social responsibility below.
- Require any person or organisation or other entity receiving an offer of contribution(s) or support from the tobacco industry to notify that to the regulator. Also see recommendations relating to political contributions below.

Preventing and managing conflicts of interest

Approach 1: The legislation would state that government bodies must establish, implement and periodically review and enhance policies and procedures to give effect to the listed requirements below. The details could then be included in a government policy statement or directive and thus readily amended over time as required. This will also allow obligations to be tailored to individual government bodies' needs within defined parameters. Non-compliance could see the application of relevant administrative sanctions, including potentially dismissal for serious non-compliance.

or

Approach 2: The legislation would be explicit and record each of the obligations set out below, setting penalties in the legislation for non-compliance for both government bodies, and for officials, employees, consultants and contractors.

Legal obligations that government bodies must:

- Establish codes of conduct and conflict of interest protocols for government officials, employees, consultants and contractors, prescribing the standards with which they should comply in their dealings with the tobacco industry.
- Not hire, award a contract to or otherwise retain or engage any person to work or serve in any capacity with responsibility for tobacco control, if that person is also engaging in employment with the tobacco industry, or has done so within the previous [3/6/9/12/24] months. This is also relevant if that person has or could have any other conflict of interest with the tobacco control responsibilities of the position, contract award or service appointment due to current or past direct or indirect affiliation of any kind with the tobacco industry.
- Not have any financial interest or investment in the tobacco industry, except where they are responsible for managing an ownership interest in a state-owned tobacco industry.
- Not allow any person employed by the tobacco industry or by any agency acting on behalf of the tobacco industry to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.
- Not nominate any person employed by the tobacco industry, or any entity working to further its interests, to serve on delegations to international meetings relating to tobacco control.

Legal obligations that all persons who have, or have had [within a period of 6/9/12/24 months], a role in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors, must:

- Disclose – and the government agency must ensure effective management of – any conflicts of interest if/as they arise.
- Declare and divest themselves of direct interests in the tobacco industry, e.g., including financial interests or involvement in the industry in any governance role, directorship or similar role.
- Inform their employer about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, after departure from service. This should be declared when the role with the industry is to commence within a period of [6/9/12/24 months] after leaving service. The legislation should also provide for notification when a person subsequently takes a role

ARTICLE 5.3 LEGISLATION

with the tobacco industry, i.e., after leaving service, but within the stipulated time period.

- Not accept payments, gifts or services, either monetary or in kind, from the tobacco industry.
- Notify any offers of payments, gifts or services from the tobacco industry to their employer.

Legal obligations to describe how government bodies should manage conflicts of interest when they arise, including decision-making processes, appeal provisions and sanctions for wrong-doing.

Tobacco industry disclosure and reporting

There is a broad range of information that tobacco manufacturers, importers, growers and other tobacco businesses could be required to disclose under legislation. Based on the Article 5.3 guidelines, the tobacco industry should be required to disclose at least the following:

- production
- manufacture
- market share
- marketing expenditures
- revenues
- other activities, including lobbying, philanthropy, political contributions and all other activities not prohibited under FCTC Art. 13.

A more detailed recommended list of other information to be required for disclosure through legislation is contained in the Campaign for Tobacco Free Kids model legislation.^{xi}

The frequency of disclosure needs to be specifically set out in legislation, with reports required at least annually. It may be appropriate to consider reports more frequently depending on the type of information sought. There should be a provision explicitly stating it is an offence for the tobacco industry to provide false or misleading information.

The legislation should provide for a wide range of information on tobacco industry activities to be made publicly available, and as soon as possible after it is submitted to the regulator.

Disclosure or registration of tobacco industry entities, affiliated organisations and individuals acting on behalf of the tobacco industry, including lobbyists should also be required. An example of relevant legislation is the Canadian Lobbyist Registration Act that regulates lobbying at the federal level. The Act requires lobbyists to file a return with the Commissioner of Lobbying if they communicate with a public office holder under certain conditions. This registry is searchable on a publicly-accessible website.^{xii}

Political contributions

The Article 5.3 guidelines urge Parties to have effective measures in place 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.

Legislation could impose a simple ban on all such contributions by making it an offence for the tobacco industry to offer or provide such contributions and an offence on the part of political parties, candidates or those acting on their behalf to accept such contributions. It should also carry a requirement for those offered such contributions from the tobacco industry to notify the relevant regulatory body of any such offers.

Such a provision could be included in specific tobacco control or public health law, or included in wider electoral finance law. Many countries have electoral finance laws to improve transparency and accountability that set rules around donations to political parties, candidates and campaigns by business or other interests. These usually include provisions that:

- set limits on the size of donations
- require public disclosure of who is making donations and to whom
- limit third-party advertising, i.e., advertising by non-political bodies, aimed at building electoral support for a particular policy that a business (or other) interest supports

The State of New South Wales, Australia, has implemented legislation specifically banning contributions by the tobacco, alcohol and gaming industries.^{xiii} For an example of wider electoral finance law, see the Canada Elections Act 2000.^{xiv}

Banning of so-called corporate and social responsibility activities by the tobacco industry

In most cases a ban on corporate and social responsibility activities would be covered in provisions in tobacco control legislation aimed at implementing a comprehensive ban on tobacco advertising, promotion and sponsorship (in line with Article 13 of the FCTC). In this case, legislation could define 'corporate social responsibility activities' as meaning any activities promoting the health or welfare of other individuals, the wider community, or the environment; funding community services; activities related to disaster relief; or any other activities that are philanthropic in nature. The operative provision would provide that no seller of tobacco products, or any person or entity acting on their behalf, may provide funding or any other form of support for any corporate responsibility activities. Some jurisdictions allow the industry and those acting on their behalf to provide such funding, and allow agencies to

ARTICLE 5.3 LEGISLATION

accept it, but ban the direct or indirect public recognition of that support. For the avoidance of doubt, public recognition would need to include publicity provided by both the paid and unpaid media. This approach is seen as inferior as inevitably it becomes publicly known that such assistance has been provided.

Where corporate social responsibility activities continue but with restrictions over their publicity, there may need to be consideration given to an exception for reporting of corporate social responsibility activities as part of legally-required reporting, e.g., business reporting such as in annual reports and financial statements.

