

## CHAPTER 28

### TRANSPARENCY AND ANTI-CORRUPTION

#### Article 28.1 Definitions

For the purposes of this Chapter:

“act or refrain from acting in relation to the performance of or the exercise of their official duties” includes any use of the public official’s or foreign public official’s position, whether or not within the official’s authorised competence;

“administrative rulings of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice;

“Anti-Bribery Convention” means the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* done at Paris on 17 December 1997;

“confiscation” means the permanent deprivation of property by order of a court or other competent authority, and includes forfeiture, where applicable;

“foreign public official” means any natural person holding a legislative, executive, administrative, or judicial office of a foreign country, at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that natural person’s seniority; and any natural person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

“freezing” or “seizing” means temporarily prohibiting the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

“official of a public international organisation” means an international civil servant or any person who is authorised by a public international organisation to act on its behalf;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

“public official” means:

- (a) any natural person holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, and irrespective of that natural person’s seniority;
- (b) any other natural person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined under that Party’s law and as applied in the pertinent area of law in that Party; or
- (c) any other natural person defined as a public official under a Party’s law; and

“UNCAC” means the *United Nations Convention against Corruption* done at New York on 31 October 2003.

## **Section A Transparency**

### **Article 28.2 Publication**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, including on the internet where feasible, or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.
2. With respect to any measure referred to in paragraph 1 that a Party proposes to adopt, each Party shall, to the extent it considers appropriate:
  - (a) publish in advance the proposed measure or information concerning the nature of the proposed measure; and
  - (b) provide interested persons and the other Party with a reasonable opportunity to comment on the proposed measure or information.

3. To the extent possible, when introducing or changing the laws, regulations, or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations, or procedures, proposed or final, in accordance with its legal system, are made publicly available and the date when they enter into force.
4. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:
  - (a) promptly publish the regulation on a single official website or in an official journal of national circulation; and
  - (b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

### **Article 28.3 Administrative Proceedings**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are administered in a consistent, impartial, and reasonable manner.
2. With a view to administering in a consistent, impartial, and reasonable manner the measures referred to in paragraph 1 with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying these measures to a particular person, good, or service of the other Party in specific cases, that:
  - (a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;
  - (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
  - (c) it follows its domestic procedures in accordance with its laws.

**Article 28.4**  
**Review and Appeal<sup>1</sup>**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and
  - (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant authority.
3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic laws and regulations, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

**Article 28.5**  
**Provision of Information**

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of the proposed or actual measure.
2. On request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.
3. A Party may convey any request or provide information under this Article to the other Party through their contact points.

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<sup>1</sup> For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

**Article 28.6**  
**Accessible and Open Government**

To the extent possible, each Party shall endeavour to ensure that information published by its central level of government with respect to any matter covered by this Agreement is accessible in open, machine-readable formats.

**Section B**  
**Anti-Corruption**

**Article 28.7**  
**Scope**

This Section applies to measures to prevent and combat bribery and corruption relating to any matter covered by the Agreement.

**Article 28.8**  
**General Provisions**

1. Each Party affirms its resolve to prevent and combat bribery and corruption in matters affecting international trade or investment.
2. Each Party recognises the important role that both the public and private sectors have in preventing and combatting bribery and corruption.
3. Each Party recognises the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade or investment, including the United Nations, the Organisation for Economic Co-operation and Development, the World Trade Organization, the Financial Action Task Force, and the G20, and recognises the importance of working jointly with the other Party to encourage and support appropriate initiatives to prevent and combat such bribery and corruption.
4. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in many bilateral and multilateral forums and that cooperation under this Agreement can enhance the Parties' joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade or investment.

5. Each Party affirms its adherence to the Anti-Bribery Convention and the UNCAC.
6. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

**Article 28.9**  
**Measures to Prevent and Combat Bribery and Corruption**

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:
  - (a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;
  - (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties;
  - (c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,<sup>2</sup> for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of their official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and
  - (d) the aiding or abetting, or conspiracy in, the commission of any of the offences described in subparagraphs (a) through (c).
2. Each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

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<sup>2</sup> For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

- (a) the establishment of off-the-books accounts;
  - (b) the making of off-the-books or inadequately identified transactions;
  - (c) the recording of non-existent expenditure;
  - (d) the entry of liabilities with incorrect identification of their objects;
  - (e) the use of false documents; and
  - (f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.
3. Each Party shall make the commission of an offence described in paragraphs 1 or 2 liable to sanctions that take into account the gravity of that offence.
4. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraphs 1 or 2. In particular, each Party shall ensure that legal persons held liable for offences described in paragraphs 1 or 2 are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.
5. Each Party shall disallow the tax deductibility of bribes and other expenses considered illegal by the Party incurred in furtherance of the commission of an offence described in paragraph 1.
6. Each Party shall adopt or maintain measures in accordance with its law that permit it to impose visa restrictions, such as refusal, cancellation or curtailment, or other immigration controls, on any foreign public official who engaged in the commission of an offence described in paragraph 1.<sup>3</sup> A Party may also adopt or maintain such measures in respect of:
- (a) the spouses, civil partners, unmarried partners, children, and dependent household members of the foreign public official; and
  - (b) any person that assisted or encouraged such offences, or any person that attempted to engage in such activities.
7. The Parties recognise the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:
- (a) encourage enterprises to prohibit or discourage the use of facilitation payments;

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<sup>3</sup> For greater certainty, a Party may seek to impose visa restrictions or other immigration controls even absent a conviction that a foreign public official engaged in the commission of an offence described in paragraph 1, where there is sufficient other information to make such a determination.

