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

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

Protecting from Tobacco Industry Interference

 LEGISLATIVE & POLICY TEMPLATES

APRIL 2012
TOOLKIT REFERENCE
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Protecting from Tobacco Industry Interference

LEGISLATIVE TEMPLATES

Introduction

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

Assess the Legal Framework

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 already exist, but these could be outdated, unimplemented, or not specifically tailored for tobacco industry interference.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

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

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

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

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

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

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

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

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

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

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

**Assessing the Type of Legislation**

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

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

**A Word About the Templates**

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

**A. Comprehensive Government Policy**

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Title/Subject

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

Preamble/Rationale/Explanatory Notes/State Policy

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

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

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

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

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

**Definitions**

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

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

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

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

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

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

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

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

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

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

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**Government Officials Rights & Duties**

**Focal Points / Structures (OPTIONS)**

Optional provisions for the creation of a council or committee or assigning the task to an existing agency or body:

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

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

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

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

Roles and functions of the *X Committee*:

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

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

Creation of 5.3 Council – A 5.3 Council is hereby created and attached to the Department/Ministry of Health under its administrative supervision. It shall have the primary responsibility for the enforcement of this Act and coordination among different agencies. It shall transmit all cases for prosecution arising from violations of this Act to the proper authorities for appropriate action: Provided, however, that it may institute such administrative actions and disciplinary measures as may be warranted in accordance with law.

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

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

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

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

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

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

Avoid Conflict of Interest/Disclosure and Management

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

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

Limit/Prohibit Interaction with the Tobacco Industry

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

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

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

(Add other relevant government agencies)

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

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

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

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

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

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

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

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

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

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

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

Reject Contributions of/Partnerships with the Tobacco Industry

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

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

Whistleblower Protection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rights and Benefits of a protected whistleblower. --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\textbf{Tobacco Industry Regulation}

\textbf{Ban/ Prohibit Publication of so-called CSR}

\textbf{Option A}

\textbf{Ban of CSR:} So-called CSR activities, donations or similar contributions that credit tobacco companies, its affiliates, as well as entities related to and carrying the names and brands of tobacco companies, are prohibited.

\textbf{Option B}

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

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

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

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

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

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

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

(1) The kind of advertising, promotion or sponsorship, including its content, form and type of media
(2) The placement and extent or frequency of the advertising, promotion or sponsorship
(3) The identity of all entities involved in the advertising,
promotion and sponsorship including advertising and production companies

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

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

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

Disclosure of Information to the public and pertinent government agencies

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

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

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

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

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

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

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

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

Agencies shall not have any financial interest in tobacco companies, \(^{xxviii}\) or invest in the tobacco industry and related ventures.

OR

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

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

Offenses, Sanctions, and Enforcement

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

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

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

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

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

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

**Miscellaneous Provisions**

**Programs: Awareness Raising**

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

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

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

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

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

**Programs: Monitoring & Reporting**

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

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

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

**Programs: Capacity Building**

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

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

**Programs: Partnership Building**

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

**Funding**

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

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

**Savings and Repeal**

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

**Effectivity**

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

Protecting from Tobacco Industry Interference
B. Requiring Information from the Tobacco Industry

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

Sample Policy Template

Requirement of Information from the Tobacco Industry

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

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

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

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

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

Protecting from Tobacco Industry Interference
b. Information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, such as lobbying, philanthropy, political contributions.

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

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

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

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

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

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

II. Enforcement Mechanism

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

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

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

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

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

III. Monitoring

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

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

IV. Integration in the Program

The agency shall integrate the policy in its programs related to the promotion of public disclosure of transactions involving public interest and transparency in the government.