Note: Freedom of speech considerations are likely to be raised by the tobacco industry with respect to provisions that ban publicity of permitted corporate social responsibility activities. Most countries' constitutions provide for justified restrictions on freedom of expression for various purposes, for example, for the protection of human health and welfare.

Ban on incentives

Legislation should state that government bodies must not provide any incentive or privilege to any person to establish or run a tobacco manufacturing, wholesale or import business, or any incentive or privilege related to any phase of the production or marketing of tobacco products. This would include but not necessarily be limited to subsidies, investment incentives, direct investments or loans, tax exemptions or reductions or any other form of favourable tax treatment, and research and development grants or loans. Furthermore, legislation could provide that government bodies must not support, endorse or advocate for the business interests of the tobacco industry outside the jurisdiction of the country.

Awareness raising

Some jurisdictions may want to impose an obligation, via legislation, on a particular government agency to require it to take responsibility for ensuring that all branches of government are made aware of the addictive and harmful nature of tobacco products. Where this approach is taken, legislation should also include a provision on the need to protect tobacco control policies from the commercial and other vested interests of the tobacco industry, and of the strategies, tactics and surrogates used, openly or covertly, by the tobacco industry to undermine and subvert the development and implementation of effective tobacco control policies, including philanthropic contributions to public and private organisations.

State-owned industry

Where Parties have a state-owned tobacco industry, their legislation (tobacco control legislation, or legislation in general) should include an explicit provision stating that that ownership must not prevent full implementation of the FCTC. It should also make clear that the state-owned industry shall be treated no differently and be subject to the same laws and policies as other tobacco industry operating within that Party's jurisdiction.

More broadly, it is recommended that steps should be taken through law and policy to ensure that there is a clear separation of the government role of managing the state's interest in the state-owned tobacco industry and the role of putting in place and implementing effective tobacco control policies, legislation and programmes.

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- i See: World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: WHO. Available at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf, accessed 18 September 2017.
- ii See: FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Geneva: World Health Organization. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017
- iii Vienna Convention on the Law of Treaties, 1969. <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>
- iv See: http://global.tobaccofreekids.org/en/solutions/laws_litigation/resources/#drafting
- vi D, Luna I. Tobacco Control Lawyers' Manual. Legislative Guide, Common Legal Questions, Case Studies. August 2011. Health Justice and SEATCA. Available at: <http://www.healthjustice.ph/wp-content/uploads/2014/09/Tobacco-Control-Lawyers-Manual.pdf>
- vii See <http://www.who.int/tobacco/control/legislation/en/>, accessed 18 September 2017.
- viii See Protected Disclosures Act 2000, Available at: http://www.legislation.govt.nz/act/public/2000/0007/latest/DLM53466.html?search=ts_act_protected+disclosures_noresel&p=1&sr=1, accessed 17 September 2017.
- ix WHO Conference of the Parties. 2008. Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship). Available at: http://www.who.int/fctc/guidelines/article_13.pdf, accessed 17 September 2017.
- x Note this provision may overlap with common provisions relating to banning tobacco sponsorships and scholarships and should be integrated to ensure the provision is broad enough to cover all avenues of industry contributions.
- xi Campaign for Tobacco-Free Kids. 2012. Draft Tobacco Control Act Template. Available at: http://global.tobaccofreekids.org/en/solutions/laws_litigation/resources/#drafting
- xii See Office of the Commissioner of Lobbying of Canada website, available at https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00000.html.
- xiii See the Election Funding, Expenditure and Disclosures Act 1981. Available at: http://www.austlii.edu.au/au/legis/nsw/consol_act/efeada1981443/, accessed 18 September 2017.
- xiv Canada Elections Act 2000. Available at: <http://www.elections.ca/content.aspx?section=res&dir=loi/fel/cea&document=index&lang=e>, accessed 18 September 2017. See Part 17 on third party advertising (restrictions on advertising that can be done by entities that are not running for office). This is relevant for example if a Party wanted to set controls on the tobacco industry running a campaign in support of a tobacco-friendly political party or candidate. Also see Part 18, Division

Factsheet 9

MODEL CODE OF CONDUCT PROVISIONS AND CONFLICT OF INTEREST PROTOCOLS IN RELATION TO THE TOBACCO INDUSTRY

This document briefly summarises the common key elements of government conduct and integrity frameworks, drawing on United Nations and Organization for Economic Cooperation and Development (OECD) materials, as well as specific countries' integrity frameworks. It suggests how these key elements might be integrated within, or work in parallel with, existing government integrity materials. Specific recommendations under the WHO Framework Convention on Tobacco Control (FCTC) Article 5.3 guidelines relating to the prevention of tobacco industry interference have informed the suggestions in this document. The document also proposes processes for identifying and resolving potential, perceived and actual conflicts of interest.

BACKGROUND

The FCTCⁱ was developed in response to the globalisation of the tobacco industry and tobacco use. The FCTC sets out the necessary principles, obligations and tobacco control measures that are required in order to combat the global tobacco epidemic. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to:

“... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

This has been expanded further in the FCTC Conference of the Parties' Guidelines for Implementation of Article 5.3,ⁱⁱ which emphasises that Parties should implement measures to prevent interference by the tobacco industry in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

These measures are necessary due to the behaviour of the tobacco industry aimed at undermining tobacco control efforts, and the fact that, unlike any other consumer product, there is no safe means of using tobacco products. This has led governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.ⁱⁱⁱ

Many of the recommendations contained within the Article 5.3 guidelines relate directly to the manner in which government bodies, their officials, representatives and employees should conduct themselves. These expectations of proper conduct are typically consistent with best practice guidance on government integrity in relation to all dealings by government bodies with businesses and with civil society more widely. There is plenty of guidance already available internationally on how policy-makers and decision-makers should conduct themselves impartially, fairly and transparently. There are also many

useful examples of government codes of conduct that may be helpful for governments and the individual bodies which make up those governments, as they develop their own codes of conduct and other procedures for managing perceived or actual conflicts of interest.

To be consistent with the principles of the FCTC Article 5.3 guidelines, Parties should consider the manner of tobacco industry interaction with government bodies, officials, representatives and employees more explicitly. Parties should consider what steps they need to put in place for the management of perceived or actual conflicts of interest and to ensure that in all their public and private dealings, government officials, representatives and employees meet appropriate conduct requirements. This will help ensure Parties meet their obligations under Article 5.3 of the FCTC to protect public health policies from the commercial and other vested interests of the tobacco industry.

