FCTC Article 5.3 Guidelines Best Practice: The Role of the Public Service Commission
The Southeast Asia Tobacco Control Alliance (SEATCA) is a multi-sectoral alliance established to support ASEAN countries in developing and implementing effective tobacco control policies. It responds to the serious need to fast-track tobacco control policies in Southeast Asia. Working to identify tobacco control priorities in the region and coordinating efforts on these priorities, SEATCA promotes knowledge-sharing among countries for effective, evidence-based tobacco control measures and regional cooperation among its advocacy partners.

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

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The Role of Public Service in Implementing a Global Tobacco Treaty

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The Role of Public Service In Implementing a Global Tobacco Treaty

WHO FCTC:
Global Tobacco Treaty

The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) is the first treaty developed under the auspices of the WHO which came into force in February 2005 and has been ratified by 180 Parties (out of 196 eligible Parties), representing 89% of the world's population. It is a treaty that aims to address the devastating health, social, economic, and environmental consequences of tobacco consumption and exposure to tobacco smoke.

General Treaty Obligation: Article 5.3

The FCTC embodies numerous evidence-based measures to reduce smoking and exposure to tobacco smoke, promote alternative livelihood, and regulate the tobacco industry in various aspects of operation. Article 5.3 of the FCTC is an overarching obligation that allows the government to fulfill the objectives of the treaty by obligating Parties to protect their public health policies from the commercial and other vested interests of the tobacco industry.

Coverage: Public Health Policies with respect to Tobacco Control

The purpose of Article 5.3 is to protect public health policies with respect to tobacco control.

This obligation applies to officials who have roles to play in developing or implementing policies, programs, and strategies corresponding to FCTC provisions. The sectors involved include, among others:

1. Agriculture (Art. 17: Provision of support for economically viable alternative activities; Art. 18: Protection of the environment and the health of persons)
2. Budget (Art. 26: Financial resources)
3. Culture and Arts (Art. 13: Tobacco advertising, promotion, and sponsorship)
4. Customs (Art. 15: Illicit trade in tobacco products)
5. Development/Sustainable Development (Art. 17: Provision of support for economically viable alternative activities)
6. Education (Art. 12: Education, communication, training, and public awareness)
7. Environmental (Art. 8: Protection from exposure to tobacco smoke; Art. 18: Protection of the environment and the health of persons)
8. Foreign Affairs or International Cooperation (Art. 2: Relationship between this Convention and other agreements and legal instruments; Art. 20: Research, surveillance and exchange of information; Art. 21: Reporting and exchange of information; Art. 22: Cooperation in the scientific, technical, and legal fields and provision of related expertise)
9. Food and Drug/Regulatory Agencies of Health (Art. 9: Regulation of the contents of tobacco products; Art. 10: Regulation of tobacco product disclosures; Art. 11: Packaging and labeling of tobacco products)
11. Labor (Art. 17: Provision of support for economically viable alternative activities; Art. 18: Protection of the environment and the health of persons)
12. Local Government (Art. 16: Sales to and by minors)
13. Marginalized Sectors (women, children, indigenous peoples, urban poor, etc.) (all substantive provisions)
14. Public Information (Art. 12: Education, communication, training, and public awareness)
15. Public Service (Art. 5: General obligations [including multisectoral collaboration and protection against tobacco industry interference])
17. Sports (Art. 13: Tobacco advertising, promotion, and sponsorship)
18. Tax or revenue (Art. 6: Price and tax measures to reduce the demand for tobacco)
19. Trade (e.g., Art. 9: Regulation of the contents of tobacco products; Art. 10: Regulation of tobacco product disclosures; Art. 17: Provision of support for economically viable alternative activities)
20. Transportation (Art. 8: Protection from exposure to tobacco smoke)

1. Raise awareness about the harmful nature of tobacco products and tobacco industry interference
2. Limit interaction with the tobacco industry and ensure the transparency of interactions that occur
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry
4. Avoid conflicts of interest for government officials and employees
5. Deformalize activities described as “socially responsible” by the tobacco industry
6. Require that information provided by the tobacco industry be transparent and accurate
7. Do not give preferential treatment to the tobacco industry
8. Treat state-owned tobacco industry in the same way as any other tobacco industry

