

5. New Chapter Twelve-A (Anti-Corruption) is hereby added as follows:

“CHAPTER TWELVE-A

ANTI-CORRUPTION

ARTICLE 12A.1

Scope

This Chapter applies to measures to prevent and combat bribery and corruption in any matter covered by this Agreement.

ARTICLE 12A.2

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 official’s position, whether or not within the official’s authorised competence;

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, if 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, permanent or temporary, 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 **seizure** 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 a civil servant of a public international organisation or any natural person 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 those assets;

public official means:

- (a) any natural person holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that individual'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 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.

ARTICLE 12A.3

General Provisions

1. Each Party affirms its resolve to prevent and combat bribery and corruption in any matter affecting international trade or investment.
2. Each Party recognises the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard.
3. Each Party recognises the importance of regional and multilateral organisations and initiatives to prevent and combat bribery and corruption in any matter affecting international trade or investment, including the United Nations, the OECD, the WTO, Financial Action Task Force and the G20, and commits to work with the other Party to encourage and support appropriate organisations and initiatives to prevent and combat that bribery and corruption.
4. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in many bilateral and multilateral fora, and that cooperation under this Agreement can enhance the Parties' joint efforts in those fora and help produce outcomes that prevent and combat bribery and corruption in any matter 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 Chapter, 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 12A.4

Measures to Prevent and Combat Bribery and Corruption

1. Each Party shall adopt or maintain the necessary legislative or other measures to establish that it is a criminal offence under its law, in matters affecting international trade or investment, for:

- (a) a public official of the Party or a person who performs public functions for the Party intentionally to solicit or accept, directly or indirectly, any article of monetary value or other benefit, such as a favour, promise, or advantage, for themselves or for another person, in exchange for any act or omission in the performance of their public functions;
- (b) any person subject to the jurisdiction of the Party intentionally to offer or grant, directly or indirectly, to a public official of the Party or a person who performs public functions for the Party any article of monetary value or other benefit, such as a favour, promise, or advantage, for themselves or for another person, in exchange for any act or omission in the performance of their public functions; and
- (c) any person subject to the jurisdiction of the Party intentionally to offer, promise, or give any undue pecuniary or other advantage, directly or indirectly, to a foreign official, for that official or for another person, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

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 this Article:

- (a) the establishment of off-the-books accounts;
- (b) the making of an off-the-books or inadequately identified transaction;
- (c) the recording of non-existent expenditure;
- (d) the entry of a liability with incorrect identification of its object;
- (e) the use of a false document; and
- (f) the intentional destruction of a bookkeeping document earlier than foreseen by its law.

3. Each Party shall adopt or maintain domestic laws or regulations, and any other measure as may be necessary, to establish as a criminal offence under its law, in matters affecting international trade or investment, if committed intentionally, the embezzlement,

misappropriation, or another 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 security, or any other thing of value entrusted to the public official by virtue of the public official's position.

4. Each Party shall adopt or maintain domestic laws or regulations, and any other measure as may be necessary, in accordance with its laws and regulations to establish as criminal offences, in any matter affecting international trade or investment, if committed intentionally, by any person subject to its jurisdiction:

- (a) the conversion or transfer of property, knowing that the 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 offence to evade the legal consequences of that person's action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of, or rights with respect to property, knowing that the property is the proceeds of crime; and
- (c) subject to the basic concepts of its legal system, the acquisition, possession, or use of property, knowing, at the time of receipt, that the property is the proceeds of crime.

5. Each Party shall adopt or maintain effective, proportionate, and dissuasive penalties and appropriate procedures to enforce any measure that it adopts or maintains pursuant to paragraphs 1 through 4.

6. A Party shall not allow the tax deductibility of bribes and, if appropriate, other expenses considered illegal by that Party incurred in furtherance of the commission of an offence described in paragraph 1.

7. Each Party shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in criminal and, where appropriate and feasible, non-conviction-based proceedings of:

- (a) proceeds, including any property, derived from the offences described in paragraphs 1, 3, and 4; and
- (b) property, equipment, or other instrumentalities used in or destined for use in those offences.