This document focuses on the conduct of government officials, representatives and employees, including those who serve on government-established or appointed boards, committees and other bodies. It does not include provisions for government ministers, elected representatives of the people, the judiciary or other individuals otherwise elected or appointed to an executive, parliamentary or judicial role. However, much of the discussion and many of the recommended code of conduct provisions contained within this document would be directly relevant to persons in these roles.

KEY PRINCIPLES OF GOVERNMENT CODES OF CONDUCT

Introduction

This section summarises the key principles that should be the primary focus of government conduct expectations. This section also lists some of the obligations that government personnel should be expected to meet for each of these key principles that are usually reflected in government conduct guidance in some form.

Principle 1: Acting in the public interest

Government personnel are expected to:

- act in the public interest in all their dealings;
- be loyal to the public interests of their country
- perform their duties and functions efficiently, effectively, with integrity and to the best of their abilities;
- do their best to ensure that the public resources for which they are responsible are applied as effectively and efficiently as possible – and only for their intended purpose.

Principle 2: Transparency and accountability

Government personnel:

- shall make all decisions, including but not limited to the award of contracts or the making of decisions or recommendations on the adoption of policy and the funding of programmes, entirely on merit.
- have an obligation to perform their duties in a manner that is open, honest and transparent, and that will bear the closest public scrutiny.
- shall ensure that, wherever possible, information is accessible to the public.

Principle 3: Honesty and integrity

Government personnel:

- have an obligation to carry out their duties with honesty and integrity;
- must not place themselves under any financial or other obligation to external parties where those interests might seek to influence how they perform their official functions.

Principle 4: Avoidance of Conflicts of Interest

Government personnel:

- shall not directly or indirectly solicit or accept any payment, gift, service, gratuity, entertainment, loan or other favour that may influence how they perform their duties, exercise their functions or affect their judgement.
- shall not use their official authority or powers for the improper advancement of their own or their family's personal or financial interests.
- shall declare any business, commercial, financial or other interests or activities undertaken that may raise a possible conflict of interest when performing their duties.
- shall ensure that instances of conflicts of interest, perceived or actual, are minimised.
- shall take active steps to identify and resolve conflicts of interest in favour of the public interest when a conflict does arise.
- shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.
- shall dispose or restrict the operation of private interests that could compromise official decisions in which they participate.

Principle 5: Fairness and impartiality

Government personnel shall:

- perform their duties fairly and impartially;
- at no time discriminate against any group or individual^{iv}, or otherwise abuse the power and authority vested in them;
- at no time afford any undue preferential treatment to any group or individual;
- make decisions in the public interest and with regard to the merits of each case, without regard for personal gain;
- act lawfully and objectively at all times.

THE APPLICATION OF INTEGRITY FRAMEWORKS IN RELATION TO DEALINGS WITH THE TOBACCO INDUSTRY

The need for a tobacco industry focus as part of government integrity frameworks

The above principles and obligations for government personnel are entirely relevant to public office holders' dealings with the tobacco industry. However, alongside this set of overarching principles and obligations, consideration must be given to the general obligation under Article 5.3 of the FCTC and the various specific recommendations under the Article 5.3 guidelines.

For example, while Parties to the FCTC would not want to discriminate against the tobacco industry, they should apply specific restrictions around engagement with the industry and a greater level of scrutiny to all dealings with the industry and to the conduct of government personnel with respect to the industry. This is consistent with past experience with the conduct of the tobacco industry and Principle 1 of the Article 5.3 guidelines which states that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.

See [Fact Sheet 3: Why Do We Treat the Tobacco Industry Differently from Other Industries?](#)

This conflict requires a unique approach to engagement with the tobacco industry to confront not only the direct strategies such as active lobbying, provision of financial incentives, advertising and corporate social responsibility initiatives, but also the more subtle influences targeting government personnel, among others. This includes relationship building that may take place through the provision of gifts and other favours, appointments of ex-government personnel to roles within the tobacco industry, appointment of industry representatives to government committees and boards and attempts to directly or indirectly influence policy and legislative development.

General vs. tobacco industry-specific codes of conduct provisions

Governments have the option, in giving effect to the Article 5.3 guidelines, of adopting rules of behaviour for government personnel through administrative means (policy), law or a combination of both. If administrative means are the preferred approach, in whole or in part, options include:

- Issuance of a government directive outlining expectations of conduct for all government personnel with respect to the tobacco industry (e.g., see possible provisions contained within Fact Sheet 6 of this toolkit: *Model Government Directive on Implementation of Steps to Prevent Interference by the Tobacco Industry* and Fact Sheet 7: *Model Process Guidelines for Interaction with the Tobacco Industry*). Such a directive can be presented as high-level expectations or provide very specific provisions that all government bodies (and thus their officials, representatives and employees) must comply with.

- The development of codes of conduct by all relevant government bodies for their officials, representatives and employees with respect to the tobacco industry. Such codes of conduct relating to the tobacco industry can either be integrated into the government body's wider code of conduct, or sit alongside it as an industry-specific addendum to more generalised conduct requirements.

This resource does not recommend one approach over the other as needs will be country-specific. Recommendations for tobacco industry-specific code of conduct provisions discussed below may, however, be used in either manner.

See [Fact Sheet 8: Guidance on Legislation to Give Effect to the FCTC Article 5.3 Guidelines](#)

Use of this resource

This resource provides provisions for incorporation within government integrity materials, such as government personnel codes of conduct.

The model provisions are in some cases drawn from provisions contained within Fact Sheet 6 of this toolkit: *Model Directive on Implementation of Steps to Curb the Influence of the Tobacco Industry* as that document sets out, among other matters, suggested requirements for government bodies to impose on their employees, contractors and agents.

The two documents should be used in a complementary fashion and supported by legislation (see Article 5.3 Toolkit Fact Sheet 8: *Guidance on Legislation to Give Effect to the FCTC Article 5.3 Guidelines*).

