POLICY BRIEF

NON-JUDICIAL APPROACHES
Implementing Article 19 of the WHO FCTC

Global Center for Good Governance in Tobacco Control

Tobacco causes more than 7 million deaths and US$1.4 trillion in economic losses every year. **Article 19 of the WHO FCTC** provides the legal basis to make the tobacco industry accountable and liable.

Article 19 and Article 5.3: Mutually Supportive

Article 19 asks countries to deal with 'criminal and civil liability, including compensation where appropriate.' This includes strengthening both judicial (litigation) and non-judicial approaches to make the tobacco industry accountable and liable. Non-judicial approaches include increasing administrative sanctions, imposing financial obligations (fiscal measures like environmental levies), utilizing health and non-health tribunals, and establishing compensation mechanisms.

Article 5.3 strengthens enforcement at every level: transparency requirements generate the evidence base, conflict-of-interest rules protect regulatory officials, and denial of benefits removes the incentives that sustain industry conduct. Critically, Article 19 enforcement actions also advance Article 5.3 in return — taxes, extended producer liability charges, and increased sanctions all carry a denormalising effect that erodes the industry's ability to claim social responsibility.[1,2,3,4,5]

Background

Historically, World Health Organization Framework Convention on Tobacco Control (WHO FCTC) Article 19 tools focused on civil-tort litigation. High-profile cases — notably in Canada — show that even court-approved liability awards can be undermined when companies restructure or use insolvency-type processes, clearing large liabilities before full payment is made.[6]

In other sectors where this type of corporate behavior is anticipated, governments impose financial guarantees and bonds: compulsory pre-market instruments — analogous to customs bonds or oil-spill liability insurance — that require companies to pre-deposit or secure funds that remain available even if the company later seeks to reduce its exposure through restructuring or insolvency. These are legislated as administrative measures, not court-ordered remedies. This example demonstrates why a focus on judicial approaches can be inadequate even in countries where judicial infrastructure is robust. Globally, only 1 in 5 countries have a reliable court system, leaving much to be desired in judicial infrastructure.[7]

COP10, COP11, and the Expert Group Report

The Tenth Session of the Conference of the Parties (COP10) to the WHO FCTC Decision on Article 19 initiated focus on non-judicial approaches and administrative liability. It "[urged parties] to establish and apply, in accordance with their national law, criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions in order to enforce the liability of the tobacco industry" — this means, it has to be large enough, correctly scaled, and enforceable enough to change behaviour, not just represent a predictable cost of doing business.[8]

COP10 also adopted a landmark decision on Article 18 (Environment) noting intersectionality with "Article 19 of the WHO FCTC, to hold the tobacco industry accountable for the damage it causes to the environment and the adverse health effects on workers involved in the cultivation and manufacture of tobacco products, and the disposal and treatment of waste resulting from their manufacture and consumption" .[9]

At COP11, Parties adopted FCTC/COP11(6), which invites Parties to consider tools and resources available and the Expert Group's recommendations including, among others, to ensure that:[10]

- **Fines... are "proportionate to the seriousness of the violation… including… fines proportionate to the annual turnover of the defendant..."**
- **"Legislation provides administrative agencies and tribunals... with authority to determine liability for harms caused by tobacco where appropriate and that such determinations are subject to limited appeals."**

Critically, the COP11 decision also sought the development of a self-assessment tool enabling Parties to evaluate their existing **administrative and non-judicial liability** frameworks, and a report on policy options and tools on **cost recovery including through fiscal measures such as levies, taxes and surcharges**.

Non-Judicial Liability Frameworks

A non-judicial liability framework is a system that holds actors accountable for harm through administrative, regulatory, or financial mechanisms—such as fines, compensation schemes, or compliance orders—without requiring court litigation. The following table shows a classification of measures to impose liability outside the court systems.

MEASURES

Sanctions	Fiscal Measures	Compensation Mechanisms
Administrative / regulatory liability • Fines e.g., Daily-running multiplier penalties • Licence suspension or revocation *Must be effective, proportionate, and dissuasive — not absorbable as a routine cost of doing business (COP10).*[11]	**Compulsory financial obligations** • Taxes and levies • Bonds and financial assurance — • Polluter pays charges: Eco-taxes and environmental surcharges • Cost recovery schemes *Bonds are administrative instruments — imposed by a regulator or customs authority as a market-entry condition, not by a court after the fact.*	**Financial liability** • Trust funds — funded by levies, fines, or bonds • Injury compensation funds — e.g. COVAX model, asbestos trust fund[12] • Compensation tribunals — binding awards without court dependence *Compensation must be substantial — scaled to real harm, not symbolic*

TRIBUNALS

These can be imposed by a broad range of agencies (e.g., health regulators, environmental agencies, human rights bodies, finance and anti-corruption authorities, and customs or trade regulators) — to determine liability for a wide range of harms. In many jurisdictions, administrative tribunals on human rights, corporate governance, and environment are established to augment the court system, ensuring increased access to justice and increased access to compensation/remedies for victims.

Alignment with Article 5.3

A "liability" measure that is formally sound but administered by a captured regulator, or that gives the industry a governance or communications role, is futile regardless of its scale. Tobacco industry must bear costs; it must not be given benefits or subsidies that offset these costs. The tobacco industry must not govern, communicate, or gain

reputational benefit from compliance. To illustrate Extended Producer Responsibility (EPR) schemes that give tobacco industry a governance or campaign role — however structured — violate Article 5.3 Rec. 6[13] and Article 13[14] simultaneously.

