

CHAPTER 5
ANTICORRUPTION

Article 5.1: Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance of or the exercise of official duties includes any use of the public official's or foreign public official's position, whether or not within the official's authorized competence;

foreign public official means an individual holding a legislative, executive, administrative, or judicial office of the authorities of a territory that is not the territory represented by the Party, at any level, whether that individual is appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that individual's seniority; and an individual exercising a public function for the authorities of a territory that is not the territory represented by the Party, at any level, including for a public agency or public enterprise;

issuers means:

- (a) for AIT, issuers that have a class of securities registered pursuant to 15 U.S.C. 78l or that are otherwise required to file reports pursuant to 15 U.S.C. 78o(d); and
- (b) for TECRO, companies which publicly offer and issue securities, or promoters who publicly offer securities pursuant to Article 5 of the *Securities and Exchange Act*.

official of a public international organization means an international civil servant or an individual authorized by a public international organization to act on its behalf;

public enterprise means an enterprise over which the authorities of the territory represented by a Party may, directly or indirectly, exercise a dominant influence;¹ and

public official means an individual:

- (a) holding a legislative, executive, administrative, or judicial office of the authorities of the territory represented by a Party, whether that individual is appointed or elected,

¹ Dominant influence for purposes of this definition shall be deemed to exist, *inter alia*, if the authorities of the territory represented by the Party hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise, or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

permanent or temporary, paid or unpaid, and irrespective of that individual's seniority;

- (b) who performs a public function for the authorities of the territory represented by a Party, including for a public agency or public enterprise, or provides a public service, as defined under the laws of the territory represented by a Party and as applied in the pertinent area of the law of the territory represented by a Party; or
- (c) defined as a public official under the law of the territory represented by a Party.

Article 5.2: Scope and General Provisions

1. This Chapter addresses legislative and other measures of the authorities of the territories represented by the Parties to prevent and combat bribery and corruption in any matter affecting international trade and investment.²
2. Each Party, through its Designated Representative, recognizes the importance of preventing and combatting bribery and corruption in matters affecting international trade and investment.
3. Each Party, through its Designated Representative, recognizes the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard.
4. Each Party, through its Designated Representative, recognizes the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade and investment and, through its Designated Representative, commits to work jointly with the other Party, through its Designated Representative, to encourage and support appropriate initiatives to prevent and combat such bribery and corruption.
5. The Parties, through their Designated Representatives, recognize that the respective competent anticorruption authorities of the territories represented by the Parties have established working relationships in many bilateral and multilateral forums and that cooperation under this Chapter can enhance joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting international trade and investment.
6. AIT, through its Designated Representative, recognizes the obligations of the authorities of the territory that it represents under the *United Nations Convention against Corruption* (UNCAC), done at New York, October 31, 2003. TECRO, through its Designated

² For AIT, this Chapter does not apply to conduct outside the jurisdiction of federal criminal law of the territory that AIT represents and, to the extent that an obligation involves preventive measures, shall apply only to those measures covered by federal law governing federal, state, and local officials of the authorities of the territory that AIT represents.

Representative, recognizes the obligations of the authorities of the territory that it represents under the May 20, 2015 *Act to Implement United Nations Convention Against Corruption*.

7. Each Party, through its Designated Representative, recognizes the obligations of the authorities of the territory that it represents to conduct public procurement in a transparent and impartial manner under the *WTO Agreement on Government Procurement*, done at Marrakesh, April 15, 1994, as amended, March 30, 2012.

8. Each Party, through its Designated Representative, recognizes the importance of preventing and combating bribery and corruption in the context of labor law implementation and enforcement and that corruption increases the particular vulnerability of migrant workers with respect to labor protections and internationally recognized labor rights. To this end, each Party, through its Designated Representative, shall adopt or maintain measures to eliminate the charging of recruitment fees and related costs to migrant workers.

9. Each Party, through its Designated Representative, recognizes the importance of preventing and combating bribery and corruption by promoting transparency and strengthening environmental governance and enforcement, with a view to enhancing efforts to combat environmental degradation.