A major focus of government integrity measures designed to effect to the provisions of the FCTC Article 5.3 guidelines in relation to the conduct of government personnel would be on the adoption of measures to prevent or, where it is not possible to prevent, mitigate conflicts of interest. Recommendation 4 of the FCTC Article 5.3 guidelines sets out very specific requirements for government officials and employees in this regard. The model provisions below therefore focus to a large extent on management of conflict of interest.

For all the proposed model provisions, it is important to note that existing integrity frameworks (e.g., a country's current code of conduct for government personnel) may already have generalised provisions that may broadly capture the intent and the obligations contained in these provisions. These model provisions do, however, provide a tobacco industry-specific focus that will be useful to give emphasis to the importance of preventing interference by the tobacco industry in a variety of situations. If a stand-alone tobacco industry-specific code of conduct for officials is developed, it will be important to ensure that the tobacco industry-specific provisions are consistent with provisions found in wider government integrity frameworks for the country.

CODES OF CONDUCT AND MANAGEMENT OF CONFLICT OF INTEREST IN RELATION TO THE TOBACCO INDUSTRY

A INTRODUCTION

A1 [Name of country] is a Party to the WHO Framework Convention on Tobacco Control (FCTC).^{vi,vii} This Treaty was developed in response to the globalisation of the tobacco industry and tobacco use. It sets out the necessary principles, obligations and tobacco control measures that are required in order to combat the global tobacco epidemic. Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to:

“... act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”

A2 This has been expanded and clarified further in the FCTC Conference of the Parties’ Guidelines for Implementation of Article 5.3.^{viii} These guidelines emphasise, through guiding principles and recommendations, that Parties should implement measures to curb the influence of the tobacco industry in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.

A3 These measures are necessary due to past and ongoing behaviour of the tobacco industry aimed at undermining tobacco control efforts, and the fact that unlike any other consumer product, there is no safe means of using tobacco products. This has led governments and international agencies to conclude that there is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.^{ix}

B PURPOSE OF THIS STATEMENT

B1 As a Party to the FCTC, the government has an obligation to take steps to protect its policy setting and law making from the commercial and other vested interests of the tobacco industry. Accordingly, the government has issued a directive on Implementation of Steps to Curb the Influence of the Tobacco Industry^x that sets out steps all government bodies are required to implement.

B2 In further support of the Government’s efforts to meet its obligations under Article 5.3 of the FCTC, this policy statement has been issued to provide

guidance to government bodies on possible provisions for inclusion in their codes of conduct and conflict of interest protocols for officials, representatives and employees.

C STATUS OF THIS STATEMENT

C1 This statement constitutes guidance to all government ministries, departments, agencies, bodies, quasi- or semi-governmental institutions, boards, committees, commissions and other state-run or state-funded bodies in all branches and at all levels of government.

C2 The head of each government body must:

- Review existing codes of conduct or other government integrity guidance materials that are in place with respect to its personnel in light of this government policy statement.
- Consider either adoption of a stand-alone code of conduct for personnel in relation to the tobacco industry along the lines of that provided in this statement, or incorporation of provisions from this statement, where appropriate, into existing integrity guidance materials.
- Ensure that conduct expectations, with respect to the tobacco industry and as outlined in this statement and the government directive Implementation of Steps to Curb the Influence of the Tobacco Industry^{xi} are made clear to all personnel.
- Put in place and take appropriate disciplinary steps against personnel who breach conduct expectations in relation to the tobacco industry.
- Subject to relevant employment law, put in place a defined procedure in employment conditions, contract requirements or other means, for potentially terminating the positions held by, or contracts awarded to, any person who breaches the code of conduct provisions. This would particularly apply to any person who has or manifests a serious conflict of interest in relation to his or her functions in the area of the development or implementation of public health policies relating to tobacco control.
- Establish a mechanism for its officials, representatives or employees to report alleged breaches of conduct without fear of reprisal.

D DEFINITIONS

D1 For the purpose of this document, the following definitions apply:

‘Conflict of interest’ shall mean a situation

where there is a conflict between the public duties and private interests of any government official, representative or employee having responsibility for tobacco control where the official, representative or employee has, or is subject to, tobacco-related interests which could improperly influence the performance of his or her official duties and responsibilities. This includes any personal, financial or any other interest in the tobacco industry, such as having an existing ownership or investment therein, being an officer or a member of the board of directors of a corporation (including its subsidiaries, affiliates, branches) or a partner in partnership engaged therein, and receiving any contribution therefrom. This includes receiving or accepting any offer or contribution from the tobacco industry, even if a promise of favourable consideration is not given in exchange. A conflict of interest shall be deemed to exist where a perception of conflict of interest may exist or arise.

‘Contributions’ shall mean anything given, whether monetary or in-kind, in favour of an official, representative or employee, or an agency or institution he/she represents or is known to represent, other than those required by law. This includes, but is not limited to, any act, right, liberality, payment, gift, service, gratuity, favour, entertainment, loan, funding and technical or legal advice.

‘Government body’ includes all government ministries, departments, agencies, bodies, quasi- or semigovernmental institutions, boards, committees, commissions and other state-run or state-funded organs in all branches and at all levels of government. Where obligations are imposed on government bodies by this directive, these obligations become the obligations of all personnel of such bodies.

‘Interaction’ with the tobacco industry includes, without limitation, any of the following: telephone, email, social media or face-to-face communication, including meetings, conversations and the submission of written or recorded materials. It includes both formal and informal or social interactions.

‘Government personnel’ means all employees, contractors, providers or agents acting on behalf of or providing services for a government body, whether such activities, work or service is gainful or not.

‘Tobacco control’ means a range of supply, demand and harm reductions strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke.

‘Tobacco control policies’ or **‘public health policies with respect to tobacco control’** includes policies relevant or related to tobacco control, such as tax, price, trade, business and employment policies.

‘Tobacco industry’ includes all organisations, entities, associations and individuals that engage in work for, or on behalf of, the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesalers, distributors, importers of tobacco products, growers, tobacco retailers, front groups and any other individuals or organisations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.

‘Tobacco industry interference’ refers to a broad array of tactics and strategies used directly or indirectly by the tobacco industry to interfere with, or influence, the setting and implementation of effective tobacco control measures.

E PRINCIPLES IN RELATION TO THE CONDUCT OF GOVERNMENT PERSONNEL

E1 Principle 1: Acting in the public interest

E1.1 Government personnel are acting in the public interest when they protect public health policy with respect to tobacco control from the commercial and other vested interests of the tobacco industry in accordance with national law.