- (b) to the extent facilitation payments may be permitted, ensure the solicitation, payment, or acceptance of such payments are not used to secure a material advantage in matters affecting international trade or investment; and
  - (c) take any steps considered appropriate by the Party to raise global awareness of the harmful effects of facilitation payments, including through regional and multilateral initiatives, with a view to stopping the solicitation, payment, and acceptance of such payments.
8. Each Party shall ensure that any statute of limitations applicable to any criminal offences described in this Section shall allow an adequate period of time for the investigation and prosecution of the offence.

**Article 28.10**  
**Persons that Report Bribery or Corruption Offences**

1. Each Party shall, as it considers appropriate, adopt or maintain measures to ensure that its competent authorities that are responsible for the measures described in Article 28.9 (Measures to Prevent and Combat Bribery and Corruption), or the enforcement of those measures, are known to the public.
2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymously, any incident that may be considered to constitute an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).
3. Each Party shall adopt or maintain appropriate measures, in accordance with its laws and regulations, to protect against or provide remedy for discriminatory or disciplinary treatment of any person considered appropriate by the Party who, on reasonable belief, reports to the competent authorities any suspected incident that may be considered to constitute an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).<sup>4</sup>

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<sup>4</sup>For greater certainty, this paragraph is without prejudice to each Party's right to adopt or maintain additional requirements for the making of such a report provided these requirements do not have the effect of unjustifiably limiting a person's access to protection or remedy.

**Article 28.11**  
**Promoting Integrity among Public Officials**

1. To prevent and combat bribery and corruption in matters affecting international trade or investment, each Party affirms its resolve to promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:
  - (a) measures to provide adequate procedures for the selection and training of individuals for public positions considered by the Party to be especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;
  - (b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;
  - (c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;
  - (d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and
  - (e) measures to facilitate reporting by public officials of acts of bribery and corruption to competent authorities, if those acts come to their notice in the performance of their functions.
2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other procedures, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.
3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused or convicted of an offence described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) may, if appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.
4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters affecting international trade or

investment. These measures may include rules with respect to the conduct of members of the judiciary.

**Article 28.12**  
**Participation of Private Sector and Civil Society**

1. Each Party shall take appropriate measures in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in preventing and combatting bribery and corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes, and gravity of, and the threat posed by such bribery and corruption. To this end, a Party may:
  - (a) undertake public information activities and public education programmes that contribute to non-tolerance of bribery and corruption;
  - (b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes, codes and standards of conduct for preventing and detecting bribery and corruption;
  - (c) adopt or maintain measures to encourage enterprise management to make statements in the enterprise's annual reports or otherwise publicly disclose the enterprise's internal controls, ethics and compliance programmes, including those that contribute to preventing and detecting bribery and corruption; and
  - (d) adopt or maintain measures that respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption,

in matters affecting international trade or investment.
2. Each Party shall endeavour to encourage private enterprises, taking into account their size and legal structure, to:
  - (a) adopt or maintain sufficient internal auditing controls and compliance programmes to assist in preventing and detecting acts of bribery and corruption in matters affecting international trade or investment; and
  - (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

## Article 28.13

### **Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption**

1. In accordance with the fundamental principles of its legal system, neither Party shall fail to effectively enforce its measures adopted or maintained to comply with Articles 28.9 (Measures to Prevent and Combat Bribery and Corruption) through 28.11 (Promoting Integrity among Public Officials) through a sustained or recurring course of action or inaction after the date of entry into force of this Agreement, as an encouragement for trade and investment.<sup>5</sup>
2. Each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise their discretion with respect to the enforcement of its measures to prevent and combat bribery and corruption. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources with respect to such enforcement.
3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in paragraph 1 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption) or the acts described in paragraph 2 of Article 28.9 (Measures to Prevent and Combat Bribery and Corruption).
4. Recognising that the Parties have existing working relationships and can benefit by sharing their diverse experience and best practices in developing, implementing, and enforcing their anticorruption laws and policies, the Parties shall endeavour to continue to cooperate:
  - (a) in investigating and prosecuting any person subject to their respective jurisdictions that commit offences of bribery and corruption, including embezzlement, misappropriation, or other diversion of property by a public official, and the laundering of proceeds of crime; and
  - (b) in identifying, tracing, freezing, seizing, and confiscating the proceeds of crime or such property, equipment, or other instrumentalities in connection with its bribery and corruption offences, using both conviction and non-conviction based confiscation powers.

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<sup>5</sup> For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

**Article 28.14**  
**Relation to Other Agreements**

Nothing in this Agreement affects the rights and obligations of the Parties under the Anti-Bribery Convention, the UNCAC, or the *United Nations Convention against Transnational Organized Crime* done at New York on 15 November 2000.

**Article 28.15**  
**Cooperation, Consultation, and Dispute Settlement**

1. The Parties shall endeavour to make every effort through dialogue, exchange of information, and cooperation to address any matter that might affect the operation or application of this Section.
2. Chapter 30 (Dispute Settlement), as modified by this Article, applies to this Section.
3. A Party may only have recourse to the procedures set out in this Article and Chapter 30 (Dispute Settlement) if it considers that a measure of the other Party is inconsistent with its obligations under this Section, or that the other Party has otherwise failed to carry out its obligations under this Section, in a manner affecting international trade or investment between the Parties.
4. No Party shall have recourse to dispute settlement under this Article or Chapter 30 (Dispute Settlement) for any matter arising under Article 28.13 (Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption).
5. Further to Article 30.7 (Consultations – Dispute Settlement) each Party shall endeavour to ensure that consultations include personnel of their competent governmental authorities or other regulatory bodies who have responsibility for, or expertise in, the anti-corruption issue under dispute.
6. Further to the requirements set out in Article 30.10 (Qualifications of Panellists – Dispute Settlement), the Parties are encouraged to appoint panellists, in disputes arising under this Section, who have expertise or experience relevant to the anti-corruption issue under dispute.