Article 5.3: Measures to Prevent and Combat Bribery and Corruption

1. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offenses under the laws of the territory represented by the Party, in matters affecting international trade and investment, when committed intentionally, by any person subject to the jurisdiction of the authorities of the territory represented by the Party:

- (a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;
- (b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;
- (c) the promise, offering, or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage for the official or another person, in order that the official act or refrain from acting in relation to the performance of or the exercise of 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 and abetting, or conspiracy,³ in the commission of any of the offenses described in subparagraphs (a) through (c).

2. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary regarding the maintenance of books and records and internal controls, financial statement disclosures, and accounting and auditing standards, to prohibit or prevent the following acts carried out by issuers for the purpose of committing any of the offenses described in this Article:

- (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 laws of the territory represented by the Party.

3. Each Party, through its Designated Representative, shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offenses under the laws of the territory represented by the Party, in matters affecting international trade and investment, when committed intentionally, by any person subject to the jurisdiction of the authorities of the territory represented by the Party:

- (a) the embezzlement, misappropriation, or other diversion by a public official for the benefit of the public official or for the benefit of another person, of any property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of the public official's position;
- (b) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illegal origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of that person's action;

³ Parties may satisfy the commitment regarding conspiracy through applicable concepts within the respective legal systems of the territories represented by the Parties, including, for TECRO, 共謀共同正犯.

- (c) the concealment or disguise of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (d) the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and
- (e) participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counseling the commission of any of the offenses established in accordance with subparagraphs (a) through (d).

4. Each Party, through its Designated Representative, shall adopt or maintain effective, proportionate, and dissuasive sanctions and procedures to enforce the measures adopted or maintained pursuant to paragraphs 1, 2, and 3.

5. Each Party, through its Designated Representative, shall disallow the tax deductibility of bribes and other expenses, considered illegal according to the laws of the territory represented by the Party, and incurred in furtherance of the commission of an offense described in paragraphs 1 and 3.

6. Each Party, through its Designated Representative, shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in criminal, civil, or administrative proceedings of:

- (a) proceeds, including any property, derived from the offenses described in paragraphs 1 and 3; and
- (b) property, equipment, or other instrumentalities used in or destined for use in such offenses.

7. Each Party, through its Designated Representative, shall adopt or maintain measures in a manner consistent with the laws and regulations of the territory represented by the Party to permit denial of entry for any foreign public official who engaged in the commission of an offense described in paragraphs 1 or 3 or any other person that assisted in the commission of such an offense.

Article 5.4: Persons that Report Bribery or Corruption Offenses

1. Each Party, through its Designated Representative, shall identify the competent authorities of the territory represented by the Party that are responsible for the enforcement of the measures that it adopts or maintains under Article 5.3 and make such information publicly available.

2. Each Party, through its Designated Representative, shall adopt or maintain publicly available procedures for a person to report to the competent authorities of the territory represented by the Party, including anonymously, any incidents that may be considered to constitute an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2.

3. Each Party, through its Designated Representative, shall adopt or maintain measures to protect against any discriminatory or improper disciplinary treatment of any individual who, upon reasonable belief, reports to the competent authorities of the territory represented by the Party any suspected incidents that may be considered to constitute an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2.

4. Each Party, through its Designated Representative, shall seek to require an external auditor of an issuer's financial statement who discovers indications of a suspected incident that may be considered an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2, to report this discovery to management and, as appropriate, to corporate monitoring bodies. Each Party, through its Designated Representative, also shall seek to encourage issuers that receive such a report from an external auditor to actively and effectively respond to the report.

5. Each Party, through its Designated Representative, shall consider requiring external auditors of an issuer's financial statement to report to the competent authorities of the territory represented by the Party concerning any suspected incidents that may be considered an offense described in Articles 5.3.1 and 5.3.3 or an act described in Article 5.3.2. Each Party, through its Designated Representative, shall adopt or maintain measures protecting an external auditor from improper legal action related to the reporting, based upon reasonable belief, of such suspected incidents to the competent authorities of the territory represented by the Party.

