

CHAPTER 26 ANTI-CORRUPTION

Article 26.1 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 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, where applicable;

“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;

“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 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 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 26.2

Scope

This Chapter shall apply to measures to prevent and combat bribery and corruption in any matter affecting international trade or investment between the Parties.

Article 26.3

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 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 initiatives to prevent and combat bribery and corruption in matters affecting trade or investment, including the United Nations, and the Financial Action Task Force, and commits to work jointly with the other Party to encourage and support appropriate initiatives to prevent and combat bribery and corruption.
4. The Parties recognise the relevant principles adopted by the G20, including: *G20 High Level Principles on Organizing against Corruption; G20 High Level Principles on Corruption and Growth; G20 Guiding Principles on Enforcement of the Foreign Bribery Offence; G20 Guiding Principles to Combat Solicitation; G20 High Level Principles on Private Sector Transparency and Integrity; G20 High Level Principles on Beneficial Ownership Transparency; G20 High Level Principles for the Effective Protection of Whistleblowers; and G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery.*
5. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in various 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 trade or investment.
6. Each Party affirms its adherence to the UNCAC. The United Kingdom also affirms its adherence to the Anti-Bribery Convention.
7. 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. The Parties recognise that obligations under this Chapter shall be carried out in a manner consistent with the principles of sovereign equality and territorial integrity with respect to the Parties and that of non-intervention in the domestic affairs of the other Party. Nothing in this Chapter shall entitle a

Party to undertake in the territory of the other Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of the other Party by its law.

Article 26.4
Measures to Prevent and Combat Bribery and Corruption¹

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 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 official duties; and
 - (c) the aiding or abetting, or conspiracy in, the commission of any of the offences described in subparagraphs (a) and (b).
2. Each Party shall endeavour to adopt or maintain, and enforce measures criminalising the bribery of foreign public officials and officials of public international organisations, in accordance with Article 16 of the UNCAC.
3. 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 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

¹ For greater certainty, the obligations in this Article to establish offences may be fulfilled by a Party through legislative or other measures which cover the range of acts or offences directly or otherwise.

foreseen by the law.

4. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as a criminal offence under its law, in matters affecting international trade or investment, when committed intentionally:
 - (a) the embezzlement, misappropriation, or other diversion² 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; and
 - (b) by any person subject to its jurisdiction, the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of an offence established in accordance with subparagraph (a).
5. Each Party shall adopt or maintain measures as may be necessary in accordance with its laws and regulations to establish as criminal offences, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:
 - (a) 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 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 such property is the proceeds of crime;
 - (c) the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and
 - (d) participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of any of the offences established in accordance with subparagraphs (a) through (c).
6. Each Party shall adopt or maintain, in accordance with its law, effective, proportionate, and dissuasive penalties and appropriate procedures to enforce the measures that it adopts or maintains pursuant to paragraphs 1 through 5.
7. Neither 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.

² For greater certainty, "diversion" means, for the United Kingdom, embezzlement or misappropriation that constitutes the criminal offences of theft or fraud under its law; and, for India, as determined by its legal system.

8. Each Party shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in criminal proceedings³ of:
 - (a) proceeds, including any property, derived from the offences described in paragraphs 1, 4, and 5; and
 - (b) property, equipment, or other instrumentalities used in or destined for use in those offences.
9. The Parties recognise the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:
 - (a) prohibit the use of facilitation payments; and
 - (b) take steps to raise awareness among its public officials of its bribery laws, and to raise global awareness of the harmful effects of facilitation payments, with a view to stopping the solicitation, payment, and the acceptance of facilitation payments.
10. 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 26.5

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 which are responsible for the measures under Article 26.4 (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 as permitted by its law, any incident that may be considered to constitute an offence described in paragraphs 1, 4 or 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 3 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption).
3. Each Party shall consider adopting or maintaining 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 in paragraphs 1, 4, or 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 3 of Article 26.4 (Measures to

³ For greater certainty, this paragraph is without prejudice to the adoption or maintenance of such measures in non-conviction-based proceedings by either Party.

Prevent and Combat Bribery and Corruption).⁴

Article 26.6

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 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 shall consider establishing procedures through which a public official accused or convicted of an offence described in this Chapter 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, 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

⁴ 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.

members of the judiciary.

Article 26.7

Participation of Private Sector and Society

1. Each Party shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, 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 that 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, to encourage and assist enterprises, in particular SMEs, 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,in matters affecting international trade or investment.
2. Each Party shall endeavour to encourage private enterprises, taking into account their size, structure, and the sectors in which they operate, 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 26.8

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

1. In accordance with the applicable principles of its legal system, neither Party shall fail to effectively enforce the measures adopted or maintained to comply

with Articles 26.4 (Measures to Prevent and Combat Bribery and Corruption) through 26.6 (Promoting Integrity among Public Officials), through a sustained or recurring course of action or inaction.⁵

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 paragraphs 1, 4, and 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) and the acts described in paragraph 3 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption).

Article 26.9 **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 2000.⁶

Article 26.10 **Cooperation and Non-Application of Dispute Settlement**

1. The Parties shall make every effort through dialogue, exchange of information, and cooperation to address matters that might affect the operation or application of this Chapter.
2. The Parties shall endeavour to cooperate as appropriate, in matters affecting international trade or investment, consistent with each Party's domestic law and anticorruption frameworks, in:
 - (a) sharing their diverse experience and best practices in developing, implementing, and enforcing their anti-corruption laws and policies, including matters of embezzlement, misappropriation, or other diversion, laundering or recovery of proceeds of crime, and beneficial ownership information;

⁵ 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.

⁶ Reference in this paragraph to the Anti-Bribery Convention does not apply to India, which is not a party to the Anti-Bribery Convention.

- (b) pursuing, investigating, and prosecuting any person subject to their respective jurisdictions that commits an offence described in this Chapter and in identifying, tracing, freezing, seizing, and confiscating the proceeds of crime; and
 - (c) developing measures regarding transparency of beneficial ownership information to prevent and combat bribery and corruption.
- 3. To facilitate the cooperation described in paragraphs 1 and 2, the Parties hereby establish the Anti-Corruption Working Group, composed of government representatives of each Party, including representatives with relevant expertise, under the auspices of the Joint Committee. Where appropriate and with prior agreement of each Party, this working group may invite *ad hoc* presentations from relevant law enforcement agencies of the Parties. This working group shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties. To the extent possible, the Anti-Corruption Working Group shall avoid replacing or duplicating the work or activities of other forums between the Parties' respective competent anti-corruption authorities.
- 4. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.