

Control of Marketing of Infant and Young Child Food Act

B.E. 2560 (2017)

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun

Given on 9 July B.E. 2560 (2017)

Being the 2nd Year of the Present Reign

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient that there shall be a law related to the control of marketing of infant and young child food.

Be it; therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows;

Section 1. This Act is called the “Control of Marketing of Infant and Young Child Food Act B.E 2560”

Section 2. This Act shall come into force after the expiration of 60 days from the date of its publication in the Government Gazette.

Section 3. In this Act:

“Infant” means a child from birth to the age of 12 months.

“Young child” means a child aged between 12 months to 3 years.

“Infant food” means

(1) Milk or other kinds of food which contains suitable and sufficient nutrients for feeding infants in accordance with the Food Act; and

(2) Milk or other kinds of food which contains information to indicate it as a product for feeding infants.

“Young child food” means milk or other kinds of food which contains information to indicate it as a product for feeding young children and specifically proclaimed by the Minister with the advice of the Committee.

“Complementary food for infants” means food that adds nutrition value and develops familiarity in food consumption for infant aged more than 6 months in accordance with the Food Act.

“Manufacturer” means a person who makes, mixes, modifies and repackages a product.

“Importer” means a person who brings or orders a product into the Kingdom.

“Distributor” means a person who sale, divide, distribute, exchange, give or having it for sale for commercial purpose.

“Label” means a label in accordance with the Food Act.

“Advertising” means any actions that allow the public to see or receive information for commercial purposes.

“Information” means any actions to produce texts, pictures, marks, photos, films, lighting, sound, logos or any other actions that enable the general public to understand their meanings.

“Marketing” means any form of activities with an aim to sell, build image, promote, encourage or support the consumption of infant food, young child food or complementary food for infants, as the case may be, for commercial purposes.

“Healthcare facility” means a healthcare facility in accordance with the Sanatorium Act, or a healthcare facility operated by a ministry, bureau, department, local administration, state-owned enterprise, public educational institution, other public organization or the Thai Red Cross Society, including private non-profit organization that conducts activities on maternal and child health, and public health professional organization.

“Public health professional organization” means professional committee in various disciplines in accordance with the Practice in the Art of Healing Act, Thai Medical Council in accordance with the Medical Profession Act, Thai Nursing and Midwifery Council in accordance with the Professional Nursing and Midwifery Act, Thai Dental Council in accordance with the Dental Treatment Profession Act, Thai Pharmacy Council in accordance with the Pharmaceutical Profession Act, Thai Physical Therapy Association in accordance with the Practice of the Physical Therapy Act, Thai Medical Technology Council in accordance with the Practice of the Medical Technology Act, Thai Traditional Medical Council in accordance with the Thai Traditional Medicine Act, Thai Council of Community Public Health in accordance with the Community Health Professional Act, and any other professional medical and public health organizations established by law.

“Public health personnel” means an individual in any professions who is working in the health care system, including a volunteer who provides services relating to healthcare.

“The Committee” means the Committee on the Control of Marketing of Infant and Young Child Food.

“The competent officer” means any person authorized by the Minister to be in charge of enforcing this Act.

“The Minister” means the Minister in charge of enforcing this Act.

Section 4. The Minister of Public Health is in charge of the enforcement of this Act, and is authorized to appoint competent officers and issue ministerial notifications for the implementation of this Act.

Ministerial notifications shall enter into force from the date of their publication in the Government Gazette.

Chapter 1

The Committee on the Control of Marketing of Infant and Young Child Food

Section 5. The Committee on the Control of Marketing of Infant and Young Child Food shall be established with the acronym CMIYCF and composed of the following representatives;

1. Permanent Secretary of Ministry of Public Health as a chairperson;
2. Eight committee members by position, namely Director-General of the Department of Children and Youth, Director-General of the Department of Health Services Support, Director-General of the Department of Local Administration, Secretary General of the Consumer Protection Board, Secretary General of Food and Drug Administration, Secretary General of the National Broadcasting and Telecommunications Commission, Secretary-General of National Health Commission of Thailand and Permanent Secretary of the Bangkok Metropolitan Administration;
3. Five expert committee members to be appointed by the Minister from the Thai Nursing and Midwifery Council, the Council of Community Public Health, the Pharmacy Council of Thailand, the Royal College of Pediatricians of Thailand and the Royal Thai College of Obstetricians and Gynaecologists; and
4. Five expert committee members to be appointed by the Minister, including three private non-profit organization representatives, one from each of the following services - on maternal and child health, children’s rights and health consumer protection, along with one expert on marketing communications and one expert on law.