Article 5.5: Promoting Integrity Among Public Officials⁴

1. To prevent and combat bribery and corruption in matters affecting international trade and investment, each Party, through its Designated Representative, shall promote, among other things, integrity, honesty, and responsibility among public officials. To this end, each Party, through its Designated Representative, shall adopt or maintain legislative and other measures to:

- (a) provide adequate procedures for the selection and training of public officials for public positions considered by the authorities of the territory represented by the Party to be especially vulnerable to bribery and corruption;
- (b) promote transparency and accountability of public officials in the exercise of public functions;

⁴ For AIT, this Article applies only at the central level.

- (c) require senior officials, and other public officials as considered appropriate by the authorities of the territory represented by the Party, to make available to appropriate authorities of the territory represented by the Party declarations 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
- (d) facilitate and require reporting by public officials of acts of bribery and corruption to competent authorities of the territory represented by the Party, when such acts come to their notice in the performance of their functions.

Each Party, through its Designated Representative, shall also adopt or maintain appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials.

2. Each Party, through its Designated Representative, shall adopt or maintain codes or standards of conduct for the correct, honorable, and proper performance of public functions, and the avoidance of conflicts of interest by public officials. Each Party, through its Designated Representative, shall also adopt or maintain measures providing for disciplinary or other actions, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party, through its Designated Representative, shall establish procedures through which a public official charged or convicted of an offense described in this Chapter may be removed, suspended, or reassigned by the appropriate authority of the territory represented by the Party, bearing in mind respect for the principle of presumption of innocence.

4. Without prejudice to judicial independence, each Party, through its Designated Representative, shall adopt or maintain measures to strengthen integrity and prevent opportunities for corruption of public officials that are members of the judiciary in matters affecting international trade and investment. Such measures may include rules with respect to the conduct of public officials that are members of the judiciary.

Article 5.6: Participation of Private Sector, Worker Organizations, and Civil Society

1. Each Party, through its Designated Representative, shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organizations, worker organizations, and community-based organizations, in preventing and combatting bribery and corruption in matters affecting international trade and 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, each Party, through its Designated Representative, may, for example:

- (a) engage in public information activities and public education programs that contribute to non-tolerance of bribery and corruption;
- (b) encourage professional associations and other non-governmental organizations, where appropriate, to encourage and assist enterprises, in particular small and medium size enterprises, in developing codes, standards of conduct, and compliance programs for preventing and detecting bribery and corruption;
- (c) promote public awareness of the harmful effects of corruption on the environment, build capacity to address corruption that leads to environmental degradation, and ensure that information on measures against corruption is available to communities and regions in danger of environmental degradation;
- (d) encourage enterprise management to make statements in the enterprise's annual reports or otherwise publicly disclose the enterprise's internal control programs, including those that contribute to preventing and detecting bribery and corruption; and
- (e) respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption, in matters affecting international trade and investment.

2. Each Party, through its Designated Representative, shall encourage enterprises, taking into account their size, legal structure, and the sectors in which they operate, to:

- (a) adopt or maintain sufficient internal accounting controls, compliance programs, or monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards, to assist in preventing and detecting offenses described in Articles 5.3.1 and 5.3.3 or acts described in Article 5.3.2; and
- (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

Article 5.7: Application and Enforcement of Measures Adopted or Maintained to Prevent and Combat Bribery and Corruption

1. Each Party, through its Designated Representative, affirms its commitment to enhance the effectiveness of law enforcement actions to prevent and combat the offenses described in Articles 5.3.1 and 5.3.3 or the acts described in Article 5.3.2.

2. In accordance with the fundamental principles of the legal systems of the territories represented by the Parties, each Party, through its Designated Representative, shall ensure that the authorities of the territory represented by the Party do not fail to effectively enforce the measures

adopted or maintained under Articles 5.3, 5.4, and 5.5, through a sustained or recurring course of action or inaction.

3. In accordance with the fundamental principles of the legal systems of the territories represented by the Parties, each Party, through its Designated Representative, recognizes that the law enforcement, prosecutorial, and judicial authorities of the territories represented by the Parties retain the right to exercise discretion with respect to the enforcement of measures adopted or maintained to prevent and combat bribery and corruption in matters affecting international trade and investment. Each Party, through its Designated Representative, also recognizes that the authorities of the territories represented by the Parties retain the right to take bona fide decisions with regard to the allocation of their resources with respect to such enforcement.