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BRIEFING

NEW TOBACCO REGULATION
IN THAILAND

JULY 2017

- THE NEW TOBACCO PRODUCTS CONTROL ACT CAME INTO FORCE ON 4 JULY 2017.
- THE ACT CURTAILS TOBACCO ADVERTISING AND WILL MAKE IT DIFFICULT FOR NEW BRANDS OR PRODUCTS TO ACCESS THE THAI MARKET.



The new Tobacco Products Control Act (2017) (the “TPCA”) came into effect on 4 July 2017. It replaced the Tobacco Products Control Act (1992) and the Non-Smoker’s Health Protection Act (1992) (the “Previous Laws”), which regulated the display, purchase and use of tobacco products over the previous two decades, and introduces broad restrictions on the advertising, marketing and sale of tobacco.

The TPCA’s curtailment of tobacco advertising effectively forces retail tobacco sales underground and will make it difficult for new tobacco brands or products to gain Thai market share.

Regulation of e-cigarettes

The Previous Laws applied only to tobacco plant derivatives and were unable to regulate liquid nicotine vaping. The TPCA expands the definition of “Tobacco Products” to include any products containing nicotine as an ingredient, other than items addressed under drug laws, which are excluded from the definition of tobacco products.

Although this could open the door to e-liquid being subject to taxes and duty-free import restrictions in a similar manner to cigarettes and other traditional forms of tobacco, the TPCA contains a broad prohibition on commercial production, import and advertising of products used in a way that stimulates smoking and that contain products harmful to health notified under TPCA. The TPCA could therefore be used to conclusively prohibit a retail e-cigarette market in Thailand. Meanwhile, the

importation of e-cigarettes and e-liquid remains banned under a 2014 notification issued under the Export and Import of Goods Act.

Minimum age requirements

The minimum age provisions are now more stringent, and penalties of up to three months' imprisonment and a fine of up to THB30,000 apply for infringement.

Legal age increased from 18 to 20. Eighteen-year olds are no longer allowed to purchase Tobacco Products as the TPCA increases the minimum age to 20 years, one of the highest minimum ages in Asia. The TPCA also requires tobacco suppliers to check the identification of purchasers if the purchaser's age is in doubt. This is stricter than the Previous Laws, in which the offence of underage sales was made out only if the supplier knew that the buyer was under 18, which acted as a disincentive to ask for ID. The TPCA does not, however, prohibit a person under the age of 20 from possessing or using Tobacco Products.

Sales staff to be 18 years or older. The TPCA prohibits the hire of anyone under the age of 18 to sell or provide Tobacco Products. In effect, this will require stores to have at least one employee aged 18 or more present at all times Tobacco Products are sold.

Restrictions on sale and promotions

Restrictions on promotions effectively limit the availability of Tobacco Products to licensed retail premises. Penalties of up to three months' imprisonment and fines of THB40,000 apply to infringements.

Physical sales only. The prohibition of sale by vending machine will continue and the TPCA also prohibits the sale of Tobacco Products by electronic communications/computer networks, sales outside the location for which a tobacco sale permit has been granted, and hawking and peddling. The TPCA continues the prohibition on displaying Tobacco Products on retail premises and enables the Ministry of Public Health (the "Ministry") to establish rules governing how the names and prices of Tobacco Products are displayed in retail premises.

Discount promotions. Providing gratis Tobacco products with the purchase of other Tobacco Products or non-tobacco products is unlawful, as are cut-price discount promotions where the sale price is displayed to attract buyers to retail premises.

Raffles, contests. Offering admission to a contest or performance to purchasers of Tobacco Products is prohibited, as is granting participation in raffles or other games of chance.

Sample products. Tobacco Products cannot be distributed as samples if the intended effect is to achieve wider distribution or to persuade the public to use the product.

Merchandising. It is now unlawful to display brand names or logos of Tobacco Products, or importers or manufacturers of Tobacco Products, on any product other than Tobacco Products. This prohibition extends to the import for advertisement and sale of tobacco-branded merchandise.