FCTC Article 5.3 Guidelines

The Guidelines for the Implementation of Art 5.3 (Guidelines) was adopted through consensus by treaty parties in 2008 to assist governments in implementing Art 5.3. The guidelines allow policymakers and implementers to ensure that the efforts to protect tobacco control policies from the tobacco industry are comprehensive and effective. It recommends that governments establish measures to:

Transparency Measures Recommended

The Guidelines provided specific measures to promote transparency in reducing conflicts of interest and in dealing with the tobacco industry:

- Disclosure and management of conflict of interest for officials, employees, consultants, and contractors involved in setting and implementing public health policies with respect to tobacco control
- Transparent interaction with the tobacco industry through public hearings, public notices of interactions, and disclosure of records
- Disclosure of tobacco industry activities
- Disclosure or registration of tobacco
Translating FCTC Article 5.3 into Reality

Specific Rules for Public Officials

Many of the items in the Guidelines refer to the conduct of public officials, specifically highlighting the need to develop clear policies that cover all those working in government offices, including contractors and applicants, and the measures that need to be taken to avoid conflicts of interests, such as prohibiting the following:

1. Having partnerships, non-binding or non-enforceable agreements with the tobacco industry
2. Accepting or endorsing policy drafts or other offer of assistance from the tobacco industry
3. Accepting or endorsing instruments drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures
4. Representing the tobacco industry in bodies or entities involved in developing or implementing policies in relation to tobacco control
5. Receiving contributions, gifts, or donations from the tobacco industry
6. Participating in “socially responsible” activities of the tobacco industry
7. Granting privileges, incentives, or benefits to the tobacco industry

Case Study

The following case study shows in detail how one Southeast Asian government’s application of such recommendations has led to best practices in Art 5.3 implementation despite the challenges faced.

The Philippines: Civil Service Commission

After representatives from the Department of Health (DOH), Civil Service Commission (CSC), and the civil society members learned about Art 5.3 and its Guidelines from a SEATCA meeting in 2009, they continued to meet regularly to monitor tobacco industry interference and decide on policy reforms that could prevent such interference. After months of collective deliberation and several consultations with other government agencies, the DOH and the CSC jointly issued the Joint Memorandum Circular No. 1 of 2010 (JMC). This policy provides a code of conduct for all government officials in relation to the tobacco industry, which, consistent with Art. 5.3 Guidelines, is broadly defined in the policy to include all those that represent the tobacco industry. The Civil Service Commission has jurisdiction to hear complaints related to the violation of the JMC.

Box 1. JMC in a Nutshell

Consistent with the Anti-Graft and Corrupt Practices Act and the FCTC:

1. All public officials shall:
   • Not interact with the tobacco industry (TI) unless strictly necessary for its regulation;
   • Make all “necessary” interactions public and transparent;
   • Not receive any form of direct or indirect contribution from TI; and
   • Disclose interests in the TI.
2. Violations of JMC are subject of administrative proceedings.
3. Heads of agencies must include implementation of the JMC in their annual agency reports.

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1 Equivalent of Public Service Commission in other countries, the Philippine Civil Service Commission is an independent Constitutional body in charge of the working conditions and wellbeing of all public servants in the country.
Success Stories

The CSC’s efforts to implement the JMC have resulted in interventions that have been significant in ensuring the protection of tobacco control measures. For instance, in a local government unit called Albay, tobacco control advocates, with the assistance of a CSC lawyer, warned against potential violation of the JMC to prevent the tobacco industry from interfering during a hearing on smoke-free legislation. The tobacco companies were asked to submit any positions in advance and in writing to ensure transparency and to avoid unnecessary interactions with local government officials. This effectively reduced the challenges the advocates faced in getting a 100% Smoke-Free Ordinance adopted.

