

Myanmar: 2020 Tobacco Industry Interference Index

Report on the Implementation of WHO FCTC Article 5.3
July 2020



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@ People's Health Foundation, July 2020

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The information from this report will form part of the **Global Tobacco Industry Interference Index 2020**, a global survey of how public health policies are protected from the industry's subversive efforts, and how governments have pushed back against this influence. The tobacco Industry Interference Index was initiated by the South-East Asia Tobacco Control Alliance (SEATCA), as a regional report with support from the Bill and Melinda Gates Foundation. The Global Tobacco Industry Interference Index is a part of a global publication of the Global Centre for Good Governance in Tobacco Control (GGTC) at the School of Global Studies in Thammasat University, and the Stopping Tobacco Organizations and Products (STOP), with support from Bloomberg Philanthropies.

WHO FCTC Article 5 General Obligations

1. Each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols to which it is a Party.
2. Towards this end, each Party shall, in accordance with its capabilities:
 - (a) establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control; and
 - (b) adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.
3. **In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.**
4. The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.
5. The Parties shall cooperate, as appropriate, with competent international and regional inter-governmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties.
6. The Parties shall, within means and resources at their disposal, cooperate to raise financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms.

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Background and Introduction

In the ASEAN region, interference from the tobacco industry remains a big problem. The tobacco industry continues to interfere with, deter and thwart government efforts to protect public health through both overt and covert means. It lobbies and dissuades governments from developing and implementing stringent tobacco control policies that are effective. Such obstructive tactics must be exposed to illustrate the various ways in which the industry carries out these activities, and also to identify vulnerable sectors so that steps can be taken to address ways to stop interference.

WHO FCTC Article 5.3 is often described as the backbone of the Convention as it guides countries to protect their tobacco control policies from the vested interests of the tobacco industry. WHO FCTC cannot be implemented effectively if industry interference is not rooted out. However, Article 5.3 is the least effectively implemented Article. The solution lies in the hands of governments. Governments need to be proactive and vigorous in putting in place safeguards and measures to prevent unnecessary TI interactions, limit necessary ones, and set up disclosure procedures to protect public health policies.

To give more clarity and guidance to the Parties, WHO FCTC Conference of Parties had unanimously adopted the Guidelines for Implementing WHO FCTC Article 5.3 in 2008, which provided 8 main recommendations to the Parties to ensure that the industry is prevented from exerting its influence on public health policy.

The SEATCA's Tobacco Industry Interference Index, developed and reported since 2015, intends to measure the level of industry interference, as well as the responses or counter-measures implemented by the government to implement WHO FCTC Article 5.3. The purpose of this index is to define the measures and elements that contribute the ability of the industry to interfere with policy making. The assessment could provide an indication of the government's capacity to resist tobacco industry interference.

The SEATCA's Tobacco Industry Interference Index is a civil society report assessing the implementation of FCTC Article 5.3 among ASEAN countries. All ASEAN countries participated in this survey and have been ranked from the lowest level of TI interference to the highest. The report, in time series since 2015, identifies any changes compared to the previous year's report. References are from publicly available evidence to support choice of answers, although in some instances, there may be no evidence available. The same scoring method used in previous report has been retained. Overall, progress in the implementation of Article 5.3 has been snail-paced. A few countries moved forward in their efforts to implement the Article 5.3 Guidelines while a few faced increased industry interference. Some countries made progress in one area and regressed in another, resulting in little movement. There still remains much room for improvement in the implementation of the FCTC Article 5.3 Guidelines in the ASEAN region.

Since 2016, Myanmar's score has steadily improved. However, its score slightly increased from last year at 54 points in 2020.

Methodology

The Tobacco Industry Interference Index is an attempt to define the elements that contribute to the ability of the tobacco industry to interfere with public health policy making. Information sources for the research were based on publicly available or commonly known information. The research was limited to information sourced from official websites, news reports, tobacco company reports, and verifiable anecdotal reports.

Covering incidents of tobacco industry interference from January to December 2019, relevant pieces of evidence were gathered, reviewed, and scored based on the questionnaire provided by Southeast Asia Tobacco Control Alliance (SEATCA). The results were shared with a core group of civil society groups for review and subjected to their validation. The report was revised and finalized based on the inputs gathered from the core group.