(Specify all known programs here)

V. Sustained Awareness-Raising Program

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

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

VI. Funding

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

VII. Effectivity

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

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

Sample Template (based on CSC –DOH JMC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Aware of the higher level of risk and responsibility with respect to tobacco industry interference, the Philippine Department of Health went a step further than the Civil Service initiative on amending the Code of Conduct and provided specific guidelines on how the health officials should take action to denormalize tobacco industry’s CSR activities. It appointed a division to take charge of this function in order to assist the rest of the department as well as other civil servants in implementing the policies geared towards implementing Article 5.3. Below is a sample template based on what is required under the DOH-DM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sample Memorandum Template:

MEMORANDUM ORDER
No. _____
Series of 2012

TO:
FROM:
SUBJECT: Revised Guidelines for Hiring of Personnel

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

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

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

For the purpose of this rule, interest in the tobacco industry means personal, financial or other interest\(^{iii}\), including, but not limited to: \(^{iii}\)

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

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

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

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

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

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

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

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

E. No Contribution Policy

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

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

FROM:

SUBJECT : PROHIBITION FROM RECEIVING ANY CONTRIBUTION FROM THE TOBACCO INDUSTRY

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

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

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

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

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

All costs incident to the implementation of this Memorandum shall be taken from the X budget.
For strict compliance.
F. Declaration of Interest

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

Declaration of Interest

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

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

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

Signed on this 22nd day of April, 2012.

Name:

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

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

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

SUBJECT: PROTECTION OF THE BUREAUCRACY AGAINST TOBACCO INDUSTRY INTERFERENCE

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

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

Pursuant to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which was ratified by the President on September 23, 2003 and concurred in by the Senate on April 25, 2005, specifically under the title General Obligations, Article 5.3; the Parties, in setting and implementing their public health policies with respect to tobacco control, shall act to protect these policies from commercial and vested interests of the tobacco industry.

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

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

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

1.0 Coverage

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

2.0 Definition of Terms

2.1 **Tobacco Industry** shall refer to organizations, entities, associations, and individuals that work for or in behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, front groups and any other individuals or organizations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry.¹

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

3.0 Prohibitions

3.1 **Unnecessary Interaction with the Tobacco Industry**

Public officials and employees shall interact with the tobacco industry only when strictly necessary for the latter’s effective regulation, supervision or control. Transparency in all interactions with the tobacco industry shall be observed. Any necessary interaction with the tobacco industry should be carried out in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction. In the event the tobacco industry engages in any conduct that may create such a perception, public officials and employees shall act to prevent or correct this perception.²

3.2 **Preferential Treatment to the Tobacco Industry**

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

3.3 **Accepting Gifts, Donations and Sponsorship**

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

3.4 Financial Interest in the Tobacco Industry

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

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

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

3.6 Conflict of Interest with the Tobacco Industry

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

3.7 Engaging in an Occupational Activity within the Tobacco Industry

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

4.0 Responsibilities of the Head of Agency

The head of agency shall be responsible for the following:

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

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

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

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

6.0 Implementation of the Program

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

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

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

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

This Circular shall amend all issuances inconsistent herewith.

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

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

ESPERANZA L. CABRALL, MD
Secretary
Department of Health

CERTIFIED TRUE COPY

JUN 29, 2010
MAYLEEN V. AGUIRRE
Chief, Records Section - IMS
Department of Health
ANNEX A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ibid
Ibid
Ibid
Ibid
Ibid
Ibid
Ibid
Ibid
Ibid
Ibid

Rep. Act 6713, Sec. 9

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

Rep. Act 6713, Sec. 7 (b)

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

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

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

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

Recommendation 4.10, Guidelines implementing Article 5.3 of the FCTC

Parties should not allow any official or employee of government or of any semi/quasi governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.
Annex B
Guideline of the Adoption and Implementation of Public Health Policy on Tobacco Control and Protection against Tobacco Industry Interference, Department of Education
GUIDELINES ON THE ADOPTION AND IMPLEMENTATION OF PUBLIC HEALTH POLICIES ON TOBACCO CONTROL AND PROTECTION AGAINST TOBACCO INDUSTRY INTERFERENCE