Box 2. JMC in Action

a. The Department of Education adopted a policy to prohibit TI contributions (so called CSR of TI) in public schools and warned those reported to have received TI CSR indirectly.
b. The Department of Health introduced a more stringent version of the JMC that applies to all agencies and personnel in the agency.
c. When a multinational tobacco company approached the Bureau of Customs to be a “partner” in curbing illicit trade, the government agency sought advice from the CSC and was informed that it would violate the JMC if it pursues this partnership.
d. The Department of Labor and Employment, the Department of Science and Technology, the Department of Foreign Affairs, the Bureau of Internal Revenue, and the Metro Manila Development Authority have issued their respective regulations compliant with the JMC.

Box 3. Raising Awareness

Consultations with government agencies regarding Art. 5.3 have encouraged some agencies to initiate their own Art. 5.3-compliant policy. For instance, in January 2010, the Land Transportation and Franchising Regulatory Board (LTFRB) has required all PUVs and land transportation terminals to be 100% smoke-free. PUV drivers and operators are responsible for posting “No Smoking” signs in their vehicles, and drivers are responsible for warning their passengers and co-workers against smoking inside PUVs.

In accordance with WHO Art. 5.3, the LTFRB “shall endeavor to partner with government agencies, civil society organizations, and private sector, except, those representing tobacco interests.”
Winds of Change

Countering Tobacco Industry Interference

Below are some of the tobacco industry’s common tactics that the Philippines managed to address with the help of the JMC, a policy that adopts Article 5.3 recommendations.

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

NOW: In 2012, the Bureau of Customs rejected the renewal of partnership with Philip Morris, citing that Art 5.3 and the JMC prohibit the agency from doing so.

THEN: In 2009, the Philippines’ Bureau of Internal Revenue (BIR) awarded a Billionaire’s Club Award to Philip Morris for being one of the highest taxpayers. While other businesses have received the award, Philip Morris’ award was widely publicized. This created a perception of endorsement from the government.

NOW: Based on the JMC, the BIR adopted Revenue Regulation (RR) 28-2014, which reiterates and spells out the rules in the JMC, and added that any violation of the RR shall be deemed conduct prejudicial to the best interest of the service and shall constitute a grave offense.

The tobacco industry does not rest, neither should we.

The implementation of the JMC is not without challenges. In May 2012, the Philippines’ Department of Labor and Employment (DOLE) also issued a memorandum to implement CSC-DOH Joint Memorandum Circular 2010-01. However, four months later, Philip Morris (PMFTC) undermined the policy by meeting with DOLE officials in a tobacco-producing region and organizing an industry-led tripartite committee to deal with child labor in tobacco. The Committee includes PMFTC, farmer representatives, and the government. The authorities are currently looking into this matter in line with the JMC.
Best Practices Checklist

ESTABLISH A FORUM

In early 2009, the Philippines set up a multi-sectoral Article 5.3 committee that includes the Department of Health, the Civil Service Commission, other government agencies, and NGOs.

ADOPT A CODE OF CONDUCT

In 2010, the Philippines adopted a policy to “Protect the Bureaucracy from Tobacco Industry Interference” which includes revisions to the Code of Conduct, a monitoring/reporting process, and administrative sanctions.

EXCLUDE TOBACCO INDUSTRY IN MEETINGS

In international examples, the Indian government severed ties with a tobacco conference that included tobacco industry representatives. At the International Negotiating Body sessions for the Illicit Trade Protocol, representatives of over a hundred governments agreed to eject the tobacco industry from the public gallery.

For more details on this checklist and other tools to encourage government agencies to adopt policies that protect against tobacco industry interference, please check out SEATCA’s Toolkit for Policy Makers and Advocates: Preventing Tobacco Industry Interference available at www.industryinterference.seatca.org
The First Step

Establish a core group and develop a plan.

In the Philippines, members of the Core Group on Art 5.3 include high-level officials in the Department of Health, Civil Service Commission, and several NGOs. Other potential partners include the Ombudsman and anti-corruption agencies.

In July 2009, an Art 5.3 Committee was formally set up under the Department of Health to develop implementation strategies to fulfill the obligations under Art 5.3 as elaborated by the Guidelines.

