

Palau

40

Summary of Findings

1. Industry participation in policy development

No incidence of tobacco industry participation in policy development during the reporting period was identified and no industry representatives have ever been in a Conference of the Parties (COP), INB or COP work group (WG) delegation.

Industry interference in policymaking existed in the years when Palau was developing comprehensive tobacco control legislation circa 2007/2008, though the government did not respond to their offer of assistance. One senator at that time was approached individually and he too refused the offer of assistance.

Similarly, while no law or policy exists, no recent evidence could be found of the government allowing or inviting the tobacco industry to sit in any government interagency/multisectoral committee/advisory group body that sets public health policy.

Presidential Executive Order No 379 established a multisectoral national Coordinating Mechanism (CM) to combat noncommunicable diseases (NCDs) in 2015 that states that the CM will develop an explicit code of behavior for how all members of the Committee interact with industry representatives. A code of behavior/conduct was drafted but has not yet been made official to date.

2. Industry CSR activities

No evidence of corporate social responsibility (CSR) could be found either before or during the reporting period.

3. Benefits to the industry

There is no evidence of such interaction in the reporting period.

There were two pieces of tobacco-related legislation drafted in late 2019; one was introduced in the Senate (SB 10-158) and consisted of amendments to the current comprehensive tobacco control legislation touching on several articles of the Framework Convention on Tobacco Control (FCTC) and the second piece introduced in the House of Delegates (HB No.10-119-12) was specific to electronic cigarettes. Comments were solicited on these pieces of legislation; however, we did not learn of any comments generated from the tobacco industry.

No action was taken on either piece of legislation due to the COVID-19 pandemic. There was an election in November of 2020 and with a new administration and new legislature, both pieces of legislation will have to be introduced again. In either case, the delay was not due to tobacco industry interference.

Legislation that came into effect in 2013 raising the tax on tobacco received some industry opposition specific to the provision prohibiting duty-free sales in the Republic, though it passed despite the opposition.

There were incidents highlighted in a 2017 Public Auditor's report whereby the Bureau of Revenue Customs and Taxation and Bureau of Customs and Border Protection improperly entered into contractual agreements with select tobacco importers allowing them to pay installments on

import and excise taxes without interest. One importer was allowed to pay an old tax rate. This practice is still ongoing – such agreements are not only for tobacco importers but for importers of any goods.

4. Unnecessary interaction

No evidence of top-level government officials meeting with or fostering relations with the tobacco companies was found, nor were incidents of the government accepting assistance from the tobacco industry on enforcement.

5. Transparency

No evidence of meetings with the tobacco industry was found.

Both the Open Government Act (1 PNCA §901) and the Administrative Procedures Act (APA) (6 PNCA §101) promote openness and access to public information to facilitate the involvement of the public and stakeholders in the policy review process. However, both are self-regulating and similar to the shortfall of the Code of Ethics (PNCA §601), do not prescribe activities specifically with or by the tobacco industry.

No rules exist for the disclosure or registration of tobacco industry entities, etc. Only licensing for all businesses is required and foreign businesses must also be registered under the Foreign Investment Act.

6. Conflict of interest

No such prohibition/requirement exists specifically for tobacco companies. However, the

Code of Ethics calls for transparency, prohibits conflicts of interests, requires disclosures of potential conflict of interests, mandates financial disclosures and regulates acceptance and use of contributions by government employees, candidates and public officials.

At least one currently elected official is on the Board of Directors of one of the companies that imports tobacco in Palau.

7. Preventive measures

Few preventive measures are in place in Palau. While promoting openness and access to public information, neither the Open Government Act (1 PNCA §901) nor the Administrative Procedures Act (APA) (6 PNCA §101) address or mention the tobacco industry specifically. Similarly, the Code of Ethics does not prescribe activities specifically with or by the tobacco industry.

There is no requirement of the government for the tobacco industry 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. Only for tax purposes is there a requirement to report/declare the type and quantity of tobacco products imported.

While there have been efforts to raise awareness of tobacco industry interference within the community (WNTD 2010, 2012), a longer-term public campaign in 2018, and a presentation made to members of the NCD CM, there is nothing set up to consistently raise awareness within government departments on policies relating to the World Health Organization (WHO) FCTC Article 5.3 Guidelines.

“ Besides declaring type and quantity of tobacco products imported for tax purposes, there is no requirement for the industry to provide information on market share, marketing expenditures, revenues and other activity. ”

Recommendations

Although Palau has not recently experienced industry interference, there is much work to be done to improve preventive measures.

IMPROVE existing policies such as the Palau Civil Service Rules and Regulations, the Code of Ethics, the Open Government Act and the Administrative Procedures Act to comply with Article 5.3 Guidelines.

AMEND RPPL 8-27, Palau's comprehensive tobacco legislation, concerning CSR so that it includes language disallowing any official or employee of government or of any semi/quasi-governmental body (i.e. any entity receiving government funding or support) to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.

RAISE AWARENESS among civil servants about the need to protect public health policies from commercial and other vested interests of the tobacco industry, and the strategies used by the tobacco industry to interfere with the setting and enforcement of public health policies with respect to tobacco control.

DEVELOP a clear national policy that puts public health over commercial interests, especially tobacco profits by condemning preferential treatment to the tobacco industry and by forbidding partnerships and non-binding or non-enforceable agreements with them. In asserting such a position and policy, the Palau government may clearly show commitment to Guiding Principle 1 of the WHO FCTC Article 5.3 Guidelines: "There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health."