The Director-General of Department of Health shall be a committee member and secretary and appoint two Department of Health officers to be assistant secretaries.

The appointment of expert committee members shall follow the rules, methods and conditions stipulated by the Minister with the advice of the Committee.

Section 6. The expert committees shall be qualified according to the following qualifications;

- (1) is a Thai national
- (2) is not a politician, member of local administrative council, member or executive of a political party, or an officer in a political party
- (3) is not an incompetent person or a quasi-incompetent person
- (4) is not a bankrupt person or has not been a dishonest bankrupt person
- (5) has never been imprisoned by the court's final judgment except for offences committed through negligence or minor offences
- (6) is not a stakeholder in the infant food industry, young child food industry, or complementary food for infant industry, whether directly or indirectly
- (7) has never been subject to a court judgment or order for forfeiture of assets as state properties due to unusual wealth or unusual increase in assets
- (8) has never been expelled, dismissed or discharged by a public or private company due to malfeasance, gross misconduct or corruption in the course of official duty

Section 7. Expert committee members shall hold the office for a term of three years. Any vacating member may be re-appointed but shall not hold the office for more than two consecutive terms.

In case an expert committee member vacates the office prior to the expiration of his or her term, the Minister shall appoint a new member with the same expertise. The appointed member shall hold the office for the remaining period except when the remaining period of the term is less than 90 days, in which case a new appointment may not be required and the Committee shall consist of remaining committee members.

At the expiration of a term in paragraph 1, if a new expert committee member has not yet been appointed, the vacating expert committee member shall continue to hold the office until a new appointment is made.

Section 8. Apart from the vacation of office upon the expiration of term, an expert committee member shall vacate the office upon;

- (1) Death
- (2) Resignation
- (3) Being dismissed by the Minister due to a fault, misconduct, malfeasance or incompetence
- (4) Being disqualified or being under prohibition under Section 6

Section 9. At the committee meeting, no less than one half of the total number of committee members must be present to establish a quorum.

At the committee meeting, if the chairperson is absent or unable to perform his duty, one member shall be elected by the Committee as chairperson.

If any committee member has direct or indirect interest with the issue that is being deliberated by the Committee, the committee member must inform the Committee and let the Committee decide whether the committee member should participate in the meeting and in making decision on that issue.

Rulings and decisions of the meeting shall be carried out by simple majority. One member shall possess one vote. If the votes are tied, the chairperson shall cast an additional vote as a deciding vote.

Section 10. The Committee shall be authorized with the following powers and duties.

- (1) Formulate policies, strategies and measures to control the marketing of infant food, young child food and complementary food for infants.
- (2) Promote and support the development of a marketing surveillance system for infant food, young child food and complementary food for infants.
- (3) Provide advice or comment to the Minister on the prescription of notifications for the purpose of implementing this Act.
- (4) Provide advice or comment to the Minister on marketing controls for infant food, young child food and complementary food for infants for the purpose of implementing this Act.
- (5) Carry out any other activities as assigned by this Act, or other laws, or orders from the Cabinet or Minister.

Section 11. The Committee may appoint Sub-committees to consider or implement a specific task as appointed by the Committee.

Sections 6, 8 and 9 shall apply to the Sub-committees, *mutatis mutandis*.

Section 12. In the operation of the Committee and Sub-committees' duties under this Act, the Committee and Sub-committees may inquire any agencies, organizations or persons for technical information or statistics on the marketing of infant food, young child food and complementary food for infants. The Committee and Sub-committees are authorized to summon any persons to provide the fact or comment, or submit an explanation, document, information, evidence or any concerned objects, for consideration.

Section 13. The Department of Health, Ministry of Public Health, shall be authorized to perform administrative functions of the Committee and Sub-committees, with the following powers and duties.