E2 Principle 2: Transparency and accountability

E2.1 Government personnel will meet their obligations with respect to transparency and accountability when they observe all conduct expectations of them with respect to the tobacco industry and actively take steps to promote full transparency of all interactions with the tobacco industry.

E3 Principle 3: Honesty and integrity

E3.1 Government personnel must carry out all their duties with honesty and integrity and must avoid any financial or other interests in the tobacco industry that might influence how they carry out their official functions.

E4 Principle 4: Avoidance of conflicts of interest

E4.1 Government personnel must take all necessary steps to avoid conflicts of interest and, if they arise, to declare them and take steps to resolve them in favour of the public interest.

E5 Principle 5: Fairness and impartiality

E5.1 Government personnel must always perform their duties fairly and impartially, while ensuring that the public interest is served in the exercise of their official functions.

F CONDUCT REQUIREMENTS

F1 Participation in awareness programmes:

All government personnel that contribute to the development, implementation or evaluation of public health policies with respect to tobacco control must participate in any briefings held or promoted by their government body. Such briefings may include those focussed on raising awareness about the addictive and harmful nature of tobacco products, the need to protect tobacco control policies from commercial and other vested interests of the tobacco industry. Briefings could also include those on the strategies, tactics, and front groups used – openly or covertly – by the tobacco industry to undermine and subvert the development and implementation of effective tobacco control policies.

F2 Conflict of interest avoidance and mitigation:

All personnel must take all necessary steps to avoid where possible any perceived or actual conflicts of interest with respect to the tobacco industry, and to immediately disclose and manage any conflict of interests that do arise. Potential means for resolving conflicts of interest are presented in Section G of this policy statement. Personnel shall not engage in any transaction, acquire any position or function or have any financial, commercial or other relevant interest incompatible with their role.

F3 Declaration of conflict of interest: All government personnel must declare to their government body past or current business, commercial, financial, employment and other interests or activities undertaken for the tobacco industry, whether for financial gain or otherwise, that may raise a possible conflict of interest. This must be done at the time of initiation, employment or contract for services and at any time thereafter where a possible conflict of interest may arise. This declaration must be made on the form attached as Annex 1 to this policy statement.

F4 Limiting interactions with the tobacco industry and ensuring transparency of those that are held:

All personnel must comply with their government body's policy on interactions with the tobacco industry, including what forms of interaction are and are not permitted, and the public transparency of any interactions that do take place.

F5 Ban on certain interactions: No personnel, while working in any role that contributes to the development, implementation or evaluation of public health policies with respect to tobacco control may:

- Accept the tobacco industry's assistance to draft legislative or policy proposals, or promote the industry playing a role in monitoring or enforcement of legislation.
- Participate in or attend any industry-initiated or industry-funded policy meetings, seminars, dialogues or other forums.
- Promote partnering with the tobacco industry or the adoption of any voluntary, non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement or tobacco industry code of conduct, position paper, policy or instrument drafted by or in collaboration with the tobacco industry in the place of legally enforceable tobacco control measures.
- Accept or endorse tobacco industry involvement in, or funding of, any tobacco control or public health programmes or any other activities described, characterised, implied or likely to be perceived as socially responsible.
- Give preferential treatment to the tobacco industry in the formulation of government policy or the making of any decisions.

F6 Declaration of past engagement with the tobacco industry: Any person applying to join a government body that has a role in setting and implementing public health policies with respect to tobacco control must declare any current or previous work for or on behalf of the tobacco industry, whether gainful or not. Such declarations by personnel must be listed on the government body's conflict of interest register.

F7 Declaration of future intention to engage with the tobacco industry: Any government personnel who has a role in setting and implementing public health policies with respect to tobacco control shall inform the government body about any intention on their part to engage in an occupational activity with or within the tobacco industry, whether gainful or not, within one year of their planned departure from the government body. This intention must be notified as soon as is known. Furthermore, if a person leaves the government body and subsequently decides to engage in an occupational activity with or within the tobacco industry within one year of departure, it must

MODEL GOVERNMENT POLICY STATEMENT

similarly be notified to the government body. All such declarations must be listed on the government body's conflict of interest register.

- F8 **Restrictions on past government body personnel:** Former government personnel who have joined the tobacco industry after employment with a government body are strictly prohibited after resignation, separation or retirement from directly or indirectly engaging with incumbent government body personnel, on any matter or case pending with the government body, for a period of [6/12/24/36] months after departure.

Former government body personnel must not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

- F9 **Divestment from any investments or interests in the tobacco industry:** Any government personnel who have a role in the setting or implementation of public health policies with respect to tobacco control are prohibited from personally investing in any business in the tobacco industry or holding any other interest with the industry. Any such personnel, who hold personal investments or interest in the tobacco industry at the time of joining the government body, must divest themselves of these investments or interests within sixty calendar days of joining the government body. For the purpose of this clause, an interest in the tobacco industry means personal, financial or other interest, including, but not limited to:

- having an existing ownership or investment in the tobacco industry;
- being a member of the board of directors, an officer of the corporation or a partner in a partnership with the tobacco industry;
- receiving any contribution from the tobacco industry.

- F10 **Gifts and other favours:** Government personnel must not demand or receive any contribution from the tobacco industry for themselves, their families, relatives, friends or any other persons or organisations.
- F11 **Declaration of any offer of gifts or favours:** Any offer by the tobacco industry of any contribution must be reported and recorded in the government body's register of tobacco industry engagements.^{xii}
- F12 **Misconduct by others:** Any government official,

representative or employee who becomes aware of a breach of these conduct requirements by another official, representative or employee of that or another government body, shall report that breach to his or her manager. If it relates to the manager, then he or she must report the breach to the appropriate higher authority within the relevant government body.

- F13 **Notification of misconduct by others:** If a manager is notified of an alleged breach of these conduct requirements by personnel of the same government body, this alleged breach shall be referred for action in line with the government body's agreed disciplinary procedures.
- F14 **Commitment to comply with the provisions of this code of conduct:** Prospective government personnel shall sign a document before assuming their official role with any government body, certifying that as a condition of their taking up that role they will observe this code of conduct. Government personnel shall not take any action that seeks to circumvent any officer's obligations under this code of conduct.