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

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

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

2. These Guidelines aim to:

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

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

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

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

Reference:
   None

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

EMPLOYEES
OFFICIALS
POLICY
RULES & REGULATIONS
SCHOOLS

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

Coverage

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

1. Definition of Terms

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

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

2. Prohibitions

   a. Unnecessary Interaction with the Tobacco Industry

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

   b. Preferential Treatment to the Tobacco Industry

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

   c. Accepting Gifts, Donations and Sponsorship

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

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

d. Financial Interest in the Tobacco Industry

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

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

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

f. Engaging in an Occupational Activity within the Tobacco Industry

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

3. Information Dissemination Program

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

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

ENDNOTES

1 Par. 11 Guidelines for the implementation of Article 5.3 of the WHO FCTC: “The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.”
2 Judith Mackay and Mary Assunta, Ethical guidelines for meeting with the tobacco industry
3 Ibid
4 Ibid
5 Ibid
6 Ibid
7 Ibid
8 Ibid
9 Ibid
10 DOH Code of Conduct, Rule VII, Section 2 (3), DOH Administrative Order No. 2009-0004
11 DOH Code of Conduct, Rule VIII, Section 1, DOH Administrative Order No. 2009-0004
12 DOH Code of Conduct, Rule VIII, Section 2, DOH Administrative Order No. 2009-0004
13 DOH Code of Conduct, Rule VIII, Section 3, DOH Administrative Order No. 2009-0004
14 Recommendation 4.3, Guidelines for Implementation of Article 5.3 of the WHO FCTC
“Parties should not award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.”
15 Par. 23, Guidelines for Implementation of Article 5.3 of the WHO FCTC
“Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United nations general Assembly and by several governmental and regional economic integration organizations.”
16 Recommendation 4.7, Guidelines implementing Article 5.3 of the WHO FCTC
17 Recommendation 4.1, Guidelines implementing Article 5.3 of the FCTC
18 Recommendation 4.9, Guidelines implementing Article 5.3 of the FCTC
19 Recommendation 3.1, Guidelines for Implementation of Article 5.3 of the WHO FCTC
20 Recommendation 6.2, Guidelines implementing Article 5.3 of the FCTC
“Parties should not endorse, support, form partnerships with or participate in the activities of the tobacco industry described as socially responsible.”
21 Recommendation 3.2 Guidelines for Implementation of Article 5.3 of the WHO FCTC
“Parties should not accept, support, or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.”
22 Recommendation 5.1, Guidelines implementing Article 5.3 of the FCTC
23 Recommendation 5.3 Guidelines for Implementation of Article 5.3 of the WHO FCTC
24 Recommendation 6.2 Guidelines for Implementation of Article 5.3 of the WHO FCTC
25 Par. 41, Guidelines for implementation of Article 13 of the WHO FCTC
26 Recommendation 7.1, Guidelines implementing Article 5.3 of the WHO FCTC
27 Par. 17.7 Guidelines for Implementation of Article 5.3 of the WHO FCTC
28 Recommendation 4.7, Guidelines implementing Article 5.3 of the WHO FCTC
29 Par. 33 Guidelines for the Implementation of Article 5.3 of the FCTC
“Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could play an essential role in monitoring the activities of the tobacco industry.”
30 Recommendation 5.1, Guidelines implementing Article 5.3 of the FCTC
31 Recommendation 5.3 Guidelines for Implementation of Article 5.3 of the WHO FCTC
32 Recommendation 6.2 Guidelines for Implementation of Article 5.3 of the WHO FCTC
33 Par. 41, Guidelines for implementation of Article 13 of the WHO FCTC
Based completely on the CSC-DOH JMC adopted jointly by the Philippine Civil Service Commission and Department of Health.

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

Rep. Act. 6713, Sec. 9

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

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

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

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

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

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

Ibid

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

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

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

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

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

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

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