Introduction

The Thai Ministry of Public Health is currently considering the draft of the new Tobacco Consumption Control Act (the "TCCA"). The TCCA will supersede the two current pieces of legislation which have regulated the tobacco industry for the past 20 years. As well as combining the Tobacco Products Control Act and the Non-Smoker's Health Protection Act (both 1992), the TCCA imposes tighter restrictions on the tobacco industry: the two most radical changes are the increase in the legal age at which Thais can purchase tobacco products and the prohibition on the sale of cigarettes in packets of less than 20. The move follows Thailand's ratification of the World Health Organisation's Framework Convention on Tobacco Control, which came into force in 2005 (the "WHO FCTC") and the more recent THB20 tax increase on cigarettes. The new legislation is designed to target the main players in the tobacco industry: manufacturers, distributors and export/import agents.

Restrictions on Sales and Advertising

The TCCA also restricts the means of selling tobacco products and the outlets which may sell cigarettes. The previous restrictions on vending machines remain in force under the proposed legislation and the sale of tobacco by:

> Electronic media
> The internet
> Peddling
> Offering samples or bartering
> Discounts
> Price cutting or bulk promotions

are also prohibited. The fines for breaches have risen from THB2,000 to THB5,000.

Certain locations are also banned from selling tobacco products. The current list of venues is uncontroversial, and includes religious sites and schools. However, there is potential for ministerial regulations to extend the scope of the prohibition without further statutes being passed.

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1 The statutory definition of "tobacco product" has been broadened and now includes, for example, electronic cigarettes.
The TCCA does not contain substantive provisions regulating the display of tobacco products in retail outlets. It does, however, provide the mechanism for regulation to be introduced without further legislation being enacted. Coupled with this, there is also an obligation for those selling tobacco products to display stop smoking campaign material.

More generally, with regard to advertising and marketing, the TCCA prohibits the use of branding imagery in any advertising and marketing of tobacco products. Other merchandise bearing branding imagery is also prohibited, as is the use of such images in sponsorship arrangements. For the most part, the changes to the advertising and marketing of tobacco products give effect to Thailand’s commitments under the WHO FCTC. Some tobacco companies may need to think carefully about how they promote their CSR activities in Thailand if the new legislation is enacted. The punishment for advertising tobacco products under the guise of CSR commitments is THB 50,000 (over US$1,600) per day.

**Regulation of Product Composition**

Currently tobacco products must meet the composition standards set down by the ministerial rules or the manufacturer risks having the importation and/or sale of their product denied. The TCCA gives the Minister the additional power to order the destruction of any tobacco products whose composition does not meet the ministerial rules and to make public announcements about the dangers of the product.

**Reporting Obligations and Communication Restrictions**

The TCCA establishes a new reporting obligation for representatives of the tobacco industry. An annual report must be submitted to a newly-created committee, the Board of Directors of National Tobacco Control. The report must detail, amongst other things, the company’s accounts, charitable donations and CSR contributions. The Board has the power to order the submission of documents relating to any financial relationships the company has with other participants in the tobacco industry, members of the civil service and charitable or political organisations.

Strict restrictions on any communication between government agencies and various state organisations and members of the tobacco industry are introduced by the new Act. This aims to ensure that communication must only take place where it is necessary, transparent and solely for the benefit of tobacco control, or as required by law.

**Assessing the Impact**

Clearly the changes outlined above will have a dramatic impact on the tobacco industry’s operations in Thailand.

The TCCA raises the legal age for purchasing tobacco products from 18 to 20 years old, removing some 2 million Thai youths from the legal tobacco market. There are currently approximately 3 million smokers in Thailand. The average age at which Thai smokers take up the habit is 17 years. Although there is clearly a risk that under 20s will continue to purchase cigarettes illegally, the move is aimed at reducing the number of smokers in a manner which is easy for law enforcement officers to police. Along with increasing the age limit on cigarette purchases to 20, the TCCA also raises the age limit for alcohol to 20: it is anticipated that raising both age limits simultaneously will be more effective than raising the ages in isolation, and will have a major impact on those graduating from high school to university as this is a critical age at which individuals tend to take up drinking and smoking.
The new legislation also prohibits the sale of packets of less than 20 cigarettes which will impact the availability of tobacco products to occasional smokers and those on low incomes. According to statistics cited by the Bureau of Tobacco Control, sales of tobacco in packages of less than 20 are regularly consumed by smokers working in the agricultural sector, which makes up the majority of the Thai population.

Both measures are anticipated to create a much stronger demand for counterfeit products.

Along with a shrinking market, overall changes in government policy, and in particular the recent tax hike, the TCCA is expected to push consumers towards cheaper options, such as hand-rolling tobacco.

Next Steps
The final public hearings will be completed by 30 November 2012. The Bureau of Tobacco Control will then compile and assess all the feedback received and submit a report to the cabinet for approval before the new legislation goes before the Thai Parliament next year.

During this period of consultation industry representatives will need to be vocal if their point of view is to be taken on board by the Thai Ministry, as anti-smoking groups are likely to take the opportunity to push for further restrictions. Moreover, the restriction on communications between the Thai government and the tobacco industry, which will be imposed if the new legislation goes ahead unchanged, will make this the last opportunity for those in the tobacco industry to influence policy directly affecting them. Industry feedback should be considered and submitted as a matter of urgency.

Looking forward, the Asian Economic Community (the “AEC”) will be established in 2015. The AEC will see trade restrictions with the community relaxed in order to encourage the free flow of goods between members. As the AEC is based on free market principles these are likely to conflict with the restrictions contained in the TCCA. There are mixed views on how this conflict will ultimately play out. On the one hand, the TCCA will apply to imported cigarettes and consequently might stifle cross-border trade. On the other, the removal of trade barriers could see the restrictions in the TCCA challenged as protectionist measures.

Highlighting this possible conflict in industry submissions to the Thai Ministry may prove persuasive. Politically there is strong support for tighter tobacco controls, but there is also a very real awareness of the need to more fully integrate Thailand into the global economy.
THAILAND: TOBACCO LAW

If you would like to discuss any of the issues raised in this briefing, please get in touch with a member of our team, or your regular contact at Watson, Farley & Williams.

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