The questions were based on the twenty (20) most commonly reported incidents of tobacco industry interference in South East Asia and referenced to specific recommendations in the Article 5.3 Guidelines. The questions are grouped into seven categories:

- I. Level of participation in policy development
- II. So-called CSR activities
- III. Benefits to the tobacco industry
- IV. Forms of unnecessary interaction
- V. Transparency
- VI. Conflict of interest
- VII. Preventive measures

The time period covered in this report is January- December 2019.

Summary Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

In April 2019, the Central Board of the Control of Smoking and Consumption of Tobacco Products (National Tobacco Control Board) as stipulated under the National Tobacco Control Law of 2006 was reconstituted by the Union Government. The Union Minister of Health and Sports (MOHS) is the Chairman and Director (NCD) of the Department of Public Health acts as Secretary of the Board. The Board has not yet convened its first meeting during 2019. Although there are no representatives from tobacco industries in the Board, the government usually considers proposals from tobacco industries in setting or implementing public health policies in relation to tobacco control. In 2019, tobacco companies submitted proposals for tobacco tax reform to the Internal Revenue Department (IRD), Ministry of Planning and Finance (MOPF) and Parliamentarians. These offices acknowledged the receipt of the tobacco industries' proposals and indicated that suggestions will be included in the Union Tax Bill for consideration.

2. INDUSTRY CSR ACTIVITIES

A local cigarette company, called Myanmar Kokang Company Ltd. (MMK Cigarette Factory) located in Muse, Northern Shan State, sponsored through its distributor, Hexa Power Company Ltd., a mini-marathon and a public walking event in Mandalay held in 2018 December and 2019 January.

Despite prohibitions on tobacco industry-sponsored CSR activities and tobacco advertising, promotions, and sponsorships (TAPS) in the Control of Smoking and Consumption of Tobacco Product Law, JTI's project to provide drinking water for refugees in Kayin State is still ongoing.

3. BENEFITS TO THE INDUSTRY

For the second and third year implementation of pictorial health warnings (PHW), the second picture (rotation) should appear on cigarette packs from 2017 Dec 1st to 2018 Nov 30th, while the third picture should appear on tobacco products from 2018 Dec 1st to 2019 Nov 30th. To date, not all tobacco products carry the required pictures and old images on packs can still be found in the market. No government action is found to have been taken.

The Union Tax Law of 2019 gave a tax exemption to tobacco industries for cheroots, cigars and raw tobacco if their annual product cost does not exceed MMK 20 million (kyats).

The government is open and welcoming to foreign investment including BAT and JTI, and most recent known is Burma Tobacco Trading Co. for cigar production and tobacco growing.

4. UNNECESSARY INTERACTION

There are no publicly available reports of government officials attending social functions of the TI. However, EUROCHAM Myanmar has an anti-Illicit Trade Group that enlists BAT as a member. The objective of this group is “Coordinate regular consultation meetings between the group and the authorized government officials to develop a shared understanding of challenges and issues.” In 2019, EUROCHAM teamed-up with TRACIT, a PMI funded group, to continue addressing illicit trade issues in Myanmar.

5. TRANSPARENCY

There is no mechanism or rule for disclosure of tobacco meetings with the tobacco industry. The MOHS is working on this now.

While the Special Commercial Tax law requires all facilities and distribution chain to register, it does not cover affiliated organizations and individuals acting on the tobacco industry's behalf / lobbyists.

6. CONFLICT OF INTEREST

The government does not prohibit contributions from the tobacco industry or any entity working to further its interests.

While there are no publicly available records found, there are retired senior government officials who have joined the tobacco industry.

7. PREVENTIVE MEASURES

The Ministry of Planning and Finance, Directorate of Investment and Company Administration issued an Anti-corruption Code of Ethics which applies to all private companies and corporate bodies incorporated in Myanmar that make business deals with concerned government organizations, and companies or organizations in the private sector. However, the government does not require to report market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities nor specific guidelines compliant with the

WHO FCTC Art 5.3 guidelines for departments dealing with tobacco industry such as Internal Revenue Department for tax collection.