Prohibited areas: The sale of Tobacco Products is prohibited in temples, healthcare establishments, educational institutions, public parks, zoos or amusement parks. The TPCA empowers the Minister of Public Health (the "Minister") to designate other areas

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“IMPORTERS, EXPORTERS AND MANUFACTURERS BREACHING ADVERTISING RESTRICTIONS FACE ONE YEAR’S IMPRISONMENT AND A FINE OF HALF THE ADVERTISING EXPENDITURE, WITH A MINIMUM FINE OF THB1.5M APPLYING.”

as “no-sale” areas and also to restrict the sale of Tobacco Products within a specified distance of any prohibited areas.

Restrictions on advertisements. Broad restrictions on advertisements now prohibit the displaying of brand names or logos of Tobacco Products, or importers or manufacturers of Tobacco Products, in printed material, video, television, motion pictures, electronic media and advertising signs. The prohibition on advertising also extends to entertainment venues, movie theatres and as a part of any performance, competition or entertainment. The TPCA empowers the Minister to designate additional media or locations as prohibited from advertising Tobacco Products.

Importers, exporters and manufacturers breaching advertising restrictions face one year’s imprisonment and a fine of half the advertising expenditure, with a minimum fine of THB1.5m applying.

Disclosure and reporting

The TPCA imposes substantial reporting obligations on importers and manufacturers of Tobacco Products.

Financial and promotional reporting. Manufacturers and importers of Tobacco Products are required to file annual reports with the National Tobacco Products Control Board, specifying the quantity of Tobacco Products manufactured or imported, revenue from such, the amount spent on marketing, and details of any actions taken to advertise, promote or enhance the image of Tobacco Products, or otherwise interfere with tobacco control policy.

Ingredients and combustion products. The Ministry can issue regulations specifying permitted ingredients and combustion products and the TPCA requires manufacturers and importers of Tobacco Products to disclose both the ingredients of Tobacco Products and the substances arising from burning those ingredients.

Testing. All Tobacco Products are required to be tested to confirm the ingredients and combustion products disclosed by the importer or manufacturer and the test results are required to be made public. The Ministry will issue a certificate of compliance for Tobacco Products that pass testing, however, the frequency of testing and the period of validity for compliance certificates are yet to be specified. If a Tobacco Product fails testing, the Ministry may prohibit further imports and sales of that product and may order the destruction of existing stocks. The Ministry is required to make public any enforcement action arising out of failed testing.

Non-smoking areas. The Ministry can designate public places, workplaces and public transport as smoke-free zones. The penalty for smoking Tobacco Products in a smoke-free zone has been increased to THB5,000 from THB2,000 under the Previous Laws.

Packaging

The Previous Laws required packaging for Tobacco Products to contain prominent and graphic health warnings, and the TPCA gives effect to packaging requirements issued under the Previous Laws until regulations are issued under the TPCA.

Appearance. Tobacco Product packaging is required to comply with Ministerial regulations regarding size, colour, symbol and label including the appearance of

trademarks, symbols, pictures and messages, in compliance with the rules, procedures and conditions set out by the Minister.

Minimum pack size. Cigarettes are not permitted to be manufactured or imported into Thailand in a pack or other container of less than 20 cigarettes, and dividing the contents of a cigarette pack for sale is also prohibited. The TPCA empowers the Ministry to regulate minimum pack sizes for other Tobacco Products.

Effects on the Thai tobacco sector

The enforcement of the TPCA underscores Thailand's commitment to controlling Tobacco Products and enhancing public health protection under the international framework set out in the World Health Organization's Framework Convention on Tobacco Control 2003, which Thailand ratified in 2004 and that became effective in 2005.

The TPCA's restriction of advertising and promotion will severely restrict the ability of importers and manufacturers to launch new products, and is likely to curtail traditional promotional activities designed to increase market share of a specific brand. It remains to be seen whether Thailand will move to plain packaging, as countries such as Australia have, and require the removal of all brand logos.

Following the importer and distributor of Marlboro and L&M cigarettes challenging Thailand's mandatory graphic health warnings on cigarette packages in the Thai courts on intellectual property grounds, the Supreme Administrative Court has upheld graphic warning requirements for cigarette packaging on the grounds of public health. This court decision suggests that the Ministry would also be able to implement plain packaging on the grounds of public health if it wished to do so.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors below or your regular contact at Watson Farley & Williams.



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