



TOBACCO INDUSTRY INTERFERENCE INDEX

Implementation of Article 5.3 of the WHO Framework
Convention on Tobacco Control in ASEAN Countries, 2019



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- » Brunei: Ministry of Health
- » Cambodia: Cambodia Movement for Health (CMH)
- » Indonesia: Indonesian Public Health Association (IAKMI)
- » Lao PDR: Dr. Maniphanh Vongphosy
- » Malaysia: Malaysia Women's Action for Tobacco Control and Health (MyWatch)
- » Myanmar: People's Health Foundation (PHF)
- » Philippines: HealthJustice Philippines
- » Thailand: Action on Smoking & Health Foundation (ASH Thailand)
- » Vietnam: HealthBridge Vietnam (HBV)

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About SEATCA (www.seatca.org)

SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by supporting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO Framework Convention on Tobacco Control. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control in Southeast Asia, the WHO bestowed upon SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General's Special Recognition Award in 2014. SEATCA is an official NGO Observer to the WHO FCTC Conference of Parties and a co-initiator of the Global Center for Good Governance in Tobacco Control (GGTC).

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INTRODUCTION

Since coming into force in 2005, implementation of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC)¹ has significantly improved despite interference of the tobacco industry and its allies, as the most common global challenge to overcome.²

The FCTC emphasizes the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of the tobacco industry's activities that have a negative impact on tobacco control. Fundamentally, effective tobacco control is antithetical to the economic and other vested interests of the tobacco industry, its associated industries, and entities or persons working to further the tobacco industry's agenda.³ To this end, Article 5.3 and its guidelines⁴ are at the very core of the FCTC.

Despite the importance and increasing global efforts to implement Article 5.3 and its guidelines, it remains to be an underutilized measure for many Parties to protect the treaty and public health against tobacco industry interference.⁵ Governments are also recognizing the increased vulnerabilities of non-health sectors to the interference of the tobacco industry.⁶

This sixth Tobacco Industry Interference (TII) Index report is a civil society report prepared by the Southeast Asia Tobacco Control Alliance (SEATCA) to gauge the level of implementation of Article 5.3 and its guidelines in nine (9) countries in the ASEAN region. Country partners from Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, and Vietnam conducted the initial country survey and evidence gathering to complete their 2018 national reports.

Similar to its predecessors, the same questionnaire and scoring method were used in preparing this report to quantify the intensity, frequency, and severity of tobacco industry interference based on publicly available information, as well as specific government measures or responses to address these incidences based on specific recommendations in the Article 5.3 guidelines.

The report provides a comparison among countries of their annual scores and, for this edition, a historical overview of country scores over the years (2015-2018)ⁱ to gauge any progress or deterioration in the capacity of governments to resist tobacco industry interference, and to illustrate the similarity of tobacco industry

tactics across countries and across time. Ultimately, these assessments could help identify specific gaps for governments where improvements can still be made.

Overall, findings indicate that ASEAN countries are moving slowly in implementing Article 5.3. While some of the countries have made progress in reducing tobacco industry interference, many have regressed and declined over the years. While this can signify the pervasiveness of



Resisting tobacco industry is key to protecting public health.”

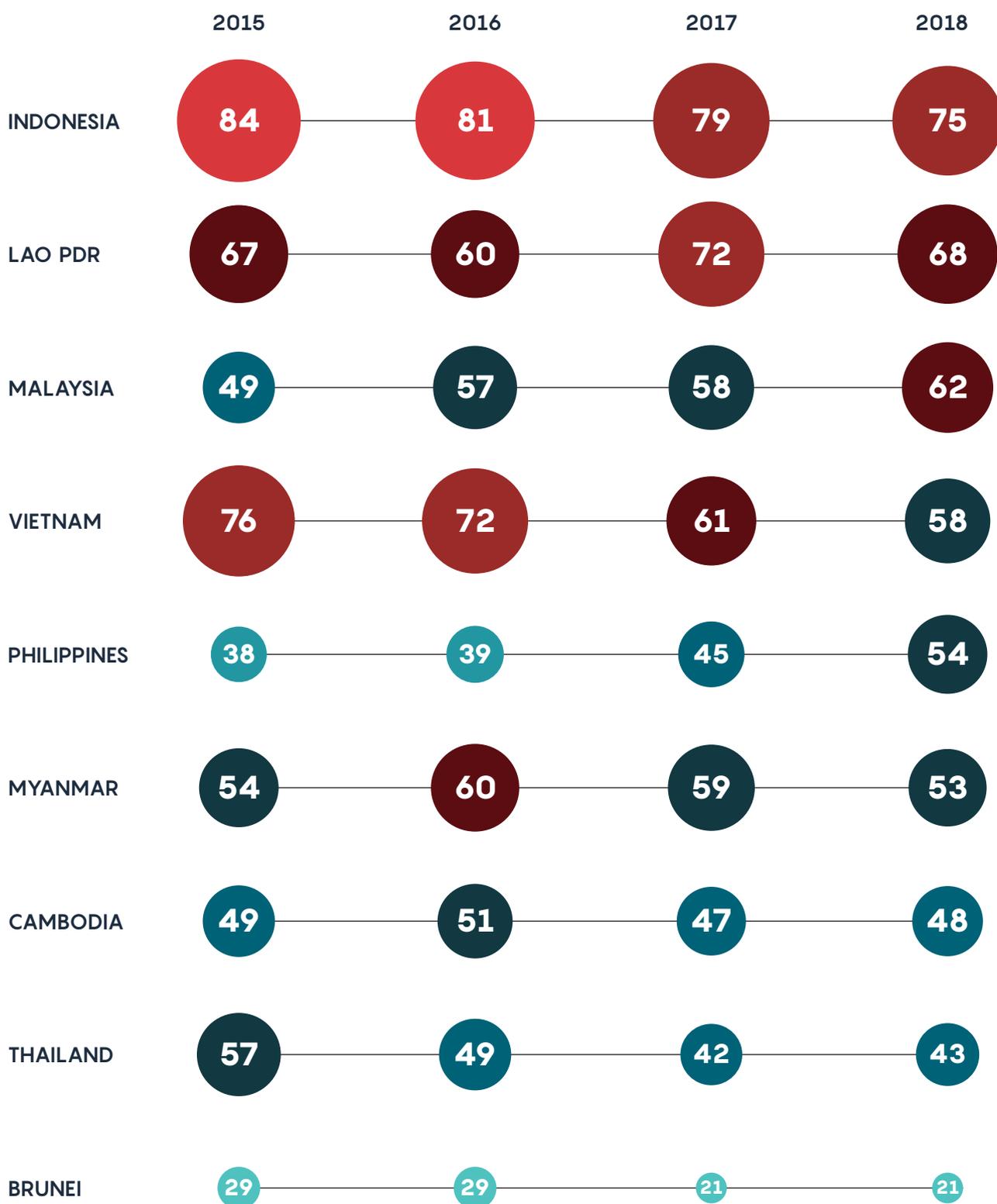
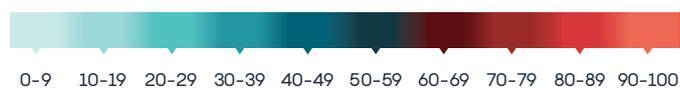
the tobacco industry's actions and behaviors to interfere with governments in public policy domains, this can also be a sign of increasing public awareness and capacity to monitor and document the tobacco industry's movements and behaviors. Nevertheless, governments and civil society alike need to be vigilant and proactive consistently to counter tobacco industry interference in all its forms.

Figure 1 shows the historical patterns of how countries have made progress, maintained status quo, or deteriorated in addressing tobacco industry interference and implementing Article 5.3. The lower the ranking (or score) means better implementation of Article 5.3. Overall, Indonesia, Vietnam, and Myanmar are showing significant progress, while Brunei and Cambodia's scores are almost unchanged. Philippines and Malaysia on the other hand, have scores that have been increasing, which could indicate the need to revisit existing policies and a more proactive approach.

ⁱ While data for 2014 is available for most countries, it was not included in the analysis as the questionnaire and scoring method used were slightly different from the version adopted since 2015.

