

CHAPTER 21

TRANSPARENCY AND ANTI-CORRUPTION

Section A: Transparency

Article 21.1: Definitions

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and factual situations that fall generally within its scope 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 either Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

Article 21.2: Publication

1. Each Party shall ensure, that its laws, regulations, procedures and administrative rulings of general application regarding a matter covered by this Agreement, are promptly published or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.

2. Each Party shall, to the extent possible:

- (a) publish in advance any measure referred to paragraph 1 that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on the proposed measures.

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 laws and regulations of general application adopted by its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 1:

- (a) promptly publish the laws and regulations in an official journal of national circulation, or on a single official website that is freely accessible, searchable and updated regularly;
- (b) notify in writing that website, no later than 60 days after the date of entry into force of this Agreement; and
- (c) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Drafters' Note on Article 21.2 (Publication)

Delegations agreed that the concept of “to the extent possible” either singly or in combination with “reasonable opportunity” and “interested persons or other Parties”, provides flexibility for the Parties to determine the extent and degree of consultations. Cases where it may not be possible to provide the opportunity described in Article 21.2 (Publication) include, for example:

- (a) if advance consultations would defeat the regulatory objective;
- (b) if necessary to prevent serious dislocation in the market;
- (c) if necessary to reduce or avoid health hazards or imminent harm; or
- (d) if necessary to avoid serious inconsistencies with recent judicial decisions or conflict with a Party's laws and regulations.

Article 21.3: Notification and Provision of Information

1. Each Party shall, to the extent possible, inform the other Party of any proposed or actual measure that the Party considers might materially affect the operation of this Agreement, or that substantially affects the interests of the other Party under this Agreement.
2. On request of a Party, the other Party shall promptly provide information and answer questions related to a proposed or actual measure that the requesting Party considers might materially affect the operation of this Agreement, or substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously informed of that measure.
3. A Party shall convey any request or provide information under this Article through its contact point.
4. Information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Article 21.4: Administrative Proceedings

In order to administer all measures of general application with respect to a matter covered by this Agreement in a consistent, impartial and reasonable manner, each Party shall ensure, in its administrative proceedings applying measures referred to in article 21.2 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 of the initiation of that proceeding, in accordance with the Party's domestic procedures, 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 all the issues in dispute;
- (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 positions prior to a final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) the procedures are in accordance with its laws and regulations.

Article 21.5: Review and Appeal

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 final administrative actions concerning matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority responsible for applying administrative measures and they shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to such tribunals or procedures, 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 arguments submitted or, if required by that Party's laws and regulations, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its 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 that is the subject of the decision.

Section B: Anti-Corruption

Article 21.6: Definitions

For the purposes of this Section:

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

foreign public official means a 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 person's seniority; and a person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organization means an international civil servant or a person who is authorised by a public international organisation to act on its behalf, and

public official means:

- (a) a person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;
- (b) a 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 the Party's laws and regulations and as applied in the pertinent area of that Party's laws and regulations; or
- (c) other person defined as a public official under a Party's laws and regulations.

Article 21.7: Scope

1. The Parties affirm their resolve to prevent and combat corruption and bribery in international trade and investment.
2. The scope of this Section is limited to measures to prevent and combat bribery and corruption with respect to a matter covered by this Agreement.
3. 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 laws and regulations, and that those offences shall be prosecuted and punished in accordance with each Party's laws and regulations.
4. Each Party affirms its existing obligations, if applicable and to the extent it is a party under the *United Nations Convention against Corruption*, done at New York on October 31, 2003 (UNCAC), the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, done at Paris, France, on December 17, 1997 (OECD Convention), and the *Inter-American Convention Against Corruption*, done at Caracas on March 29, 1996 (IACAC).

Article 21.8: Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its laws and regulations, in matters that affect international trade or investment, when committed intentionally, by a 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 his or her 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 his or her 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 or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her 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 conspiracy¹ in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. 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 5. In particular, each Party shall ensure that there are measures that provide for legal persons held liable for offences described in paragraphs 1 or 5 to be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

4. No Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and

¹ Parties may satisfy the commitment regarding conspiracy through applicable concepts within their legal systems, including *asociación ilícita*.

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:

- (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.

6. Each Party shall consider adopting or maintaining measures to protect, against unjustified treatment, a person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraphs 1 or 5.