The Committee is composed of DOH directors and high-level policymakers, high-level representatives from the Civil Service Commission, Office of the President, as well as civil society and NGO representatives. The body meets regularly and has created a working group for Inter-agency Linkages, Policy Development, and Communications.

The Inter-agency Linkages working group coordinates the meetings with key government agencies to ensure that Art 5.3 is implemented in these agencies. The Policy Development working group focuses on developing strategies and policies required to promote a tobacco industry-resistant culture. The Communications group develops tools, response mechanisms, and IEC materials to raise awareness about tobacco industry interference. It has produced fact sheets, posters, and videos relating to Art 5.3. It also developed letter templates and press materials.

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

Box 4. Government Agencies Targeted by the Tobacco Industry

Global studies show a pattern on the type of government bodies that the tobacco industry “targets” or partners with because of their existing or potential role in tobacco control measures:

- Ministries or Departments of
  - Agriculture
  - Budget
  - Culture
  - Customs
  - Education
  - Environment
  - Finance
  - Foreign Affairs
  - Health
- Congress or National Assemblies
- Local government units (LGUs)

- Internal Revenue
- Justice
- Labor and Employment
- Social Welfare
- Tobacco (Board)
- Trade and Industry
- Transportation and Communication
- Internal Revenue
- Justice
- Labor and Employment
- Social Welfare
- Tobacco (Board)
- Trade and Industry
- Transportation and Communication
### The Next Step

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

Continue to overcome challenges.

Adopting policies and programs is a good start but the real challenge is in implementing and sustaining these initiatives.

Build capacity.

In 2010, the DOH provided initial support for the CSC to conduct trainings among CSC officers to implement the JMC. The CSC continues to conduct trainings and aims to incorporate JMC implementation in existing programs and constantly develops tools. The legal department of the CSC significantly contributes to the technical aspects of the training. Professionals in civil society contribute to these efforts as well.

Build alliances.

The CSC continues to reach out to partners by conducting inter-agency Article 5.3 meetings on a quarterly basis. CSC personnel and lawyers also serve as resource persons in capacity-building activities of LGUs, government agencies, and other entities interested in implementing the JMC. Take immediate action.
Take Immediate Action.

In August 2014, an online news agency reported that the NTA was liable for unnecessary interaction with Mighty Corp., a local tobacco company. The National Tobacco Administrator (NTA) Edgardo Zaragoza posed together with a tobacco company’s president in a synchronized tree-planting activity. The tobacco company website reports: “NTA lauds Mighty Corp. on its contribution in the tobacco industry.”

In response to this news item, the CSC wrote a letter to the NTA warning it that any activities undertaken jointly with Mighty Corporation is a form of unnecessary interaction and violates the JMC.

As a response to publicly available reports that imply a possible violation of the JMC, the CSC had sent similar reminder/warning letters to a few local government units and government offices, such as the Department of Trade and Industry.

Prepare to overcome challenges.

The JMC has not eliminated TI interference but has been an effective tool to manage it. A law passed in 2003 created a mechanism for the tobacco industry to interfere. An association of tobacco companies, the Philippine Tobacco Institute (PTI), sits as a member of the Interagency Committee that is tasked to implement the Tobacco Regulation Act. While legislative bodies are working to change this law, the JMC serves as the tobacco control advocates’ strongest weapon to counter tobacco industry’s interference in this committee.

The tobacco industry, including those protecting its interests, continues to undermine the JMC at every opportunity and seeks to have the Art 5.3-based policy revoked. The CSC continues to stand firm in order to uphold its mandate to promote integrity in public service.
How the Philippines is Implementing Article 5.3

RECOMMENDATION 1

Raise awareness about the harmful nature of tobacco products and about tobacco industry interference in tobacco control policies.

In 2010, the DOH issued DOH Memo 26 where the DOH is required to state the following in all its correspondence, contracts, and issuances: “The Department of Health does not deal with the tobacco industry or those representing its interests.” In addition, all DOH personnel are required to publicly denounce any tobacco industry donation or perception of partnership.

Under this policy, the Department of Health is also required to keep a public record of persons and entities identified as part of the tobacco industry.