FIGURE 1: TOBACCO INDUSTRY INTERFERENCE IN ASEAN

The lower the score, the better the ranking



SUMMARY OF FINDINGS

- » Brunei and Thailand's scores remain consistently lowest in ASEAN, but there is still room for improvement.
- » Philippines shows the most significant spike in its overall score primarily due to high levels of tobacco industry participation in policy development and unnecessary interactions between government officials / agencies and the tobacco industry. Malaysia, Thailand, and Cambodia also increased their overall scores for the past year.
- » Myanmar shows the most significant decline by putting in place preventive measures to protect the government from corruption. However, while Lao PDR and Indonesia's scores have also declined, their standings remain highest in the region.
- » Indonesia, a non-Party to the FCTC, is making steady progress in reducing tobacco industry interference over the years. However, stronger political will is still needed to de-normalize the tobacco industry and prioritize health over economic gains.
- » By including the tobacco industry as a stakeholder in policy development, the level of tobacco industry participation and influence in tobacco control policies particularly in Malaysia, Lao PDR, Vietnam, Indonesia, and Philippines remains high. State-owned tobacco enterprises remain in Lao PDR and Vietnam.
- » Tobacco-industry sponsored CSR activities remain a popular platform for the industry to promote itself as a "legitimate" partner in social development and to gain access to non-health government sectors across most countries.
- » Most countries continue to provide benefits to the tobacco industry such as duty-free allowance and facilitation of trade agreements on import / export of tobacco products. The tobacco industry has also managed to delay implementation of scheduled excise tax increases in Indonesia, Malaysia, and Thailand, while also transgressing the enforcement of pictorial health warnings (PHWs) in Lao PDR and Myanmar.
- » Unnecessary interactions with the tobacco industry continue to occur in most countries when government officials / agencies attend and participate in seemingly benign tobacco industry-led initiatives where they can be vulnerable to tobacco industry influence. Brunei, Myanmar, Cambodia, and Thailand have managed to keep these interactions limited.
- » The lack of transparency in disclosing interactions with the tobacco industry remains a substantial problem across all countries. While Philippines and Thailand have procedures to document necessary interactions with the tobacco industry, meeting documents / records are not made publicly accessible. While Myanmar and Philippines have laws / regulations that require the tobacco business / entities or representatives to register with the government at some level, all countries do not have a policy to register and disclose tobacco industry's affiliate organizations, individuals or lobbyists acting on their behalf.

-
- » Conflicts of interests continue to occur as incumbent and / or former senior government officials are appointed / offered positions to join the tobacco business particularly in Cambodia, Lao PDR, Malaysia, Indonesia, Philippines, and Thailand. Most countries also do not prohibit political contributions from the tobacco industry to politicians and political parties, nor require full disclosure of such contributions, except in Lao PDR, Vietnam, and to some extent Brunei, where these are not viable.
 - » Most countries are underway in putting in place preventive measures to implement Article 5.3 and other best practices to isolate tobacco industry interference. These must not be limited to the health sector and should be expanded as a whole-of-government approach to better governance. The Philippines has good policies that prohibit tobacco industry interference; however, stronger monitoring and enforcement systems are needed to improve implementation of these policies.



Governments that do not address tobacco industry interference will never achieve their tobacco control objectives.”

*Dr. Edgardo Ulysses Dorotheo,
SEATCA Executive Director*

TOBACCO INDUSTRY INTERFERENCE INDEX

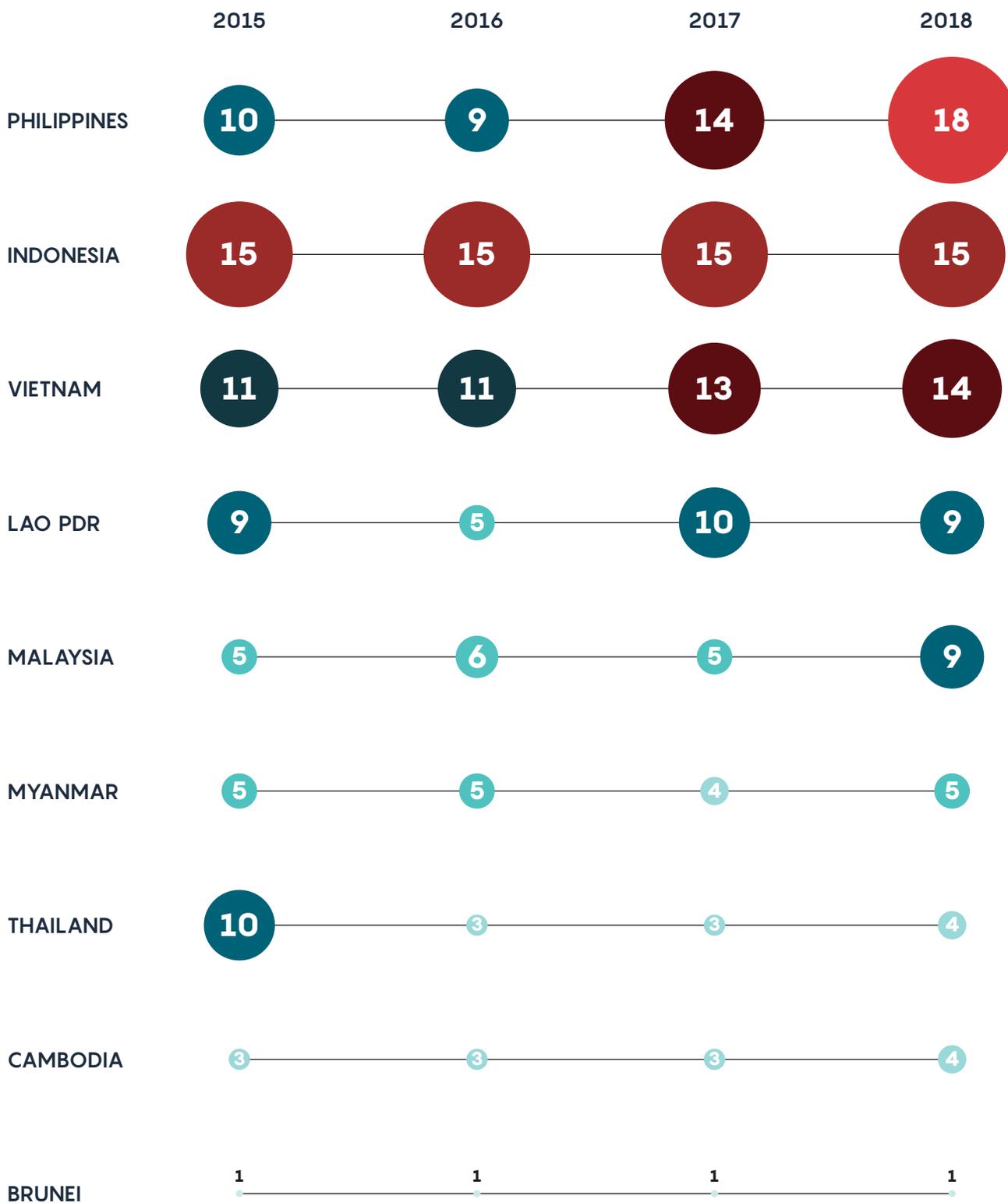
SUMMARY OF COUNTRY SCORES BY CATEGORY / CRITERIA OF MOST COMMONLY REPORTED INCIDENTS OR FORMS OF TOBACCO INDUSTRY INTERFERENCE IN 2018

INDICATORS	BR	KH	ID	LA	MY	MM	PH	TH	VN
Level of participation in policy development									
1. The government accepts, supports or endorses offer for assistance by or in collaboration with the tobacco industry in implementing tobacco control policies (Rec 3.1)	0	1	5	4	0	1	5	1	4
2. The government accepts, supports or endorses legislation drafted by/ collaboration with the tobacco industry (Rec 3.4)	0	1	5	3	3	2	5	1	4
3. The government allows the tobacco industry to sit in multi-sectoral committee/ advisory group that sets public health policy (Rec 4.8)	1	1	5	1	5	1	5	1	5
4. The government allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or subsidiary bodies or accepts their sponsorship for delegates. (Rec 4.9 & 8.3)	0	1	0	1	1	1	3	1	1
Subtotal	1	4	15	9	9	5	18	4	14
Tobacco industry-sponsored CSR activities									
5. The government receives contributions from the tobacco industry (including so-called CSR contributions) (Rec 6.4) The government agencies/officials endorse, form partnerships with/ participate in tobacco industry CSR activities (Rec 6.2)	0	3	5	0	3	4	4	2	4
Subtotal	0	3	5	0	3	4	4	2	4
Benefits given to the tobacco industry									
6. The government accommodates requests from the industry for longer implementation time or postponement of tobacco control law (Rec 7.1)	0	1	5	3	5	4	0	3	0
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)	0	4	5	5	3	3	5	2	1
Subtotal	0	5	10	8	8	7	5	5	1
Forms of unnecessary interaction with the tobacco industry									
8. Top-level government officials meet with/ foster relations with the tobacco companies such as attending social functions and events sponsored or organized by the tobacco companies. (Rec 2.1)	0	1	5	5	3	0	4	0	5
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement (Rec 3.1 & 4.3)	0	0	1	5	2	0	0	2	5

INDICATORS	BR	KH	ID	LA	MY	MM	PH	TH	VN
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry (Rec 3.1)	0	1	2	5	0	1	5	0	0
Subtotal	0	2	8	15	5	1	9	2	10
Transparency									
11. The government does not publicly disclose meetings/ interactions with the tobacco industry where such interactions are strictly necessary for regulation. (Rec 2.2)	4	2	5	4	3	4	0	3	1
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliate organizations, and individuals acting on their behalf including lobbyists.	5	5	5	4	5	5	3	4	5
Subtotal	9	7	10	8	8	9	3	7	6
Conflict of interest									
13. The government does not have a policy (whether or not written) to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions (Rec 4.11)	1	5	5	1	5	1	5	4	1
14. Retired senior officials work for the tobacco industry (Rec 4.4)	0	0	5	3	4	3	3	5	0
15. Current government officials and their relatives hold positions in the tobacco business including consultancy positions (Rec 4.5, 4.8 & 4.10)	0	4	1	5	0	2	0	4	5
Subtotal	1	9	11	9	9	6	8	13	6
Preventive measures									
16. The government has a procedure for disclosing records of the interaction with tobacco industry and its representatives. (Rec 5.1)	3	5	5	5	5	5	1	2	5
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards they should comply when dealings with the tobacco industry (Rec 4.2)	3	3	2	2	5	2	1	2	4
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, and political contributions. (Rec 5.2)	0	5	2	4	5	5	2	2	2
19. The government has a program / system/ plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)	3	3	5	3	2	5	2	2	4
20. The government has a policy prohibiting the acceptance of all forms of contributions from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations to the government, officials and their relatives. (Rec 3.4)	1	2	2	5	3	4	1	2	2
Subtotal	10	18	16	19	20	21	7	10	17
TOTAL	21	48	75	68	62	53	54	43	58

FIGURE 2: LEVEL OF PARTICIPATION IN POLICY DEVELOPMENT

The lower the score, the better the ranking



High levels of tobacco industry participation in policy development

The governments of Brunei, Cambodia, and Thailand do not accept, support, or endorse policy or legislation drafts (or offers of assistance to draft) by or in collaboration with the tobacco industry, nor invite the tobacco industry to sit at meetings where policies are decided. In these countries, the tobacco industry is not allowed nor invited to sit in inter-ministerial or committee meetings on implementing the FCTC.