G MANAGEMENT AND RESOLUTION OF CONFLICTS OF INTEREST

G1 Recording of conflicts of interest

- G1.1 All government bodies must establish and maintain a register of conflicts of interest for government personnel. A person must be appointed or assigned the role of managing the conflict of interest register and reporting to the chief executive of the government body on conflict of interest management by individuals, and by the government body as a whole.
- G1.2 All government personnel must report any perceived or actual conflict of interest as soon as it becomes apparent. All such conflicts should be recorded in the government body's register of conflicts of interest, along with decisions made on how to manage that conflict.
- G1.3 Any register of conflicts of interest must contain, at a minimum:
- a statement of the perceived or actual conflict of interest;
 - all steps taken by the person concerned to comply with the conflict of interest management measures set out below.

G2 Minor or infrequent conflicts of interest

G2.1 Concerning infrequent or minor conflicts of interest, government personnel should consider the following options for resolving their conflict of interest:

- To retain their position but isolate themselves from any participation in decision-making on the conflicted matter(s). This could include appointing an independent person to make decisions on the conflicted matter, withdrawing from discussion of conflicted matters, and/or not receiving any documents or other information relating to the conflicted matter.
- Allocating relevant conflicted functions to another person, where a particular conflict is likely to continue or reoccur.

G3 Continuing or pervasive conflicts of interest

G3.1 Concerning continuing or pervasive conflicts of interest, government personnel have the following options for resolving their conflict of interest (these are not mutually exclusive options):

- recusal from involvement in identified decision-making processes;
- voluntary or directed restriction of access to relevant or sensitive information;
- divesting or liquidating any financial interest;
- re-arrangement of their duties and responsibilities, or change to an entirely new role;
- transfer of financial investments to genuinely 'blind trust' arrangement(s);
- resignation from the conflicting function;
- resignation from the conflicting position;
- any other method of conflict of interest management that the government body considers appropriate.

G4 Irresolvable conflicts of interest

G4.1 Where a serious conflict of interest cannot be resolved satisfactorily, the person must immediately resign from their official position.

G5 Transparency

G5.1 Whichever approach is chosen for the management of conflict of interest, there must be transparency in how conflict of interest is managed – both in terms of process as well as the outcome.

H IMPLEMENTATION

H1 Responsible official

H1.1 All government bodies will ensure that a senior official of that agency is responsible for implementing and monitoring compliance with the code of conduct provisions and conflict of interest protocols described above.

This includes:

- Establishing procedures for new government personnel to formally acknowledge and agree to code of conduct provisions and conflict of interest management requirements upon employment or contract with the government body.
- Promoting the existence of the code of conduct provisions and conflict of interest management protocols among existing government personnel and ensuring through appropriate steps (e.g., employment agreements and contractual requirements) that those provisions and protocols are made mandatory.
- Putting in place steps to ensure that all government personnel comply with all requirements, including monitoring and reporting requirements.
- Establishing and managing a conflict of interest register, and reviewing all submissions of actual or potential conflicts of interest.
- Providing advice on formalised internal processes, including an appeal process, to the chief executive who would act as the arbiter of the best means of managing conflicts of interest when they arise.
- Providing an avenue for persons to report alleged breaches of code of conduct provisions and conflict of interest protocols. Taking action with respect to those allegations would include investigation and reporting to the chief executive of the circumstances of such breaches.
- Putting in place and applying appropriate sanctions for breach of the code of conduct provisions and conflict of interest management protocols.

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H2 Reporting breaches

H2.1 All alleged breaches of the code of conduct provisions and conflict of interest protocols must be reported to the [above identified responsible senior official] as soon as they become apparent.

H2.2 Any report of an alleged breach must contain at least the following information:

- a summary of the alleged breach that occurred;
- the names of the government personnel involved.

H3 Reporting misconduct (whistle-blowing)

H3.1 Every government body must ensure that:

- There is a confidential reporting mechanism available for government personnel and members of the public, as appropriate, to disclose in good faith and on reasonable grounds, suspected serious breaches of the code of conduct provisions and conflict of interest management protocols.
- There is a process for investigating and prosecuting retaliatory, discriminatory or disciplinary action taken against whistle-blowers who have reported in good faith and on reasonable grounds, suspected acts of corruption to competent authorities.
- Appropriate processes, including the following, are put in place for whistle-blower protection:
 - Due process for both the whistle-blower and the respondent, including protection of confidentiality as appropriate.
 - Protection from any form of discriminatory or retaliatory personnel action, including but not limited to: dismissal, suspension or demotion, or any other disciplinary or corrective action including transfer of duties, loss of pay or any other benefits, a requirement to undergo medical review or training, curtailment of future promotion or employment opportunities, or removal of any

protections otherwise afforded to government personnel (e.g., waiver of liability or protection from criminal and civil liability, particularly against defamation and breach of confidentiality or official information laws).

- Protection from harassment or stigmatisation.

H4 Sanctions for breaches of the code

H4.1 Sanctions for breach of the code of conduct provisions and conflict of interest management protocols should provide for a range of penalties to be applied, depending on seriousness. These should include both administrative penalties (e.g., formal warnings, financial penalties in contracts) and criminal penalties (e.g., referral to the appropriate authorities of any behaviour that may breach anti-corruption legislation).

H4.2 All government agencies should put in place in their standard contracts with service providers, the ability to suspend or cancel contracts where a serious breach of code of conduct provisions or conflict of interest protocols has occurred. Contracts should also have provisions allowing the ability to exclude such providers from future contractual processes for a period of time or for certain activities.

H5 Periodic review

H5.1 The government body code of conduct provisions and conflict of interest protocols should be reviewed annually. The annual review should include, but not be limited to, the following:

- evaluation of the code of conduct provisions and conflict of interest protocols;
- identification of any loopholes and recommendations for remedies;
- recent breaches and the remedies taken.

H5.2 Government bodies must ensure that the annual review is available to the public.

ANNEX 1 CONFLICT OF INTEREST DISCLOSURE FORM

Overview

To ensure the highest integrity, and hence public confidence, in the activities of [name of government body] it is a requirement that all government personnel (including officials, representatives and employees) and any agencies

and their personnel working for or on behalf of [government body] (e.g., contracted providers or members of any boards or committees) disclose any circumstances that could give rise to a potential or actual conflict of interest. This includes any interest that may affect or may reasonably be perceived to affect an agency's or a person's objectivity and independence.