7. The Parties recognise the harmful effects of facilitation payments given to foreign public officials, as they undermine efforts to combat corruption and incentivise bribery in foreign countries. To this end, the Parties shall encourage enterprises to prohibit or discourage the use of facilitation payments by enterprises, recognising that they are generally illegal in the countries where they are made, and must in all cases be accurately accounted for in such companies' books and financial records.

Article 21.9: Cooperation

1. The Parties acknowledge the importance of cooperation to prevent and combat bribery and corruption in international trade and investment, including through regional and multilateral initiatives and shall endeavour to work together to advance these efforts, on a mutually agreed basis.

2. Recognising that the Parties can benefit by sharing their diverse experience and best practices in developing, implementing, and enforcing their anti-corruption laws and policies, the Parties shall undertake technical cooperation activities, including training programs, as mutually agreed by the Parties.

Article 21.10: Promoting Integrity among Public Officials

1. To fight corruption in matters that affect trade and 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 natural persons for public positions considered especially vulnerable to corruption, and, if appropriate, the rotation of those natural persons 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 public officials 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 corruption² to appropriate 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 measures, if warranted, against public officials who violate the codes or standards established or maintained 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 of an offence described in Article 21.8.1 may, as considered appropriate by that Party, 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 that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 21.11: Participation of Private Sector and Society

² For the purposes of this Chapter, the term “acts of corruption” refers to the offences described in paragraphs 1 and 5 under Article 21.8.

1. Each Party shall take appropriate measures, within its means and 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 the prevention of and the fight against 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, corruption. To this end, a Party may:

- (a) undertake public information activities and public education programmes that contribute to non-tolerance of 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 or measures for preventing and detecting bribery and corruption in international trade and investment;
- (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 or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; or
- (d) adopt or maintain measures that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

- (a) develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of 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.

3. Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of an incident that may be considered to constitute an offence described in Article 21.8.1.

4. The Parties recognise the benefits of internal compliance programs in enterprises to combat corruption. In this regard, each Party shall endeavour to encourage enterprises, taking into account their size, legal structure, and the sectors in which they operate, to establish compliance programs for the purpose of preventing and detecting offenses described in Article 21.8.

Article 21.12: Application and Enforcement of Anti-Corruption Laws

1. In accordance with the fundamental principles of its legal system, no Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 21.8.1 through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Party, as an encouragement for trade and investment.³
2. In accordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anti-corruption laws. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources.
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 Article 21.8.1.

Article 21.13: Relation to Other Agreements

Nothing in this Agreement shall affect the existing rights and obligations of a Party, where applicable and to the extent it is a party, under the *United Nations Convention against Transnational Organized Crime*, done at New York on November 15, 2000, the UNCAC, the OECD Convention, or the IACAC.

Article 21.14: Dispute Settlement

1. Chapter 23 (Dispute Settlement), as modified by this Article, shall apply to this Section.
2. No Party shall have recourse to dispute settlement under this Article or Chapter 23 (Dispute Settlement) for a matter arising under Article 21.9 and Article 21.12.
3. A Party may only have recourse to the procedures set out in this Article and Chapter 23 (Dispute Settlement) if it considers that a measure of the other Party is inconsistent with an obligation under this Section, or that the other Party has otherwise failed to carry out an obligation under this Section, in a manner affecting trade or investment between the Parties.
4. Article 23.6 (Consultations) shall apply to consultations under this Section, with the following modifications:

³ 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.

- (a) a Party to the Pacific Alliance, which is not a consulting Party, may make a request in writing to the consulting Parties to participate in the consultations, no later than seven days after the date of circulation of the request for consultations, if it considers that its trade or investment is affected by the matter at issue. That Party to the Pacific Alliance shall include in its request an explanation of how its trade or investment is affected by the matter at issue. That Party to the Pacific Alliance may participate in consultations if the consulting Parties agree; and
- (b) the consulting Parties shall involve officials of their relevant anti-corruption authorities in the consultations.

5. The consulting Parties shall make every effort to find a mutually satisfactory solution to the matter, which may include appropriate cooperative activities or a work plan.

6. The Parties are encouraged to appoint panellists with expertise in the area of anti-corruption to a Panel established under Article 23.8 (Establishment of a Panel) for any matter arising under this Section.