While Myanmar and Malaysia maintain “no direct participation of the tobacco industry in policy development”, there are implications that their governments have accepted pro-tobacco industry policies which show increases in their 2018 scores. In Malaysia, British America Tobacco (BAT) made a statement acknowledging the government for not pushing through with a planned excise tax increase⁷ that reflected recommendations from a report prepared by the Institute for Democracy and Economic Affairs’ (IDEAS),⁸ a think tank funded by PMI and JTI, and another report by PMI-funded Oxford Economics on illicit trade.⁹ In Myanmar, the Internal Revenue Department (IRD), Ministry of Planning and Finance (MOPF) acknowledged receiving a tobacco tax proposal from the industry to reform the Union Tax Law, which is under review by Parliament.

Through interference at the Prime Minister Office (PMO), a pro-tobacco policy that sets a minimum price on cigarettes was also introduced in Lao PDR; however, this proposal was blocked by other ministries and did not gain traction.

In several meetings and hearings held by Philippines’ House of Representatives and Senate, tobacco industry representatives were invited as resource persons and provided inputs and comments on several proposed bills (i.e., tobacco tax increase, amendment to the Tobacco Regulation Act, and electronic nicotine delivery system / electronic non-nicotine delivery system (ENDS / ENNDS)). Several pending bills on ENDS / ENNDS also contain provisions that mimic tobacco industry positions that could very well pinpoint industry draftsmanship and origins.¹⁰

Similarly, the Indonesian government continues to treat the tobacco industry as a normal business, and hence, a conducive policy landscape exists for the industry to exert influence with the government. A pro-industry

Tobacco Bill remains pending in Parliament, with endorsement from the Vice Minister of Finance as a law that “protects farmers and generates revenues for the government”. The Coordinating Ministry for Economic Affairs also engaged Independent Research and Advisory Indonesia (IRAI) to develop a new Tobacco Roadmap that promotes the industry and undermines the government’s existing tobacco tax simplification plan. The founder and head of IRAI¹¹ was a former chief executive of Sampoerna Foundation, and now a Policy Advisor to the Coordinating Ministry for Economic Affairs. Following the passage of this roadmap, the government officially declared that it will not increase taxes in 2019 and revoked its tax tier simplification plan.¹²

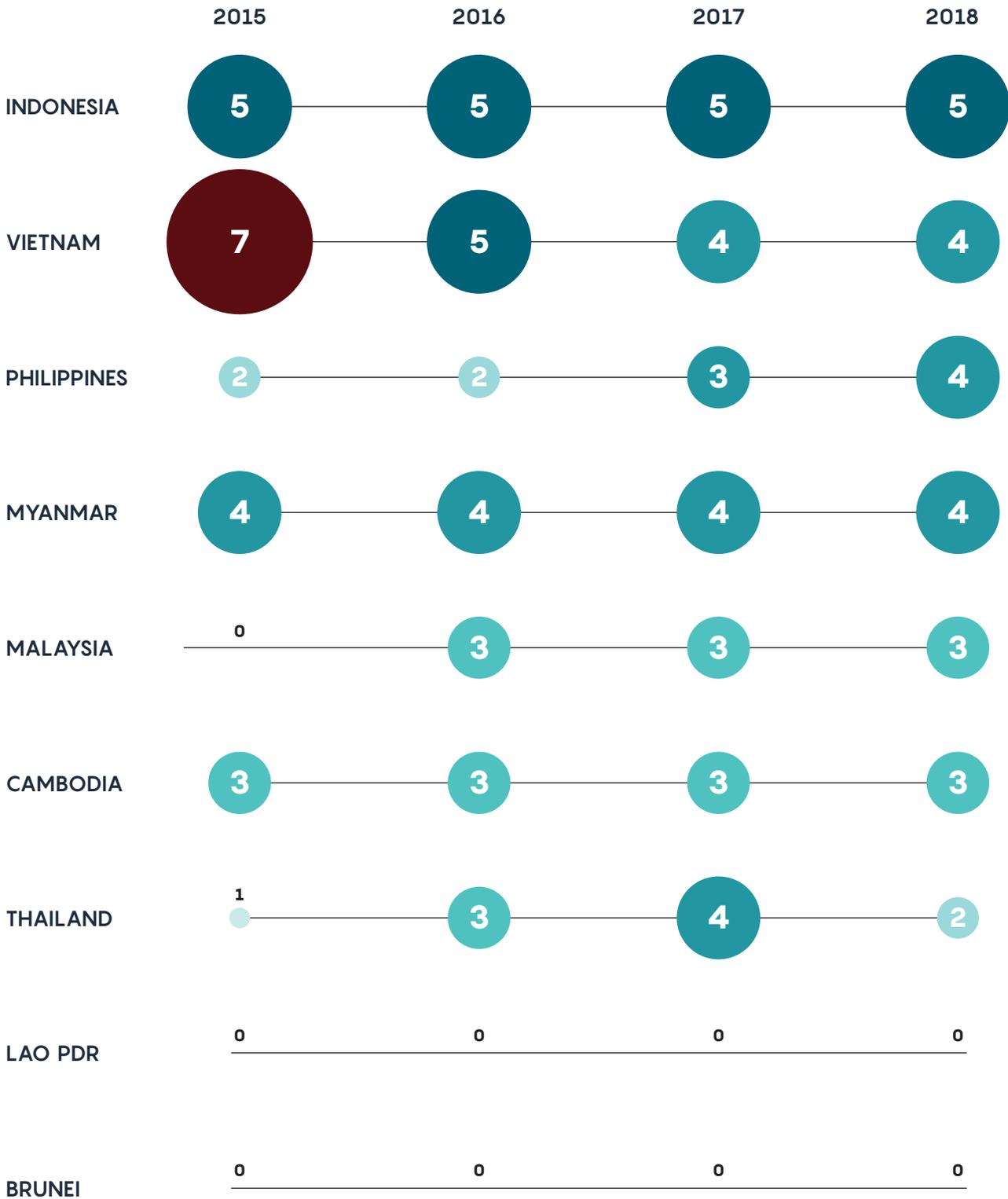
The tobacco industry also remains part of inter-ministerial or multi-sectorial committees that set public health policies in Malaysia, Philippines, and Vietnam. In Malaysia, this is through the Border Security Agency (AKSEM) that carries out enforcement activities on illicit tobacco trade, which has the National Kenaf and Tobacco Board (LKTN) in its committee,¹³ and in turn JTI, as represented in LKTN’s Board. In the Philippines, the Philippine Tobacco Institute (PTI) and the National Tobacco Administration (NTA) are also members of the Inter-agency Committee-Tobacco (IACT), a government committee tasked to implement provisions of the Tobacco Regulation Act and monitor compliance of the Graphic Health Warnings Law. In Vietnam, the government enlists and consistently engages Vietnam Tobacco Association (Vinataba), a State-owned tobacco enterprise with a lion’s share of the market, in several inter-ministerial meetings and discussions related to control of illicit tobacco trade,¹⁴ where it recommended to cancel the Viet Nam Tobacco Control Fund, transfer its management from Ministry of Health to Finance, and utilize 50% of the fund for smuggling control.^{15,16}

In the Eighth Session of the Conference of the Parties to the WHO FCTC (COP8) held last October 2018, the Philippine delegation included a representative from the tobacco industry through NTA, a government agency mandated to promote tobacco production.¹⁷

Overall, Philippines, Indonesia, and Vietnam have the highest levels of incidence where the tobacco industry participates in policy development. This is consistent for the past three (3) years. The high scores are indicative of stronger interference by the tobacco industry, and / or lesser capacity and political will of governments to resist and prevent these interferences, particularly when the tobacco industry is considered a stakeholder and has access to policy development.

**FIGURE 3: TOBACCO
INDUSTRY-SPONSORED
CSR ACTIVITIES**

The lower the score, the better the ranking



Persisting tobacco–industry sponsored CSR activities

The tobacco industry continues to utilize “corporate social responsibility” (CSR) activities as a means to access and influence policymakers, create a positive public image, and to advertise its products and brands during these events. More often, the tobacco industry engages non-health government agencies or sectors such as education, welfare and development, environment, and law enforcement to disassociate its image from the health harms caused by the products it manufactures and sells.