The DOH, CSC, and NGOs have conducted workshops all over the country to raise awareness about Art 5.3, tobacco industry interference, and the JMC. The CSC has also developed monitoring and reporting procedures to ensure that the policy is effectively implemented.

RECOMMENDATIONS 2 to 4

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

In 2010, the DOH and the CSC issued Joint Memorandum Circular 2010-01 to protect the bureaucracy from tobacco industry interference. (See full version in Annex and summary on page 3.)

Many other government agencies and local governments adopted a complementary policy to support and ensure JMC implementation.

RECOMMENDATION 5

Denormalize and regulate tobacco industry activities defined as “socially acceptable.”

In 2010, the Health Secretary disseminated warning letters to the recipients of tobacco company donations, highlighting possible violation of advertising laws and the obligation to protect public health from the vested interests of the tobacco industry.

In 2013, the Department of Education investigated a report that a public school received funding for an education program through an NGO that received tobacco industry funds; the official involved was given due warning.

In 2014, the CSC wrote a letter to the NTA warning that its activities with Mighty Corporation is a form of unnecessary interaction and violates the JMC.
Republic of the Philippines

CIVIL SERVICE COMMISSION
Constitution Hill, Batasan Pambansa Complex,
Diliman, 1128 Quezon City

DEPARTMENT OF HEALTH
San Lazaro Compound, Rizal Avenue,
Sta. Cruz, 1003 Manila

JOINT MEMORANDUM CIRCULAR NO. 2010-01

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

SUBJECT: PROTECTION OF THE BUREAUCRACY AGAINST TOBACCO INDUSTRY INTERFERENCE

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

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

Pursuant to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), which was ratified by the President on September 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’.

CERTIFIED TRUE COPY

[Signature] MAYCLEN V. AQUIRRE
Chief, Records Section - IMS
Department of Health
The definition of tobacco industry and tobacco industry interference follow very closely the definition found in Art. 5.3 Guidelines.

The policy lists down the following prohibitions: (i) unnecessary interaction with the tobacco industry; (ii) preferential treatment to the tobacco industry; and (iii) accepting gifts, donations, and sponsorships.
The head of each agency is then given a specific role to raise awareness about this policy and adopt the same in its Code of Conduct Rules.
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 campaigns to ensure sustainability of the programs.

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

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

This Circular shall amend all issuances inconsistent herewith.

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

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

ESPERANZA I. CABRAL, MD
Secretary
Department of Health

The JMC urges agencies to disseminate tobacco industry interference concerns and requires the submission of information that will assist in enforcing the policy, such as reporting on tobacco industry tactics and making such information publicly accessible.

Agencies are also required to include compliance reports in its annual report to the CSC.

The DOH committed to provide seed funding and technical assistance to CSC in the policy implementation.

Agencies are also required to encourage CSO participation in implementing this policy. CSOs must not have tobacco industry affiliation.

Any violation of this policy shall be a ground for administrative disciplinary action.
Because some agencies would likely be exposed to tobacco industry interactions (e.g., trade), the rules on behavior, in case of "necessary" interactions with the tobacco industry, are listed here.

(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 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.
To denormalize the tobacco industry's so-called CSR activities, public officials are required to avoid the perception of partnership or cooperation with the tobacco industry. Public officials are required to publicly correct any perception of partnership that may have been created.
In its objectives, the Order focuses on an apparent concern: the need to avoid all forms of partnership with the tobacco industry. This stems from the fact that the leading tobacco companies have invested aggressively in the education sector and have projected themselves as partners of schools.
The policy issuance by the Department of Education provides specific measures to gather and disseminate information on tobacco industry interference. These provisions are also found in the JMC but are particularly useful in the context of the public school system.

- School officials are required to report any form of so-called CSR activity of the tobacco industry.
- School officials are also required to report any form of information that would facilitate enforcement against tobacco industry interference.