- (1) Formulate policies, strategies and measures to control the marketing of infant food, young child food and complementary food for infants, to be considered by the Committee.
- (2) Coordinate and cooperate with concerned public and private agencies, domestic and international, in implementing policies, strategies and measures to control

the marketing of infant food, young child food and complementary food for infants.

- (3) Monitor and evaluate the outcomes of policies, strategies and measures to control the marketing of infant food, young child food and complementary food for infants as prescribed by the Department of Health or concerned agencies, to be considered by the Committee.
- (4) Act as a focal point in promoting or disseminating information and news on marketing controls for infant food, young child food and complementary food for infants, along with information and news to promote, support, advocate and establish understanding about breast feeding.
- (5) Carry out any other activities as assigned by the Minister, Committee or Sub-committees, or as assigned by this Act, or other laws, to be the powers and duties of the Department of Health, Ministry of Public Health.

Chapter 2

The Control of Marketing

Part I. Infant Food and Young Child Food

Section 14. No persons are allowed advertise infant food.

No persons are allowed to advertise infant food by presenting information on infants or young children in the advertisement that appear to be linked to or can be understood to represent infant food or food that is suitable for feeding infants.

Section 15. Manufacturers, importers or distributors of infant food or young child food, or their agents, shall ensure that the labels on infant food and young child food are significantly different and can be recognized or distinguished easily.

The labels on infant food and young child food in paragraph 1 shall be significantly different from other food labels.

Section 16. Under Section 14, in providing information about infant food or young child food, manufacturers, importers or distributors of infant food or young child food, or their agents, shall ensure consistency with the information which appears on the labels for infant food or young child food that is approved in accordance with the Food Act. There shall be no information to claim any nutritional or health benefits. In case of infant food, the following information must be presented.

- (1) The overall financial cost and quantity of infant food to be consumed;
- (2) Warning about hazards caused by inappropriate preparation or use of the product.

The rules, methods, conditions and details in preparing the information in paragraph 1 shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

The channel in providing information in paragraph 1 shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

Section 17. In providing information about infant food or young child food to public health personnel, manufacturers, importers or distributors of infant food or young child food, or their agents, shall ensure that it is backed up by scientific evidence. Such scientific evidence shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

Section 18. Manufacturers, importers, or distributors of infant food or young child food, or their agents, are not allowed to perform the following activities while engaging in the marketing of infant food or young child food.

- (1) Giving discount coupons or rights, tie-in sales, exchanging or giving prizes, gifts or other objects.
- (2) Offering infant food or young child food or product samples of infant food or young child food, whether directly or indirectly.
- (3) Offering infant food or young child food, objects or other things to pregnant women, mothers or family members of infants and young children.
- (4) Contacting pregnant women, mothers or family members of infants and young children, whether directly or indirectly, to promote, support or recommend the consumption of infant food or young child food, or to create linkage or association to infant food or young child food.

Section 19. Where manufacturers, importers or distributors of infant food or young child food, or their agents, wish to give or offer objects, equipment or materials to healthcare facilities, such objects, equipment or materials must not contain the name, logo, or other symbols that can be understood as being linked to or associated with infant food or young child food.

Section 20. Manufacturers, importers, or distributors of infant food or young child food, or their agents, are not allowed to offer any gifts, money, incentives or other benefits to public health personnel.

The provision in paragraph 1 shall not apply to offers associated with tradition or moral duty; the rules, methods and conditions thereof shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

Section 21. Manufacturers, importers, or distributors of infant food or young child food, or their agents, are not allowed to organize or sponsor academic conference, training or seminar about infant food and young child food for healthcare facilities, public health personnel, pregnant women or mothers of infants or young children, with exception of providing funds to public health professional organizations and public universities that offer curriculums on maternal and child health; the rules, methods and conditions thereof shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

Section 22. Manufacturers, importers, or distributors of infant food or young child food, or their agents, are not allowed to demonstrate or sponsor a demonstration of infant food or young child food in healthcare facilities or any other venues with the objective to encourage or promote the consumption of infant food or young child food for commercial purposes.

The provision in paragraph 1 shall not apply to manufacturers who are public health personnel whereby such activities are conducted for medical purposes or for the benefits in treating infants or young children.