This declaration must be completed at the time of engagement with, or for, [government body]. This obligation to declare any

MODEL GOVERNMENT POLICY STATEMENT

conflict of interest comprises an ongoing obligation, meaning the disclosure form must be completed again in the event that a conflict of interest arises in the future.

When filling out this declaration, you are asked to disclose any financial, professional or other interest relevant to the subject of the work or meeting in which you will be involved and any interest that could be significantly affected by the outcome of the meeting or work. You are also asked to declare relevant interests of others who may, or may be perceived to, unduly influence your judgment such as immediate family members, employers, close professional associates or any others with whom you have a substantial common personal, financial or professional interest.

Please complete this declaration and submit it to [specified agency/person]. If [agency/person] considers that a potential conflict of interest exists, subject to specific circumstances, one of the following outcomes could result:

- you may be asked to publicly declare your interest but continue to participate in the meeting or work;
- you may be asked not to take part in the portion of the meeting, discussion or work related to your interest, or not participate in related decisions;
- you may be asked not to take part in the meeting or work altogether.

In some cases, a conflict of interest may be considered so serious that the only means of managing it will be for the person so conflicted to transfer to a different area of work or, if that is not possible, to resign. [Add reference to relevant employment law, employment conditions, contract requirements, etc. that allow for these steps – and the processes that must be followed].

Please note that:

- Failure to complete this form would preclude consideration of any person or agency for any employment, contracting opportunity or appointment;
- The obligation lies with the agency or person completing this form to complete it fully, accurately and without any equivocation. Missing or deceptive content may result in future action which could, depending on seriousness, result in sanctions, including under employment or contractual law, or referral to law enforcement agencies for investigation;
- Information disclosed by you may later be made available to persons outside of [name of government body] if the objectivity of the work or meeting in which you are involved is questioned and the [appropriate person]

considers disclosure to be in the best interests of the [government body]. However, this will only occur after prior notice to you.

DEFINITIONS

The following definitions shall apply:

- **'Conflict of interest'** shall mean a situation where there is a conflict between the public duties and private interests of a public office holder where the public office holder has or is subject to interests that could improperly influence the performance of his or her official duties and responsibilities. This includes any personal, financial or any other interest, such as having an existing ownership or investment therein, being an officer or a member of the board of directors of a corporation (including its subsidiaries, affiliates, branches) or a partner in partnership engaged therein, and receiving any contribution therefrom. This also includes receiving or accepting any offer or contribution, even if a promise of favourable consideration is not given in exchange. A conflict of interest shall be deemed to exist where a perception of conflict of interest may exist or arise.
- **'Family member'** includes a spouse or life partner, father, mother, son, daughter, brother or sister.
- **'Contributions'** shall mean anything given, whether monetary or in-kind, in favour of an official, employee, or an agency or institution he/she represents or is known to represent, other than those required by law. This includes but is not limited to any act, right, liberality, payment, gift, service, gratuity, favour, entertainment, loan, funding and technical or legal advice.
- **'Government body'** includes all government ministries, departments, agencies, bodies, quasi- or semi-governmental institutions, boards, committees, commissions and other state-run or state-funded bodies in all branches and at all levels of government.
- **'Tobacco Industry'** includes all organisations, entities, associations, and individuals that engage in work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesalers, distributors, importers of tobacco products, growers, tobacco retailers, front groups and any other individuals or organisations, including, but not limited to lawyers, scientists, advertising and marketing consultants, and lobbyists that work to further the interests of the tobacco industry.

MODEL CONFLICT OF INTEREST DISCLOSURE FORM

Name: _____

Position (Employee/Consultant/Volunteer/Trustee/Board Member):

.....

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise) or circumstances that you believe could contribute to a conflict of interest between the [government body] and your personal interests, financial or otherwise:

Any changes to this information should be declared as soon as you become aware of such potential conflicts of interest.

- I have no Conflict of Interest to report.
- I have the following Conflict of Interest(s) to report (please specify other non-profit and for-profit boards you (and your family member) sit on, any for-profit businesses for which you or a family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses that you or a family member own).

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1. EMPLOYMENT AND CONSULTING

Within the past three years, have you received remuneration from a commercial entity or other organisation with an interest related to the subject of any meeting or work you are, or will be, involved in? Please also report any application or negotiation for future work.

- 1a) Employment Yes / No
- 1b) Consulting, including service as a technical or other advisor Yes / No

If yes, provide the type of interest and basic descriptive details:

Name of company, organisation or institution:

Does the interest belong to you, a family member, employer, research unit or other?

Amount of income or value of interest

Current interest (or year ceased):

2. INVESTMENT INTERESTS

Do you have current investments in a commercial entity with an interest related to the subject of any meeting or work you are, or will be, involved in? Please also include indirect investments, such as a trust or holding company. You may exclude mutual funds, pension funds or similar investments that are broadly diversified.

- 2a) Stocks, bonds, stock options, other securities (e.g., short sales) Yes / No
- 2b) Commercial business interests (e.g., proprietorships, partnerships, joint ventures) Yes / No

MODEL CONFLICT OF INTEREST DISCLOSURE FORM

If yes, provide the type of interest and basic descriptive details.

Name of company, organisation or institution:

Belongs to you, a family member, employer, research unit or other?

Amount of income or value of interest:

Current interest (or year ceased):

3. PUBLIC STATEMENTS AND POSITIONS (during the past three years)

3a) As part of a regulatory, legislative or judicial process, have you provided an expert opinion or testimony, related to the subject of the meeting or work you are, or will be, involved in, for a commercial entity or other organisation? Yes / No

3b) Have you held an office or other position, paid or unpaid, where you may be expected to represent interests or defend a position related to the subject of any meeting or work you are, or will be, involved in? Yes / No

If yes, describe the subject, specific circumstances, parties involved, time frame and other relevant details.

4. RESEARCH SUPPORT (Delete if not relevant)

Within the past three years, have you or your department or research unit received support or funding from a commercial entity or other organisation with an interest related to the subject of the meeting or work you are, or will be, involved in? Please also report any application or award for future research support.