- Information includes offer of donation made by the tobacco industry or any preferential treatment given to it.
- Information reported shall be made publicly accessible.
Sample Sector Specific Policy for Tax Authorities:  
Bureau of Internal Revenue RMO No. 28-2014

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
BUREAU OF INTERNAL REVENUE  
Quezon City

July 14, 2014

REVENUE MEMORANDUM ORDER NO. 28-2014

SUBJECT: Amendment to the Revised Code of Conduct for Revenue Officials and Employees as implemented by Revenue Memorandum Order (RMO) No. 53-2010 by prescribing the policies and guidelines on the protection of the Bureau of Internal Revenue (BIR) against tobacco industry interference pursuant to the Joint Memorandum Circular No. 2010-01 of the Civil Service Commission and Department of Health

TO : ALL REVENUE OFFICIALS AND EMPLOYEES AND OTHERS CONCERNED

This Order is an addendum to RMO No. 53-2010 dated June 11, 2010 by prescribing the policies and guidelines on the protection of the Bureau of Internal Revenue (BIR) against tobacco industry interference, defining therein certain offenses as additional grounds for administrative disciplinary action with their corresponding penalties, which shall form part of Section 18 as letter L thereof, Prohibition Against Conflict of Interest and Partiality, Chapter III-Responsibility to the Public, Revised Code of Conduct for Revenue Officials and Employees, as follows:

Section 18 – Prohibition Against Conflict of Interest and Partiality.

1. The following shall be the policies and guidelines on the protection of the BIR against tobacco industry interference.

   (a) Revenue 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.

   (b) In the event that a meeting is strictly necessary, revenue 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.

The Revenue Memorandum Order of the Bureau of Internal Revenue (BIR RMO) directed its order to all its revenue officials and employees.

It adopted essentially all the provisions found in the JMC and explained how this should be integrated in the existing code of conduct and policies of the bureau.

In accordance with the JMC’s provision requiring all government agencies to adopt the provisions in its Annex as part of their Codes of Conduct, the BIR RMO explicitly states that the rules laid down under the JMC in its Annex will form part of the Revised Code of Conduct of Revenue Officials and Employees, specifically the chapter on Prohibitions against Conflict of Interest and Partiality as well as Responsibility to the Public.
Revenue officials are prohibited from receiving gifts and contributions including policy drafts and legal advice. Contributions made to family members and other entities on the official's behalf are specifically mentioned. This is the same provision found in the Annex of the JMC and reflects the recommendations in Art. 5.3 guidelines.

The RMO specified the type of offense that applies in case of violations of the order. In this case, the BIR RMO specified that violating any of the rules will constitute a Grave Offense and will be considered “Conduct Prejudicial to the Best Interest of the Service.” And that any charges made under this order will not prevent the filing of civil and criminal cases that may apply.
The Department of Foreign Affairs Memorandum reaches out to all foreign service posts including regional consular offices to remind them of the general prohibitions of the JMC and code of conduct that should be followed in case interactions are strictly necessary for regulation.

The COP6 Decision on Art 5.3 Implementation which was adopted in October 2014 specifically urged Parties to “raise awareness and adopt measures to implement Art. 5.3 among all parts of government including diplomatic missions.” Diplomatic missions have been targeted by tobacco companies to promote export or sale of tobacco in foreign countries as well as to influence negotiations relating to the FCTC.

Assistant Secretary of Industry Development Group
Department of Trade and Industry

“The Philippine government is asking its Thai counterparts to provide information on the matter to determine whether the customs transactions covered by the WTO ruling are also part of the case Thailand wants to prosecute.

“Trade Assistant secretary Ceferino Rodolfo said earlier that as the government waits for Thailand’s action on the outstanding issues, it would also want to ensure that Philippine export interests are not affected and gains from the WTO ruling continue to benefit exporters.

“In 2011, the WTO issued a decision ordering Thailand to put in place reforms on customs valuations and taxes.

“This, as Thailand’s imposition of higher duties on cigarette imports from the Philippines was in violation of global trading rules.

“The WTO ruling was issued for a case filed by the Philippines, on behalf of Philip Morris Philippines, against Thailand for the imposition of higher duties on its cigarette exports.

“As outstanding issues remain, the Philippines has two options: to continue surveillance in the DSB or to go to formal proceedings for dispute settlement.”