Section 23. Manufacturers, importers, or distributors of infant food or young child food, or their agents, are not allowed to donate infant food or young child food to healthcare facilities or public health personnel.

The provision in paragraph 1 shall not apply to the donation of infant food or young child food for the purpose of special treatment for patients with specific diseases or abnormal physical conditions. Such donation shall be made on a need-only basis as announced by the Ministry with the advice of the Committee.

The rules, methods and conditions for the donation in paragraph 2 shall be in accordance with the guidelines stipulated by the Minister with the advice of the Committee.

Section 24. In preparing or disseminating technical information on maternal and child health, manufacturers, importers or distributors of infant food or young child food, or their agents, shall ensure that such information does not appear to promote or support the consumption of infant food or young child food, whether directly or indirectly, or communicate linkage or association with infant food or young child food.

The provision in paragraph 1 shall not apply to manufacturers who are public health personnel whereby such activities are conducted for medical purposes or for the benefits in treating infants or young children.

Part II. Complementary food for infants

Section 25. No persons are allowed to advertise complementary food for infants.

Section 26. Manufacturers, importers or distributors of complementary food for infants, or their agents, shall ensure that the labels on complementary food for infants and infant food, young child food or any other food products are significantly different and can be recognized or distinguished easily.

Section 27. Manufacturers, importers, or distributors of complementary food for infants, or their agents, are not allowed to perform the following activities while engaging in the marketing of complementary food for infants with any persons in healthcare facilities in accordance with the Sanatorium Act or healthcare facilities operated by a ministry, bureau, department, local administration, state-owned enterprise, public educational institution, other public organization or the Thai Red Cross Society.

- (1) Giving discount coupons or rights, tie-in sales, exchanging or giving prizes, gifts or other objects.
- (2) Offering complementary food for infants, product samples of complementary food for infants, objects or other things, whether directly or indirectly.

Section 28. Manufacturers, importers or distributors of complementary food for infants, or their agents, are not allowed to engage in the marketing of complementary food for infants with pregnant women or mothers of infants under six months of age.

Section 29. The provisions in Sections 17, 19, 20, 21 and 22 shall also apply to complementary food for infants.

Chapter 3

Competent officers

Section 30. A competent officer is authorized with the following powers and duties.

- (1) Enter any places during official hours to inspect documents, advertising media or any other objects which may be related to an offence if it can be reasonably suspected that an offence has been committed against this Act. The competent officer is authorized to take photographs or perform any other actions as required in order to obtain information, witnesses or evidence.
- (2) Confiscate or seize documents, advertising media or any other objects which may be related to an offence under this Act.
- (3) Issue a warrant to summon any persons to testify, present essential evidence in writing or submit any documents or evidence to be inspected or considered by the competent officer.

During the activities under paragraph 1, any persons involved shall facilitate the competent officers as appropriate.

Section 31. The competent officer shall present his or her identity card to the persons involved.

The identity card must comply with the format prescribed by the Minister.

Section 32. Documents, advertising media or any other objects that the competent officer has confiscated or seized in accordance with Section 30 (2) shall become properties of the state. The Director-General of Department of Health is authorized to order such objects to be destroyed or handled in any other ways, in accordance with the ministerial notifications with the advice of the Committee in the following circumstances.

- (1) The objects are not claimed by their owners or possessors within ninety days, counting from the date of their confiscation or seizure
- (2) In case there is no prosecution and the owners or possessors do not request that the objects be returned within ninety days, counting from the date that knowledge of no prosecution order is received.

- (3) In case there is a prosecution and the offender accepts a settlement, or the prosecutor does not file the charges, or the court does not order a confiscation, and the owners or possessors do not request that the objects be returned within ninety days, counting from the date of fine payment, or knowledge of no filing of charges, or final court judgment, as the case may be.

Section 33. During the implementation of this Act, the competent officer shall act as the official under the Criminal Code.

Chapter 4

Penalties

Section 34. Any person who advertises infant food or young child food in ways which contravene Section 14 paragraph 1 or 2, or any persons who advertise complementary food for infants in ways which contravene Section 25, is liable for imprisonment of a term not exceeding one year, or a fine in an amount not exceeding THB 100 000, or both, as well as an additional fine in an amount not exceeding THB 10 000 per day for the duration that the act is not corrected.