8. Each Party shall prohibit the use of facilitation payments.

9. Each Party shall ensure that any statute of limitations applicable to any criminal offences described in this Chapter allows an adequate period of time for the investigation and prosecution of the offence.

ARTICLE 12A.5

Persons that Report Bribery or Corruption Offences

1. Each Party shall adopt or maintain measures to ensure that its competent authorities which are responsible for the measures pursuant to Article 12A.4, or the enforcement of those measures, are known to the public in the manner it deems appropriate.
2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymous reporting or proxy reporting through a lawyer, any information that could suggest an offence described in Articles 12A.4.1, 12A.4.3, and 12A.4.4 or an act described in Article 12A.4.2.
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 public and private sector employee who, on reasonable belief, reports to the competent authorities any suspected incident that may be considered to constitute an offence described Articles 12A.4.1, 12A.4.3, and 12A.4.4 or an act described in Article 12A.4.2.¹

ARTICLE 12A.6

Promoting Integrity among Public Officials

1. To prevent and combat bribery and corruption in any matter affecting international trade or investment, each Party should 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 that 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 any actual or potential conflict 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

¹ 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.

- (e) measures to facilitate reporting by public officials of any act of bribery and corruption to competent authorities, if that act comes 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 a disciplinary or any other procedure, 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 Article 12A.4 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 opportunity for corruption, among members of the judiciary in any matter affecting international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

ARTICLE 12A.7

Participation of Private Sector and Civil Society

1. Each Party shall take appropriate measures 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 any matter affecting international trade or investment and to raise public awareness regarding the existence, cause, and gravity of and the threat posed by that bribery and corruption. To this end, in any matter affecting international trade or investment, 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, to encourage and assist enterprises, in particular small and medium-sized enterprises, in developing internal controls, ethics and compliance programmes, and codes and standards of conduct for preventing and detecting bribery and corruption;
- (c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics, and compliance programmes, including those that contribute to preventing and detecting bribery and corruption; and

- (d) adopt or maintain measures to respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption.
- 2. Each Party shall endeavour to encourage private enterprises, taking into account their size and 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 any matter affecting international trade or investment; and
 - (b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

ARTICLE 12A.8

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

1. In accordance with the fundamental principles of its legal system, a Party shall not fail to effectively enforce the measures adopted or maintained to comply with Articles 12A.4 through 12A.6, 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 or investment.²
2. Each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise 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 that 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 Articles 12A.1, 12A.3, and 12A.4 and the acts described in Article 12A.4.2.

ARTICLE 12A.9

Institutional Arrangements

1. The Working Group on Anti-Corruption established under Article 15.3 (Working Groups) shall be composed of government representatives, as designated by each Party.
2. The purpose of the Working Group is to address matters relating to the implementation and operation of this Chapter and its functions shall be to:

² For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption law are subject to each Party's law and legal procedures.

- (a) review and monitor the implementation and operation of the provisions of this Chapter;
 - (b) provide a forum to seek solutions to resolve differences between the Parties as to the interpretation or application of this Chapter;
 - (c) coordinate with other committees, working groups, and any other subsidiary bodies established under this Agreement as appropriate; and
 - (d) perform any other functions as the Parties may decide.
3. The Working Group shall avoid replacing or duplicating the work or activities of other fora between the Parties' anti-corruption authorities.
4. The Working Group may, by agreement of the Parties, invite appropriate experts to attend meetings and advise the Working Group on any matter falling within its function.

ARTICLE 12A.10

Relation to Other Agreements

This Agreement does not affect 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 12A.11

Cooperation and Consultation

1. The Parties shall make every effort through dialogue, exchange of information, and cooperation to address any matter that might affect the operation or application of this Chapter.
2. A Party may request consultation with the other Party regarding any matter of mutual interest arising under this Chapter. Upon a request, the Parties agree to consult within the Working Group on Anti-Corruption to consider ways of reaching mutually satisfactory solutions.

ARTICLE 12A.12

Dispute Settlement

Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) for any matter arising under this Chapter.”