(Underscoring supplied)

“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”

The above provisions require that agencies should exert effort to avoid any perception of partnership with the tobacco industry. Likewise, government agencies are prohibited from extending preferential treatment to the tobacco industry.

For your guidance and consideration please.

Thank you.
DECISION

FCTC/COP6(14) Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry

The Conference of the Parties (COP),

Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco-control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on implementation of the WHO FCTC;

Recalling the resolution of the United Nations General Assembly in A/RES/66/2, which recognized the fundamental conflict of interest between the tobacco industry and public health, and United Nations Economic and Social Council (ECOSOC) resolution E/RES/2012/4, which recognized the same in relation to the work of the United Nations;

Acknowledging with appreciation the report of the Secretary-General to the ECOSOC at its substantive session in 2013 (E/2013/61), which recommended that the United Nations adopt guidelines to ensure objectivity in its work, in line with the principles of Article 5.3 of the Convention and its implementing guidelines;

Noting that global progress reports on implementation of the WHO FCTC, based on the reports of the Parties, reveal that tobacco industry interference remains one of the greatest obstacles to implementation of the Convention;

Recognizing that the tobacco industry is well resourced and will continue to undermine tobacco-control efforts internationally, particularly for developing country Parties and Parties with economies in transition;
FCTC/COP6(14) (cont.)

Noting with concern recent experiences indicating that tobacco industry strategies and tactics go beyond national borders as well as initiatives of the tobacco industry advising governments to challenge other countries' tobacco-control measures at national and international levels,

Reiterating that international cooperation is essential to prevent interference by the tobacco industry in the formulation of public health policies on tobacco control, as recommended in the guidelines for implementation of Article 5.3 and also in line with Articles 22, 23.5(g), 24.3(c), (d), (e), and Article 25 of the WHO FCTC;

Acknowledging the task requested to the Convention Secretariat in operative paragraph 2, the Convention Secretariat might consider to seek external expertise, in line with past practice,

1. DECIDES to:

   (1) urge Parties to strengthen their implementation of Article 5.3 and intensify collaborative action to address tobacco industry efforts internationally, and

   (2) urge Parties to raise awareness and adopt measures to implement Article 5.3 and its implementing Guidelines among all parts of government including diplomatic missions.

2. REQUESTS the Convention Secretariat, in coordination with the WHO to:

   (1) examine the level of tobacco industry engagement in key international organizations which are in a position to contribute to WHO FCTC implementation, prepare a report on their impact on multisectoral collaboration for the implementation of the WHO FCTC, and make appropriate recommendations;

   (2) seek collaboration with pertinent international organizations, including regional, and subregional organizations, to raise awareness of their role in contributing to Parties’ implementation of Article 5.3 and that their administrative, financial and other decisions affect implementation of Article 5.3 of the WHO FCTC, by promoting the principles of Article 5.3 and its implementing Guidelines, including rejection of any direct or indirect contributions, technical and financial, from the tobacco industry;

   (3) propose tools that will facilitate where appropriate raising awareness and assisting with implementation of Article 5.3 among all parts of government;

   (4) identify and recommend options and sustainable mechanisms international cooperation on, and exchange of information related to, tobacco industry interference, building on the existing WHO Tobacco Industry Monitoring database or through a knowledge hub, in order to strengthen effective implementation of Article 5.3 of the WHO FCTC;

   (5) stimulate the reporting of Parties’ experiences in implementing Article 5.3 of the Convention through the reporting instrument of the WHO FCTC, and facilitate exchange of best practices through the establishment of a virtual community on the WHO FCTC information platform;

   (6) develop and promote monitoring tools that would encourage voluntary and timely sharing of further information in order to enhance the monitoring of tobacco industry interference, including at the international level and regularly report on findings to Parties;

   (7) continue to develop, and make available on a continuous basis, the technical capacity required to carry out the tasks listed above and provide technical assistance to Parties upon their request, to implement Article 5.3 of the Convention;

   (8) report on its findings and activities to the seventh session of the COP.
References


Working together to promote the implementation of effective, evidence-based tobacco control measures in Southeast Asia.