Country scores for 2018 remained almost unchanged as governments continue to support partnerships or receive contributions from the tobacco industry.ⁱⁱ In Cambodia, BAT is still involved in tree planting and reforestation projects in coordination with the Forestry Administration, non-government organizations (NGOs) and farming communities,¹⁸ while JTI sponsors de-mining activities through APOPO, a Belgian NGO working in partnership with the Cambodian Mine Action Centre (CMAC), a national autonomous government body.¹⁹ The Indonesian government also continues to support, participate, and receive contributions for tree planting and enterprise development projects through Sampoerna and Djarum Foundation. In Malaysia, PMI sponsors Yayasan Salam Malaysia’s “Back-to-School” program, whose launching was officiated by the Prime Minister’s political secretary and endorsed by the government and the Chief Minister of the State of Kedah. BAT’s project to provide drinking water for Kayin State refugees remains ongoing in Myanmar, with support and endorsement from the Department of Rural Development.

In the Philippines, while the Department of Health-Civil Service Commission (DOH-CSC) Joint Memorandum Circular (JMC) on the Protection of the Bureaucracy Against Tobacco Industry Interference has banned direct partnerships between the government and the tobacco industry, tobacco companies are still able to carry on by courting contributions through foundations or cause-oriented groups such as Wong Chu King Foundation and American Chamber of Commerce Foundation. Philip Morris Fortune Tobacco Corporation (PMFTC),

through its CSR arm “Embrace”, is a partner of Jaime V. Ongpin Foundation and conducted at least 26 of these so-called CSR activities in 2018 alone. PMFTC has also participated in a river clean-up organized by the Philippine Coast Guard Auxiliary, Metro Manila Development Authority (MMDA), and Pasig River Rehabilitation Commission, all of which are government entities; and partnered with the National Commission on Culture and the Arts (NCAA), also a government agency, through the Philippine Art Awards Foundation.²⁰

Lao PDR and Thailandⁱⁱⁱ have already banned CSR activities, and to some extent, Vietnam where certain sponsorships are not allowed; however, this makes no difference to the extent by which the tobacco industry conduct these activities in Vietnam. State-owned Vinataba and other tobacco companies (both domestic and transnationals) still support a variety of programs such as scholarships,^{21,22} educational facilities improvement,^{23,24} poverty alleviation,^{25,26} and subsidies for war veterans,²⁷ among others. These CSR activities bring the tobacco industry in contact with high-profile government officials up to the level of the Prime Minister.²⁸

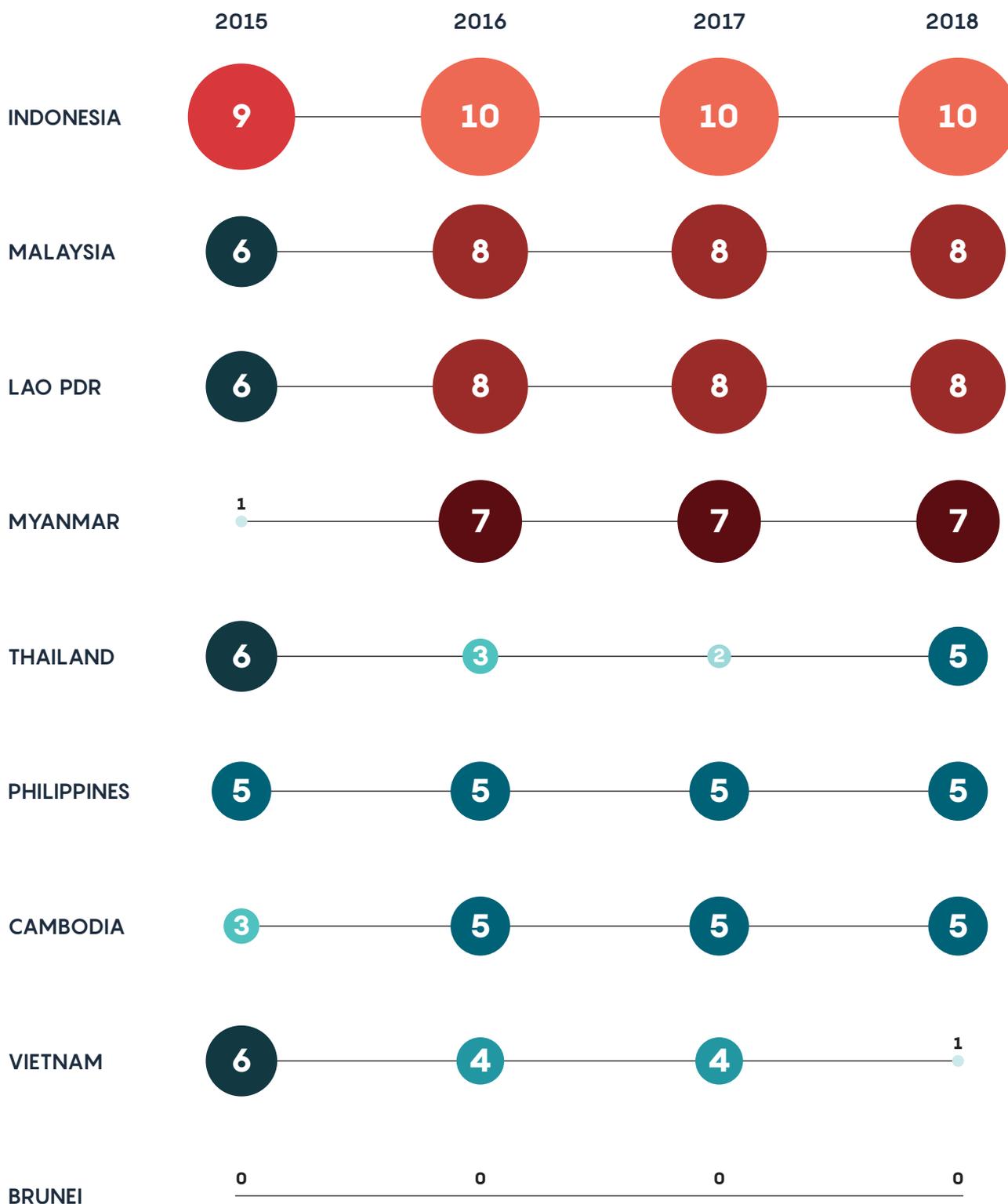
Overall, most countries have not made significant progress to stop tobacco-industry CSR activities. These endure as a popular platform for the industry to promote itself as a “legitimate” partner in social development and other causes, which it then uses as a gateway to access governments especially through non-health sector channels. The increasing number of CSR activities and partnerships especially in the Philippines indicates the immediate need to strengthen monitoring and information dissemination, so that national and local government units are properly informed that these partnerships are not allowed.

ⁱⁱ Brunei has had no local tobacco manufacturers in the country since mid-2014 nor tobacco industry-related corporate social responsibility activities.

ⁱⁱⁱ Previously applied only to Tobacco Authority of Thailand (TAOT), formerly Thailand Tobacco Monopoly (TTM), but now covers other transnational tobacco companies.

FIGURE 4: BENEFITS GIVEN TO THE TOBACCO INDUSTRY

The lower the score, the better the ranking



Tobacco industry still enjoying government benefits

With the exemption of Brunei, the tobacco industry still enjoys benefits from governments in one form or another across the ASEAN region. Many governments still consider the tobacco industry's business portfolio as a major economic driver and grant the industry with privileges, incentives, or tax exemptions to grow its business. Another serious implication of this treatment accords the industry with political leverage to strong arm governments for leeway as regards implementation of tobacco control measures, many of which have lasting impact not only on finance and trade but on public health as well.

a. Deferment or postponement to implement tobacco control measures

The tobacco industry has succeeded anew to request governments of Thailand, Lao PDR, Malaysia, and Indonesia to defer scheduled implementation plans or reduce blanket enforcement of tobacco control policies, thus their particularly high scores and a significant spike for Thailand in 2018. For Thailand, the MOF gave way to the request of tobacco farmers associations to postpone raising the excise tax from 20% to 40%, scheduled to take effect in October 2019, to October 2021;²⁹ while in Lao PDR, the implementation of 75% PHWs on cigarette packs was also delayed for 180 days (6 months) as the tobacco industry requested the government to give it time to finish its "large stockpile" of printed packets carrying smaller PHWs.

In Malaysia, while the MOH has been able to strengthen its smoke-free environment measures, several tobacco control policy decisions pending since 2016 languish as the tobacco industry continues to lobby with policymakers. The government backtracked on its decision to implement standardized packaging and heeded the opposition of the tobacco industry and lobby groups including IDEAS,³⁰ putting on hold plans to move forward despite already having in place an implementation plan and strategy. Both LTKN, which has jurisdiction on licensing tobacco retailers, and the Ministry of Primary Industries, which oversees LTKN, have also delayed for the past seven (7) years on whether to impose retail licenses on sellers of tobacco products.³¹ Lastly, contrary to MOH's recommendations

to ban all ENDS / ENNDS, non-nicotine e-cigarettes were allowed under the purview of the Ministry of Domestic Trade and Consumer Affairs after intensive lobbying of vaping groups / associations.