In addition to denormalizing Corporate Social Responsibility (CSR) and denying benefits, the other recommendations under the Guidelines for the Implementation of Article 5.3 that are most relevant include — require information and preventing/avoiding conflicts of interest.

Notably, on requiring information from the tobacco industry, the Expert Group specifically identified a new category: Mergers and Acquisitions of the tobacco industry.[15] Previously, nine categories of mandatory industry disclosure have been identified: (1) persons acting on the industry's behalf; (2) manufacturing data; (3) supply chain composition; (4) marketing expenditures; (5) CSR and research activities; (6) lobbying and political contributions; (7) evidence relevant to Article 19 liability claims; (8) production volumes; and (9) any other activities affecting the Convention.[16]

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GGTC
Global Center for Good Governance in Tobacco Control

GGTC empowers change-makers with cutting-edge strategies and tools to ensure that the health of millions around the world would not suffer at the hands of the tobacco industry.

References

[1] "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." Source:
World Health Organization Framework Convention on Tobacco Control (WHO FCTC). (2003). WHO Framework Convention on Tobacco Control: Article 5.3. Available at: https://treaties.un.org/doc/source/RecentTexts/FCTC_en.pdf

[2] "Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues, and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the Convention." Source: WHO FCTC. (2013). FCTC guidelines for implementation of Article 5.3. Available at: https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3

[3] "The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control is most likely to have a negative effect. Clear rules regarding
conflicts of interest for government officials and employees working in tobacco control are important means for protecting such policies from interference by the tobacco industry.." Source: ibid.

[4] "Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible." Source: ibid.

[5] "Parties should not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests."
Source: ibid.

[6] Osler Hoskin & Harcourt LLP. (2025). *Restructuring the Canadian tobacco industry: A model for the future?* Lexology. Available at https://www.lexology.com/library/detail.aspx?g=96ad3246-aa75-45f9-b6f8-87b888a3755c.

[7] "Globally, only one in five (or approximately 20%) countries have a court system that can be relied on. In the majority of countries, judicial systems are often regarded as inadequate, and even in instances where the case is won, the judgements are not effectively enforced." Source: Sy D, El-Awa F, Al-Lawati JA, Valizadeh B, El-Gohary S, El-Wakil R, Narain A. Towards health with justice: making the tobacco industry accountable through administrative liability. Tob Control. 2024 Feb 26:tc-2023-058289. doi: 10.1136/tc-2023-058289. Epub ahead of print. PMID: 38408837. *citing* The world justice project rule of law index 2022. World justice project, Chapter 7. 2022: 172.

[8] WHO FCTC. (2023). FCTC/COP10(13) Implementation of Article 19 of the WHO FCTC: Liability. Available at: https://fctc.who.int/resources/publications/i/item/fctc-cop10(13)-implementation-of-article-19-of-the-who-fctc-liability.

[9] WHO FCTC. (2024). FCTC/COP10(14) — Implementation of Article 18 of the WHO FCTC: Protection of the environment. Available at: https://storage.googleapis.com/who-fctc-cop10-source/Decisions/fctc-cop-10-14-en.pdf

[10] WHO FCTC. (2025). FCTC/COP/11/6 — Expert Group Report: Liability (Article 19 of the WHO FCTC). Available at: https://storage.googleapis.com/who-fctc-cop11-source/Main%20documents/fctc-cop11-6-en.pdf

[11] "to establish and apply, in accordance with their national law, criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions in order to enforce the liability of the tobacco industry." Source: WHO FCTC. (2023). FCTC/COP10(13) Implementation of Article 19 of the WHO FCTC: Liability. Available at: https://fctc.who.int/resources/publications/i/item/fctc-cop10(13)-implementation-of-article-19-of-the-who-fctc-liability.

[12] "By providing a no-fault lump-sum compensation in full and final settlement of any claims, the COVAX programme aims to significantly reduce the need for recourse to the law courts, a potentially lengthy and costly process.
."Source: World Health Organization. (2021). *No-fault compensation programme for COVID-19 vaccines is a world first*. Available at: https://www.who.int/news/item/22-02-2021-no-fault-compensation-programme-for-covid-19-vaccines-is-a-world-first; ; See also: United States Bankruptcy Code. (n.d.). *11 U.S.C. § 524* — Effect of discharge; injunction against acts to collect, recover or offset certain debts. Available at: https://www.law.cornell.edu/uscode/text/11/524

[13] "Denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry, including but not limited to activities described as "corporate social responsibility"." Source: WHO FCTC. (2013). FCTC guidelines for implementation of Article 5.3. Available at: https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3

[14] "Parties should prohibit the use of any term, descriptor, trademark, emblem, marketing image, logo, colour and figurative or any other sign7 that promotes a tobacco product or tobacco use, whether directly or indirectly, by any means that are false, misleading or deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of any tobacco product or tobacco products, or about the health effects or hazards of tobacco use." Source: WHO FCTC. (2013). Guidelines for implementation of Article 13. Available at: https://fctc.who.int/resources/publications/m/item/tobacco-advertising-promotion-and-sponsorship.

[15] "Required tobacco industry reporting to the appropriate government authority includes information on… mergers and acquisitions…" Source: WHO FCTC. (2025). FCTC/COP/11/6 — Expert Group Report: Liability (Article 19 of the WHO FCTC). Available at: https://storage.googleapis.com/who-fctc-cop11-source/Main%20documents/fctc-cop11-6-en.pdf

[16] World Health Organization. (n.d.). WHO FCTC Article 19 Civil Liability Toolkit. Available at: https://extranet.who.int/fctcapps/civil-liability-toolkit#