Section 35. Any manufacturer, importer or distributor of infant food, young child food or complementary food for infants, or their agent, who contravenes with Section 15 or Section 26, is liable for a fine in an amount not exceeding THB 300 000 as well as an additional fine in an amount not exceeding THB 10 000 per day for the duration that the act is not corrected.

Section 36. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes with Section 16 or provides information in accordance with Section 16 paragraph 1 that is false, is liable to a fine in an amount not exceeding THB 200 000.

Section 37. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes Sections 17, 19 or 24, is liable for a fine in an amount not exceeding THB 200 000.

Section 38. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes Section 18, is liable for a fine in an amount not exceeding THB 300 000.

Section 39. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes Section 20, is liable for a fine in an amount not exceeding THB 200 000.

Section 40. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes Sections 21 or 23, is liable for a fine in an amount not exceeding THB 100 000.

Section 41. Any manufacturer, importer or distributor of infant food or young child food, or their agent, who contravenes Section 22 paragraph 1, is liable for a fine in an amount not exceeding THB 200 000.

Section 42. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who contravenes Sections 27 or 28, is liable for a fine in an amount not exceeding THB 300 000.

Section 43. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who provides information on complementary food for infants to public health personnel without scientific evidence to back up, is considered to contravene Sections 17 and 29, and is liable for a fine in an amount not exceeding THB 200 000.

Section 44. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who gives or offers objects, equipment or materials to healthcare facilities which contain the name, logo, or other symbols that represent complementary food for infants or can be understood as being linked to or associated with complementary food for infants, is considered to contravene Sections 19 and 29, and is liable for a fine in an amount not exceeding THB 200 000.

Section 45. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who offers gifts, money, incentives or any other benefits to public health personnel, is considered to contravene Sections 20 and 29, and is liable for a fine in an amount not exceeding THB 200 000.

Section 46. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who organizes or sponsors academic conference, training or seminar on complementary food for infants, is considered to contravene Sections 21 and 29, and is liable for a fine in an amount not exceeding THB 100 000.

Section 47. Any manufacturer, importer or distributor of complementary food for infants, or their agent, who contravenes Section 22 paragraph 1 and Section 29, is liable for a fine in an amount not exceeding THB 200 000.

Section 48. Any person who does not comply with orders of the competent officer in accordance with Section 30 paragraph 1(3), or obstructs or does not facilitate the competent officer who is operating in accordance with Section 30 paragraph 2, is liable for imprisonment of a term not exceeding one month, or a fine in an amount not exceeding THB 10 000, or both.

Section 49. For all offences under this Act, the Director-General of Department of Health or a person authorized by the Director-General of Department of Health shall have the power to settle by fine in accordance with the criteria stipulated by the Committee. If the offender pays the fine for settlement within thirty days, counting from the date the amount thereof has been informed to him or her, the case is deemed to be settled under the Criminal Procedure Code.

Transitory Provisions

Section 50. In its first term, the Committee shall consist of committee members in accordance with Section 5 (1) and (2), with the Director-General of Department of Health acting as committee member and secretary. The Committee shall perform its duties under this Act in the interim period until expert committee members are appointed in accordance with this Act, though the period shall not exceed ninety days, counting from the effective date of this Act.

Section 51. Labels on infant food, young child food or complementary food for infants that have been prepared prior to the effective date of this Act, which do not comply with Sections 15 or Section 26, may still be used, though the period shall not exceed one year, counting from the effective date of this Act.

Section 52. Any notifications in accordance with this Act shall be prescribed within one hundred and eighty days, counting from the effective date of this Act. In case of failure to comply, the Minister shall report reasons for non-compliance to the Cabinet.

Countersigned by

General Prayut Chan-ocha

Prime Minister

Rationale: Currently the measures to control the marketing of infant and young child food are inappropriate and not in accordance with international standards. Thailand has adopted the International Code of Marketing of Breast-milk Substitutes at the 34th World Health Assembly and it was agreed at the 63th World Health Assembly that Member States shall revise and legislate the control of marketing of infant and young child food. In order to ensure that the measures to control the marketing of infant and young child food are in accordance with international standards, it is, therefore, necessary to enact this Act.