4a) Research support, including grants, collaborations, sponsorships and other funding Yes/No

4b) Non-monetary support valued at more than US\$ 1,000 overall (include equipment, facilities, research assistants, paid travel to meetings, etc.) Yes/No

5. TOBACCO OR TOBACCO PRODUCTS (answer without regard to relevancy to the subject of the meeting or work)

Within the past three years, have you had employment or received research support or other funding from the tobacco industry, directly or indirectly, or had any other professional relationship with an entity involved in the production, manufacture, distribution or sale of tobacco or tobacco products or representing the interests of any such entity? Yes/No

If yes, provide the type of interest and basic descriptive details.

Name of company, organisation or institution:

Belongs to you, a family member, employer, research unit or other?

Amount of income or value of interest:

Current interest (or year ceased):

MODEL CONFLICT OF INTEREST DISCLOSURE FORM

6. ADDITIONAL INFORMATION

- 6a) If not already disclosed above, have you worked for the competitor of a product / service which is the subject of any meeting or work you are, or will be, involved in, or will your participation in the meeting or work enable you to obtain access to a competitor's confidential proprietary information, or create for you a financial or commercial competitive advantage? Yes / No
- 6b) To your knowledge, would the outcome of the meeting or work benefit or adversely affect interests of others with whom you have substantial common personal, financial or professional interests (such as your adult children or siblings, close professional colleagues, administrative unit or department)? Yes / No
- 6c) Is there any other aspect of your background or present circumstances not addressed above that might be perceived as affecting your objectivity or independence? Yes / No

If yes, describe the subject, specific circumstances, parties involved, time frame and other relevant details.

DECLARATION

I hereby declare that the disclosed information is true and complete to the best of my knowledge.

Should there be any change to the above information, I will promptly notify the [responsible person] and complete a new declaration of interest(s) which describes the changes. This includes any change which occurs at any time while carrying out the duties of public office.

I have reviewed, and agree to abide by, [code of conduct provisions of the government body].

Signature: Date:

ACKNOWLEDGEMENT

Fact Sheet 9 of this toolkit draws on key resources available internationally. In particular, The Union wishes to acknowledge the following:

- OECD. 2005. Managing Conflict of Interest in the Public Sector: A toolkit. France: OCED Publishing. Available at: <http://www.oecd.org/dataoecd/5/48/49107986.pdf?Contentid=49107987>.
- Gilman S. 2005. Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons. Prepared for the World Bank. Available at: <http://www.oecd.org/dataoecd/17/33/35521418.pdf>.
- OECD. 2003. Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service. OECD. Available at: <https://www.oecd.org/gov/ethics/2957360.pdf>.
- Parliament of New South Wales. Code of Conduct for Members. Available at: <https://www.parliament.nsw.gov.au/members/Pages/members-ethics.aspx>.
- OECD. The 10 Principles for Transparency and Integrity in Lobbying. OECD. Available at: <http://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>.
- United Nations General Assembly. 1996. A/RES/51/59 Action Against Corruption. UN. Available at: <http://www.un.org/documents/ga/res/51/a51r059.htm>
- Southeast Asia Tobacco Control Alliance and Health Justice, Inc. 2010. Preventing Tobacco Industry Interference. Thailand: SEATCA and Health Justice. Available at: <http://seatca.org/dmdocuments/toolkit%20for%20policy%20makers%20and%20advocates%20preventing%20tobacco%20industry%20interference.pdf>.
- Government of Canada Privy Council Office. 2006. Conflict of Interest and Post-Employment Code for Public Office Holders. Ottawa: Privy Council Office. Available at: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=aarchives/code/code-conflict-eng.htm>.
- Republic of the Philippines, Civil Service Commission and Department of Health. 2010. Joint Memorandum Circular No. 2010-01. Protection of the Bureaucracy Against Tobacco Industry Interference. Manila: Republic of the Philippines Civil Service Commission and Department of Health. Available at: <http://www.tobaccocontrolaws.org/files/live/Philippines/Philippines%20-%20JMC%202010-01%20-%20national.pdf>.
- New Zealand Government State Services Commission. 2007. Standards of Integrity and Conduct. Wellington: State Services Commission. Available at: <http://www.ssc.govt.nz/integrityandconduct>.
- World Health Organisation. Declaration of Interests for WHO Experts. Geneva: World Health Organization . Available at: http://www.who.int/ipcs/methods/harmonization/areas/mutagenicity_doi.pdf.
- Transparency International. 2006. Transparency International Conflict of Interest Policy. Guatemala City: TI. Available at: https://www.transparency.org/whoweare/accountability/conflict_of_interest_policy/3/.
- United Nations Secretariat. 2006. Secretary-General's bulletin, Financial disclosure and declaration of interest statements. Available at: <https://hr.un.org/handbook/source/secretary-general%27s-bulletins/date>.
- OECD. 2009. Global Forum on Public Governance. Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation. GOV/PGC/GF(2009)1. 4-5 May 2009. Available at: <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/GF%282009%291&docLanguage=En>.

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- i World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: WHO World Health Organization. Available at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf, accessed 18 September 2017.
 - ii FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017
 - iii Ibid. See Principle 1, p2.
 - iv See section 3.0 for a discussion relating to differential treatment of the tobacco industry.
 - v FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. See Principle 1, p2. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017.
 - vi Note: countries which are not Parties to the FCTC may still want to implement these model provisions on code of conduct and conflict of interest management.
 - vii World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf, accessed 18 September 2017.
 - viii FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html, accessed 18 September 2017.
 - ix Ibid. See Principle 1, p2.
 - x See Article 5.3 Toolkit Fact Sheet 6: Model Directive on Implementation of Steps to Curb the Influence of the Tobacco Industry, as a potential model for such a Directive.
 - xi Ibid.
 - xii Note that The Union's Fact Sheet 6: Model Directive on Implementation of Steps to Prevent Interference by the Tobacco Industry recommends the establishment of a central web-based repository for registering Government bodies' engagements with the tobacco industry. If this is not done centrally, then individual agencies should record, and make public, all such engagements.
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Photo credit:
Matthieu Zellweger

*“There is a fundamental
and irreconcilable conflict
between the tobacco industry’s
interest and public health
policy interests.”*

This is the first principle from the guidelines for the implementation
of Article 5.3 of the WHO Framework Convention on Tobacco Control