In Indonesia, the tobacco industry also enjoys the same accommodation from the government both at national and local levels. After coming under pressure from the tobacco industry, the MOF cancelled the scheduled tax increase that is supposed to take effect in 2019 and revoked the tobacco excise simplification roadmap altogether, while the District Head of Jombang in East Java Province also delayed implementing their smoke-free regulation since the tobacco industry is still considered an economic stakeholder and remains a protected domestic industry. The Mayor of the City of Bogor also postponed to implement their smoke-free regulation with provisions on banning tobacco advertisement following protests not only from the Institute for Development of Economics and Finance (INDEF)³² and other front groups but from government officials as well. Representatives of the Ministry of Home Affairs and Ministry of Law and Human Rights called the local government's attention to reconcile Bogor's local policy with the national regulation (Government Regulation (PP) 109), while a member of Parliament made a special warning for local regulations "not to hamper the growth of the tobacco industry business".

On the other hand, Vietnam that has previously taken into consideration the tobacco industry's positions especially on tobacco tax policies, has successfully increased excise taxes scheduled to take effect in 2019 following stipulations of the Excise Tax Law.^{iv} In addition, the Ministry of Finance is also reviewing proposals to further increase tobacco excise tax rate following the government's plan to revise five (5) tax laws including the Excise Tax Law (focusing on tobacco tax and some other products), despite recommendations from Vietnam Tobacco Association in 2018 to temporarily suspend tax increases.^{33,34}

iv Excise Tax Law No. 70/2014/QH13 dated 2014 on "Amendments to some articles of the Excise Tax Law" that came into effect on 1 January 2016 with two milestones to increase tobacco excise rate: 1) 60% to 65% by 1 January 2016 and 2) 70% to 75% by 1 January 2019.

b. International and domestic trade benefits

The governments of Cambodia and Vietnam have an existing bilateral agreement on duty-free exemptions for dried tobacco leaves (up to 3,000 tons per year) imported from Cambodia to Vietnam; Thailand also gives tax exemptions for native tobacco leaves (up to 1 kilogram) with no industrialized purposes,³⁵ while Indonesia's restriction on tobacco leaf imports has been revoked by the Coordinating Minister for Economic Affairs. Under the ASEAN Trade in Goods Agreement (ATIGA), tobacco leaf and other tobacco related additives imported to the Philippines also enjoy zero import duties.

All countries except Brunei (and Singapore) still permit duty-free tobacco products allowance for international travelers coming to ASEAN. In Cambodia, Indonesia, Lao PDR, Malaysia, Thailand, and Vietnam, 200 sticks of cigarettes and/or equivalent tobacco products are allowed, while 400 sticks of cigarettes and/or equivalent tobacco products are still allowed in both Myanmar and Philippines.³⁶

In Lao PDR, the 25-year (2001-2026) Investment License Agreement (ILA) between the government and Imperial Tobacco Group is still in place. This incentivizes the company that controls 93% of the cigarette market with caps on excise taxes on its products that should have been collected to help boost the economy and finance health programs through the Lao Tobacco Control Fund.

c. Lack of punitive action for tobacco industry's non-compliance

Another indirect benefit that tobacco industry enjoys is the lack of action from governments to penalize the industry for its failure, deliberate or otherwise, to comply with existing tobacco control measures. For instance, in Myanmar the second and third sets of images for its PHWs should have appeared on cigarette packs from 2017 and 2018, respectively. However, no action has been taken yet and cigarette products with old PHWs (introduced since 2016) are still prevalent in the market.

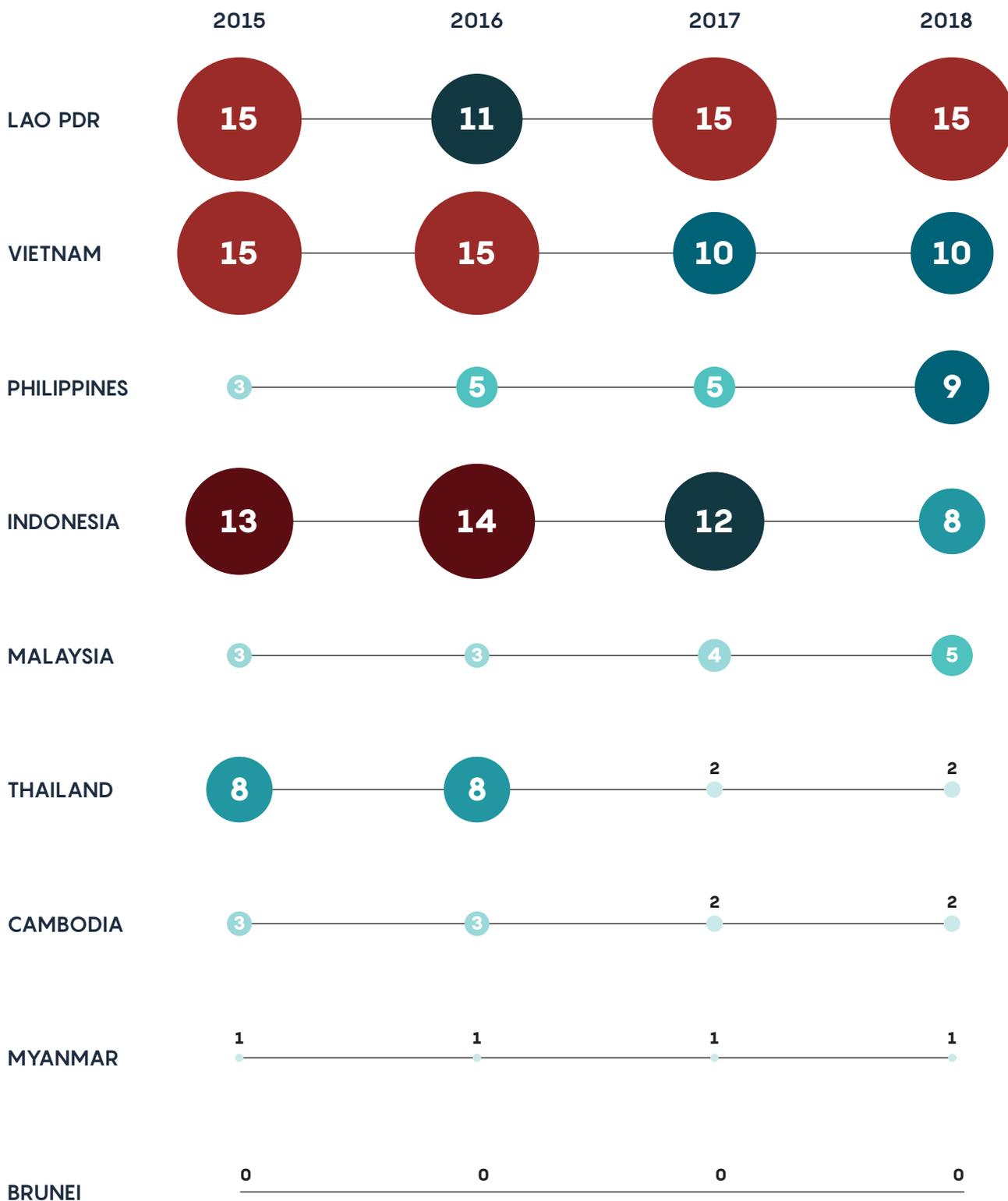
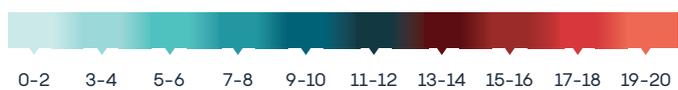
In Malaysia, there is also confusion over whether heated tobacco products (HTPs) should be classified as tobacco products and hence, must be subject to Control of Tobacco Products Regulations. In November 2018, PMI started to sell IQOS without PHWs but the government has not resolved this issue nor taken any steps to enforce PHWs application.³⁷



Many governments still consider the tobacco industry's business portfolio as a major economic driver and grant the industry with privileges, incentives, or tax exemptions."

FIGURE 5: FORMS OF UNNECESSARY INTERACTIONS WITH THE TOBACCO INDUSTRY

The lower the score, the better the ranking



Unnecessary interactions still taking place

By definition under Article 5.3 guidelines, unnecessary interactions with the tobacco industry occur when top government officials attend social functions and events sponsored by the industry or when the government accepts offers of assistance from or enters into partnerships with them. These interactions remain aplenty in Malaysia, Indonesia, Philippines, Vietnam, and Lao PDR; albeit a slight decrease for Indonesia, there was a drastic increase for Philippines and Malaysia.

a. Social functions

While seemingly benign, social functions and events provide a gateway for the tobacco industry to get to know and access high level government officials to lobby its business agenda. By merely attending and participating in these events, government agencies and officials can also be misconstrued to be officially endorsing the tobacco industry, which further normalizes the industry and its products. This is particularly evident in Vietnam and Indonesia where several ministries continue to foster close ties with the tobacco industry and have attended and promoted such events.

In Vietnam, numerous occasions can be identified including the high-level meeting between the Vice President of the National Assembly and the Regional Manager of PMI, where it promoted alternative tobacco products as “less harmful than traditional tobacco” and thus, expected the National Assembly “to provide a legal corridor for production in Vietnam”.³⁸ Several deputy ministers from trade and industry,^{39,40} National Assembly members, and People’s Committee representatives have also attended and participated in events organized by or with the tobacco industry.^{41,42}

In Indonesia, two government ministers (i.e., industry and labor) have been photographed together with the President of Sampoerna while wearing jackets with Sampoerna’s logo; one minister (cooperatives and small and medium scale enterprises) publicly encouraged and praised Sampoerna for increasing entrepreneurship, while another ministry (social affairs) has also given Sampoerna an award for its CSR activities. In Malaysia, which slightly increased its score

from 2017, publicly available information showed that the Prime Minister received the US-ASEAN Business Council, that included two PMI executives, in his office. The Johor Director of Royal Customs has also officiated the opening ceremony of BAT’s new factory together with BAT’s Managing Director; while in the Philippines, PMFTC inaugurated its solar power plant in Batangas, with the Provincial Governor and a House of Representatives member in attendance.^{43,44}

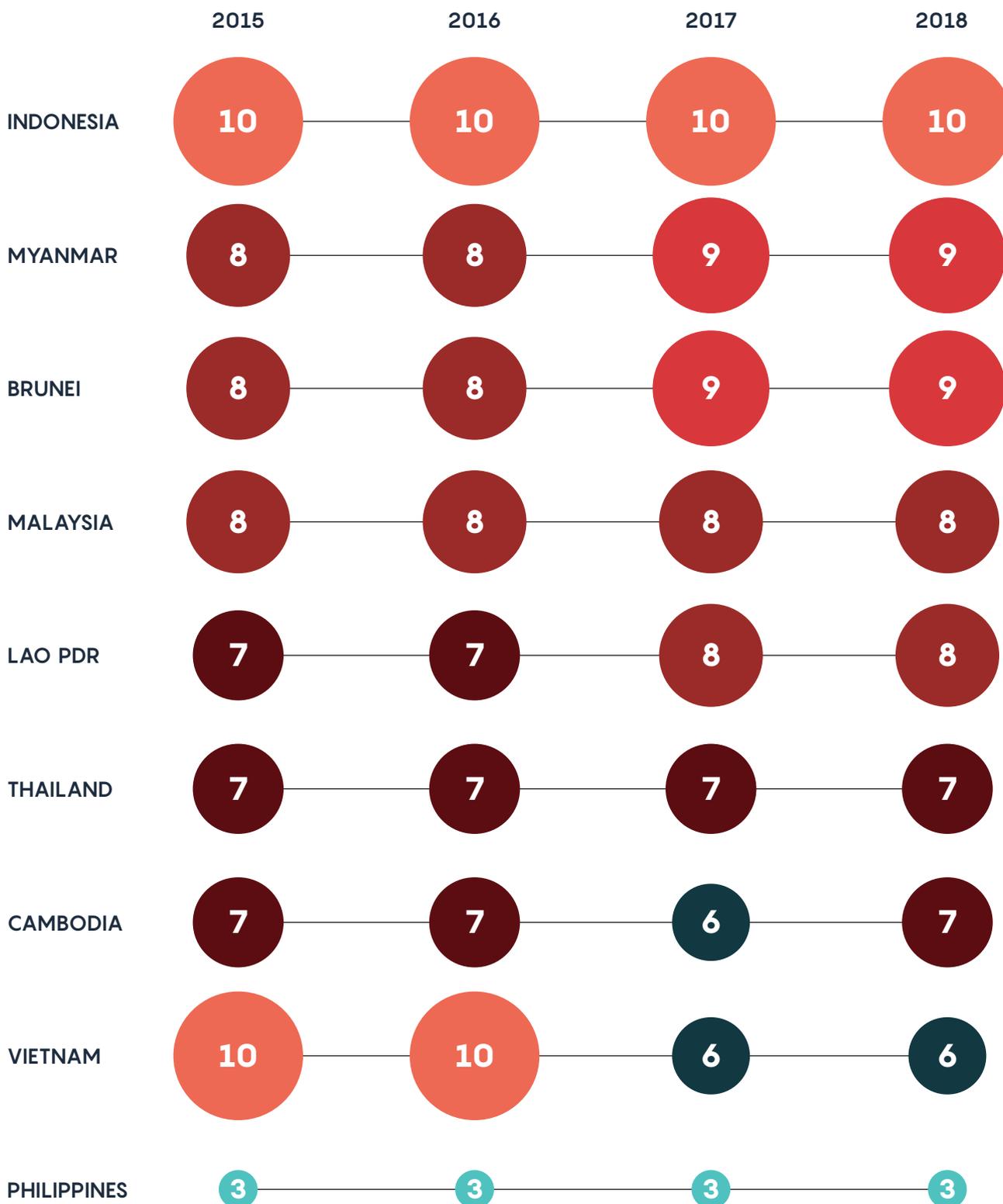
b. Assistance and offers of partnerships

Combating illicit tobacco trade seems to be a common issue among countries where tobacco industry has given assistance to and formed partnerships with governments. In Malaysia, AKSEM carried out enforcement activities on illicit tobacco with support from the industry; while European Chamber of Commerce (EuroCham) in Myanmar also established an Anti-Illicit Trade Group, which included BAT as a member to “coordinate regular consultation meetings between the group and the authorized government officials to develop a shared understanding of challenges and issues”. It is also mandatory for tobacco companies in Vietnam to provide funding for smuggling control^v aside from direct collaboration with the government through representation in multi-sectoral committees / advisory groups on illicit trade. The Lao PDR government has also received assistance from the industry for anti-smuggling enforcement; while in Thailand, TAOT has partnered with the Customs Department and the Royal Thai Army on raiding shops selling ENDS / ENNDS. Other partnerships include the Philippine National Police’s (PNP) agreement with PMFTC to implement a nationwide “youth wellness and healthy lifestyle program” signed by PNP’s Director General and PMFTC’s President and External Affairs Director; and in Cambodia, between a public school and Vinton Group.

^v Under Circular 306/2016/TT-BTC of Ministry of Finance and Directive 04/CT-BCT on 24/03/2015 of Ministry of Industry and Trade.

FIGURE 6: TRANSPARENCY

The lower the score, the better the ranking



Greater transparency and accountability needed

Across countries, the issue of government transparency in dealing with the tobacco industry has not improved - where governments have not put in place procedures that compel them to publicly disclose information about its interactions with the tobacco industry nor about registrations of entities, affiliated organizations, and individuals acting on the industry's behalf. While the tobacco industry, and any other industry for that matter, can communicate with governments regarding its business, a systematic recordkeeping to document what transpires or how the industry's agenda might impact on policy issues remain lacking.

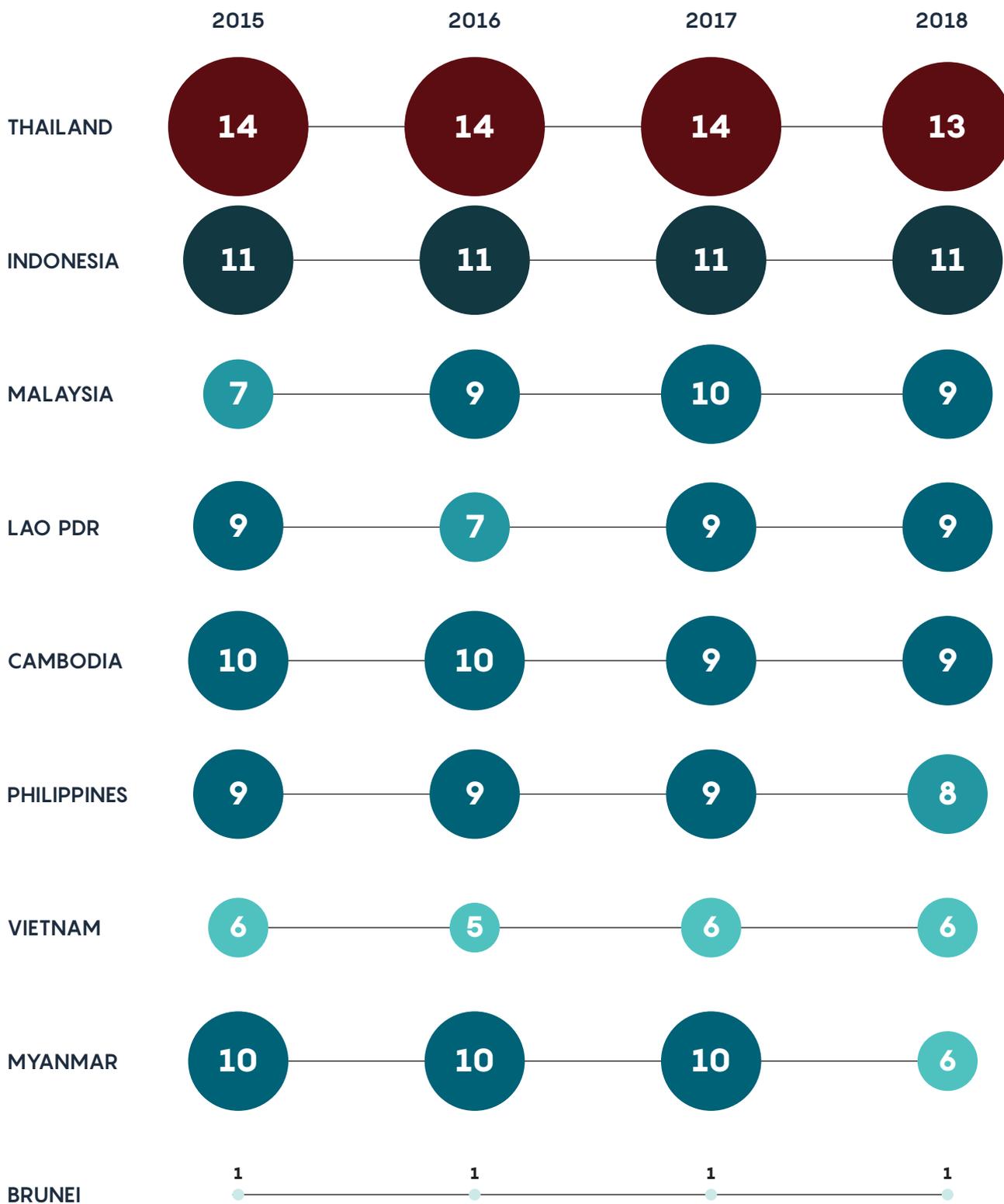
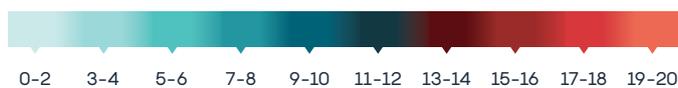
To its credit, the DOH-CSC JMC applied in the Philippines requires transparency in all interactions with the tobacco industry. It outlines procedures to be observed when meeting with the industry is strictly necessary. The same circular also requires government agencies to provide information about any interaction they had with the tobacco industry to the CSC. To ensure transparency and accountability, the government agency shall make copies of these documents accessible to the public. However, while there are social media sightings and advocates reporting of several interactions between the tobacco industry and government agencies, the CSC accounts that it does not have any documentation or disclosure of any meetings or interactions.

There are certain laws / regulations in Myanmar and Philippines that require the tobacco industry to register its business entities. Under Myanmar's Commercial Tax Law, all manufacturing facilities and distribution chains are required to register with the government, while corporate / business entities are also required to register with the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC) to operate in the Philippines. However, all other countries do not have any policy / regulations that require disclosure or registration of tobacco industry affiliated organizations or individuals acting on the industry's behalf including lobbyists.

Transparency and accountability are key ways to address bureaucratic failures including corruption, and these elements often overlap with the level of freedom of information (FOI) or the right of access to information. Most ASEAN countries do not have FOI regimes yet, which makes accessing certain information about and from the government particularly challenging. Where available, for example, in Thailand and Indonesia, reforms might still be necessary to keep their FOI legislations more comprehensive and applicable to the tobacco industry.

FIGURE 7: CONFLICT OF INTERESTS

The lower the score, the better the ranking



Conflict of interest through patronage and revolving door

The tobacco industry has mastered the art of operating away from the public eye while still spreading its sphere of influence and reaching all levels and sectors of government. One way the tobacco industry is able to do this is through political contributions to candidates, parties and their campaigns. None of the ASEAN countries have strict procedures to ban this activity and prevent potential conflict of interests. It must be noted, however, that Brunei does not have a domestic tobacco sector, while political campaigns do not take place in Lao PDR and Vietnam because of their unitary/single party governments. The Philippines' Omnibus Election Code⁴⁵ on the other hand, bans contributions from corporations but still allows individuals, including representatives from the industry, to give political contributions. Thailand's Organic Act on Political Parties also allows the tobacco industry to give political contributions up to a certain monetary limit.

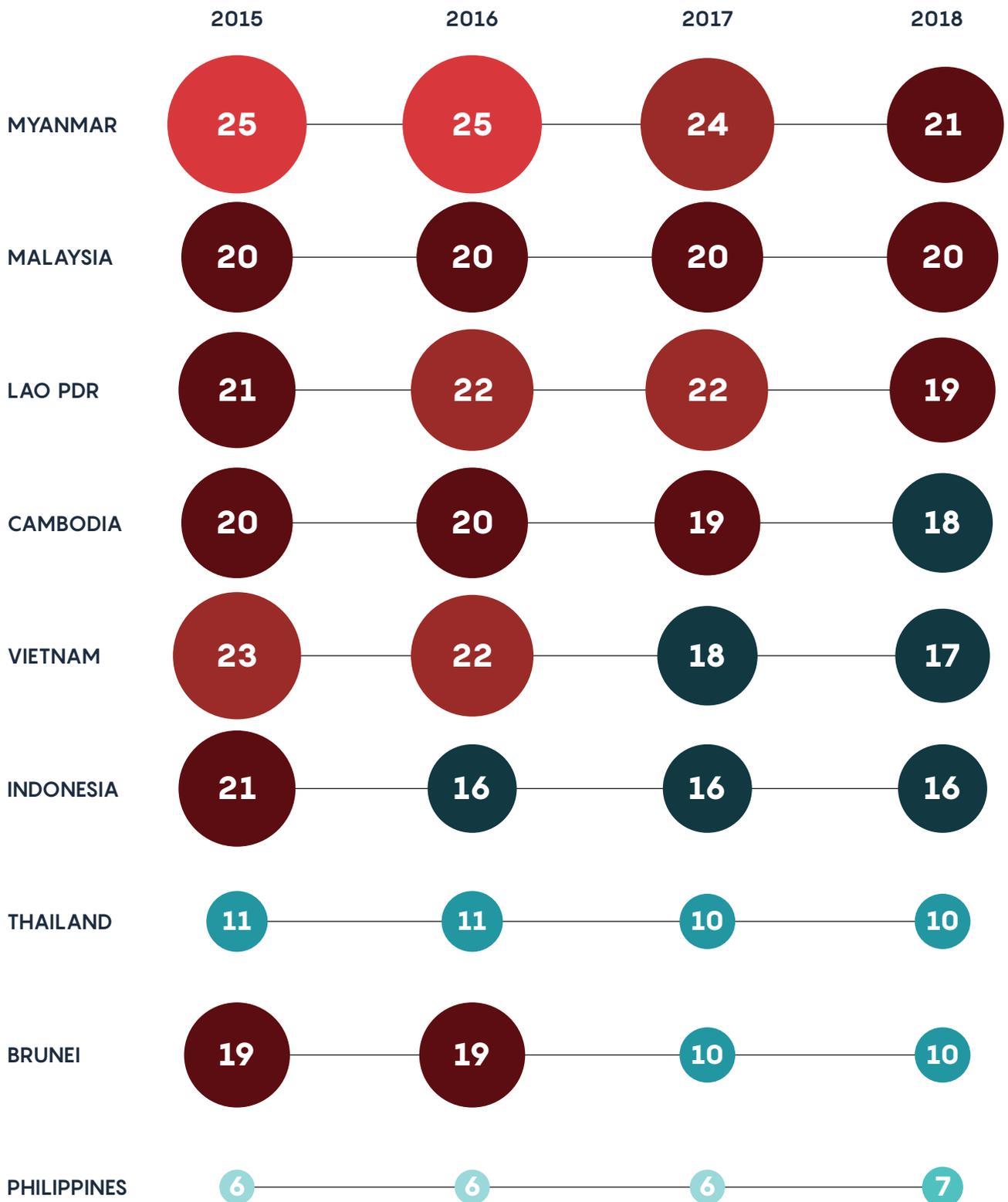
Another way for the industry to influence public policy is through the revolving door, where politicians or civil servants take up jobs as lobbyists or consultants in the area of their former public service or where former private sector employees could accept position in the government where they have the power to regulate the sector they once worked in.⁴⁶ There is evidence that this practice is growing rapidly in many parts of the world including ASEAN, which could undermine trust in governments because of the potential for real or perceived conflict of interests.⁴⁷

For 2018, reported cases of retired senior government officials who are now part of the tobacco industry include: the retired Director of Audit of the Directorate General of Custom and Tax of Indonesia, who was appointed as a member of Sampoerna's Audit Committee; the former Secretary General of the Ministry of Home Affairs, who is the Chairman of BAT Malaysia; former Philippine Solicitor General, who is currently a legal counsel of the Chairman of PMFTC; and two (2) retired police generals, who sit on TAOT's Board of Directors. In the case of Vietnam, while no new cases of revolving door are documented, most government officials appointed in previous years are still connected with Vinataba today.

Current government officials and relatives holding positions in the tobacco business reported in 2018 include: the President of the LYP Group, which owns the cigarette business of Hero King Co., Ltd., is currently a senator in Cambodia;⁴⁸ Lao PDR's MOF and Ministry of Industry of Commerce (MOIC) representatives, who sit on the Tobacco Industry Joint Venture Board of Management; and the CEO of TAOT, who is still regarded as a government official even though TAOT has been corporatized.

FIGURE 8: PREVENTIVE MEASURES

The lower the score, the better the ranking



Existing preventive measures need to be strengthened and expanded

Article 5.3 of the FCTC requires Parties to take measures to protect public health policies from tobacco industry interference. The Article 5.3 guidelines provide recommendations that aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further its interests. In order to do so, governments need information about the industry's activities and practices to ensure that the industry operates in a transparent and accountable manner, alongside a code of conduct for government employees and public officials to prescribe the standards with which they should comply in their interactions with the tobacco industry or their representatives. Philippines, Thailand and Brunei are leading the way for the region, while other countries have also made small steps forward in this direction.

The JMC was considered as one of the pioneer policies in implementing Article 5.3 of the FCTC. Since 2010, the Philippines has put in place preventive measures that apply to all officials and employees of the government. The CSC, as the central personnel agency of the government, and the DOH issued the JMC, which prohibits the following:

1. Unnecessary interaction with the tobacco industry
2. Preferential treatment to the tobacco industry
3. Accepting gifts, donations, and sponsorship
4. Financial interest in the tobacco industry
5. Accepting other analogous favors
6. Conflict of interest with the tobacco industry

It also requires heads of other government agencies to inform officials and employees of the policy against tobacco industry interference and to amend their respective Codes of Conduct by incorporating the rules it provides. The circular specifies that any violation covered under the JMC is a ground for administrative disciplinary action.

Despite the DOH-CSC JMC's impact in the Philippines and in influencing other countries to adopt similar

policies, it has its limitations. It needs to be reevaluated and strengthened.⁴⁹ Otherwise, the tobacco industry will continue to diminish Philippine's progress by taking advantage of the JMC's weaknesses.

Preventive measures of other government agencies in the Philippines

- » DOH Department Memorandum 2010 – 0126;
- » Department of Education (DepEd) Order No. 6 – Guidelines on the adoption and implementation of public health policies on tobacco control and protection against tobacco industry interference;
- » Department of Labor and Employment (DOLE) Memorandum reiterating the JMC;
- » Bureau of Internal Revenue (BIR) Memorandum Order No. 16-2012 restricting interactions with the tobacco industry;
- » Department of Foreign Affairs Memorandum directing compliance with the JMC;
- » Metro Manila Development Authority (MMDA) Memorandum amending their Code of Conduct to include protection of the MMDA against tobacco industry interference.

Thailand's Juridical Council has deliberated that the MOPH's ministerial regulation on "Guidelines on Interaction with Tobacco Entrepreneurs and Related Persons" and the Office of the Civil Service Commission's regulation prohibiting civil servants to interact with the tobacco industry should both apply to all ministries. The Tobacco Law drafting working group will work with other ministries to develop their own regulation, as MOPH had done earlier. In addition, the implementing regulations for Section 40 of the Tobacco Products Control Act 2017 is being drawn up, which requires manufacturers or importers of tobacco products to report the volume of production, income and expenses, annual report, audited financial statement, and other information for tobacco control. Section 40 aims to monitor whether the tobacco industry is transparent and provides accurate information to ascertain whether it violates the law by allocating budget for tobacco industry-related CSR activities, lobbying activities and any tobacco advertisement that is prohibited by law. If such

expenses are found in the report, action will be taken against the tobacco industry as provided in the law.

On the other hand, while Brunei does not have a local tobacco industry, it has drafted a code of conduct covering all civil servants, currently under review of the Attorney General's Chambers, after which it will be submitted to the Prime Minister for final approval. The code of conduct will also put in place a procedure to disclose the records of interaction with the tobacco industry and disallow the acceptance of all forms of contributions / gifts from the tobacco industry.

The slight improvement for Vietnam can be attributed to the MOH's official dispatch cautioning other ministries and offices not to cooperate and accept funding from the PMI-funded Foundation for a Smoke-free World (FSFW). Vinataba as a State-owned enterprise, is also required to provide some reports about its business to the MOIT and MOF periodically, but no information on lobbying, philanthropy, or contributions are collected. Although not specific to the tobacco industry, there is also an existing Anti-Corruption Law that prohibits public servants from accepting forms of contributions / gifts from the private sector; however, the government still requires the tobacco industry to provide funding and assistance related to controlling illicit trade. For Cambodia, the Sub-decree on the Establishment and Functioning of the Committee for Tobacco Control was passed and has incorporated principles of Article 5.3.

Ministries of health in Indonesia, Lao PDR, and Malaysia are also at the forefront in setting preventive measures against tobacco industry interference, albeit some limitations in coverage and scope. Indonesia's MOH has adopted a code of conduct for managing conflict of interests based on the Ministry of Administrative and Bureaucratic Reforms' guidelines tailor-made to cover relevant provisions exclusively applied to the tobacco industry. Lao PDR has also recently adopted in December 2018 its "Code of Conduct for the Health Sector" to provide guidance on interacting with the tobacco industry. However, the code only applies to government health professionals, allowing other non-health departments / ministries involved under the ILA to continuously liaise without restrictions with Lao Tobacco Limited (LTL), a joint venture between the government and Imperial Tobacco Group (ITG). In Malaysia, development and adoption of a code of conduct within the MOH's ranks to complement existing anti-corruption laws and orders is still underway.

For Myanmar, there are still no policies or procedure to disclose the records of interaction with the tobacco industry, to require periodic submission of information from the tobacco industry about its business and what it spends on marketing and philanthropy, nor to raise awareness on Article 5.3. However, the Ministry of Health and Sports (MOHS) has put in place a policy to disallow acceptance of political contributions. Also, although not specific to the tobacco industry, the Directorate of Investment and Company Administration under the Ministry of Finance and Planning (MOFP) issued the "Anti-corruption Code of Ethics for Companies and Corporate Bodies" in August 2018, which applies to all private companies and corporate bodies making business deals with concerned government ministries or organizations, and all other companies or organizations in the private sector, and prohibits:

1. Making and offering, directly or indirectly, gift, entertainment and other preferential treatment;
2. Providing directly or indirectly, necessary assistance in travelling;
3. Conferring, directly or indirectly, a financial advantage to get a business opportunity;
4. Offering, directly or indirectly, charitable donations;
5. Conferring, directly or indirectly, political contributions; and
6. Providing, directly or indirectly, assistance to get employment in companies or organizations for personal interest.

Additionally, Myanmar's Anti-corruption Commission also issued a Notification to establish a strong code of ethics for business^{vi} in October 2018. Once in place, this will also establish appropriate internal control measures to prevent corruption and policy interference, including those by the tobacco industry.

^{vi} Republic of the Union of Myanmar Anti-Corruption Commission Notification No. 14 /2018.

CONCLUSIONS AND RECOMMENDATIONS

A whole-of-government approach is essential to effectively counter tobacco industry interference. Non-health ministries and sectors remain largely unaware of the FCTC and Article 5.3, and these are important allies, if not channels, to keep the tobacco industry in check. All governments must continue their efforts to implement Article 5.3 of the FCTC; as a general obligation of the treaty, it is vital to strengthening overall tobacco control. The recommendations stated in the Article 5.3 guidelines provide clear measures that governments can implement to protect itself from potential interference and possibly, corruption.

- » The tobacco industry is not a legitimate stakeholder in any level or stage of policy development. The FCTC and Article 5.3 cannot overemphasize the irreconcilable conflict between tobacco interests and public health policy. The tobacco industry may try to reinvent its public image and even the science of smoking tobacco products, but the truth remains that every move by this industry is motivated solely by capitalist profit.
- » To this end, the tobacco industry uses CSR activities and other public relations or innovative marketing strategies to greenwash and normalize its business and gain favor from policymakers and civic groups. Thus, fake tobacco-related CSR activities must be banned completely across countries.
- » The tobacco industry still obtains benefits from governments in several countries. This is not only detrimental to tobacco control, but is at the expense of national economies losing revenues from preferential treatments and for shouldering health care costs of tobacco-related mortality and morbidity, as in the case of Lao PDR's ILA. Benefits given to the industry such as waiver of duties for export / import and promotional incentives, must be revoked. More importantly, the tobacco industry should be penalized for non-compliance with applicable tobacco control laws and regulations.
- » Government interactions with the tobacco industry should occur only when and to the extent strictly necessary to effectively regulate the industry and its products. This should not be limited to the health ministry and should also apply to all non-health ministries and sectors to a greater extent.
- » Revolving doors exist in many countries, while some governments still accept political contributions from the tobacco industry, which both create potential conflict of interests in the adoption of tobacco control measures. State-owned tobacco enterprises such as Vinataba, TAOT (albeit corporatized), Lao Tobacco Limited (under ILA) must all be treated in the same way as any other tobacco business.
- » Transparency and accountability remain challenging not only in the region but globally. These are a developmental and governance issue that are also linked with weak bureaucratic frameworks and corruption. Most countries need to establish and enforce a government-wide policy or procedure to record and disclose information about its interactions with the tobacco industry, and to gather information on tobacco industry marketing, philanthropy, lobbying and political contributions. Aside from policies specific to tobacco, freedom of information regimes, as a check and balance mechanism where available, can also facilitate access to certain information about and from the government.

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- » A practical way forward is for governments to adopt and strictly enforce a code of conduct compliant with the Article 5.3 guidelines to guide interactions with the tobacco industry, as well as to institutionalize a systematic program to raise awareness on Article 5.3 to guide the entire bureaucracy and all government officials and prevent undue influence and potential interference.



The more a country can minimize tobacco industry interference, the better its chance to advance tobacco control policy.”

Dr. Prakit Vathesatogkit, ASH Thailand Director

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