In 2018, Myanmar's Anti-corruption Commission issued a Notification (No. 14/2018) concerning the need for all business to establish a strong business code of ethics to prevent corruption. The following fundamental principles have therefore been identified for private sector organizations to develop a strong business code of ethics as well as to establish appropriate internal control measures to prevent corruption: (a) Strong, effective policy and support from top-level management to fight corruption; (b) Risk assessment to effectively identify and evaluate exposure to corruption; (c) Enhanced and detailed measures for high-risk and vulnerable areas; (d) Application of anti-corruption measures to business partners; (e) Accurate books and accounting records; (f) Human resource management policies complementary to anti-corruption measures; (g) Establish trust worthy reporting mechanisms to report suspected corrupt behaviours; and (h) Periodic review and evaluation of anti-corruption prevention measures.

Recommendations

1. Enforcement of CSR and TAPS bans should be upheld in compliance with national laws.
2. The tobacco industry should be penalized for non-compliance with tobacco control laws (i.e., PHWs).
3. To promote transparency, there must be a procedure in place to prevent the tobacco industry and its representatives to misrepresent its meetings with all government entities and not just limited to the MOHS.
4. To prevent conflict of interests, retired government/public officials should not be allowed any involvement or to hold any position in tobacco business.
5. Strong implementation of a code of conduct compliant with FCTC Art. 5.3 guidelines, as well as a systematic programme to raise awareness on Art. 5.3 should be in place to guide all government departments especially those with close dealings with tobacco industry (i.e., IRD on tax collection). Lastly, the tobacco industry must be required to provide information about its business, including what it spends on marketing and philanthropy.

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Results and Findings

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INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ¹ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ² in setting or implementing public health policies in relation to tobacco control ³ (Rec 3.1)		1				
No evidence was found that the Government accepts any offer of assistance from the tobacco industry or collaborate with it in implementing public health policies related to tobacco control.						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)			2			
<p>Although there are no tobacco industry representatives from tobacco industries in the National Tobacco Control Board, the government usually considers proposals from the tobacco industries in setting or implementing public health policies in relation to tobacco control.</p> <p>In 2019, the tobacco industries submitted proposals for tobacco tax reform to the IRD, MOPF and the Parliamentarians. According to informal information, their proposal contained (a) keeping the existing 4 tiers for cigarettes, and modest increase of tax in each tier, (b) not to increase tax for cheroots, and (c) to keep same taxation percentages for other tobacco products. The officials acknowledged receiving the proposals and indicated that suggestions from the tobacco industries will be included for consideration in updating the Union Tax Bill.</p>						
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)	0					
The government does not allow the tobacco industry to sit in the inter-agency committee that sets public health policy.						
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) (Rec 4.9 & 8.3)		1				
The government does not allow representatives of the tobacco industry to join the delegation to the COP or its related meetings.						
INDICATOR 2: Industry CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)					4	

¹ The term “government” refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

² The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

³ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

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B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)						

A local cigarette company (Myanmar Kokang Company Ltd.) through its distributor, (Hexa Power Company Ltd.), sponsored a mini-marathon and a public walking event in Mandalay Region held in 2018 December, and 2019 January.⁴

Despite CSR and TAPS are prohibited by the Control of Smoking and Consumption of Tobacco Product Law, BAT was awarded as ACE recognition award in December 2018.⁵ The U.S. Ambassador to Myanmar presided over this event.

JTI's project to provide drinking water for Kayin State refugees is still ongoing.⁶



Photo: JTI Foundation providing drinking water supply in Kayin State

INDICATOR 3: Benefits to the Tobacco Industry

6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)					4	
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For the second and third year implementation of pictorial health warnings (PHW), the second picture (rotation) should appear on cigarette packs from 2017 Dec 1st to 2018 Nov 30th, while the third picture should appear on tobacco products from 2018 Dec 1st to 2019 Nov 30th. To date, not all tobacco products carry the required pictures and old images on packs can still be found in the market.

No government action was taken against the companies for these violations.

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)				3		
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The Myanmar government is open and welcoming to foreign investment including BAT, JTI and most recently Burma Tobacco Trading Co. (BTTC) for cigar production. The BTTC is owned by

⁴ <http://www.fifthwavenews.com/fwn/2717>

⁵ <https://amchammyanmar.com/blog/general-news-3/post/best-practice-sharing-by-bat-142>

⁶ <http://jtifoundation.org/projects/extending-water-sanitation-and-hygiene-wash-projects-myanmar/>

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<p>the Huang family, a prominent Chinese-American group of business owners. Together with Robaina family, they grow cigar tobacco on 80 acres, in Pyin Oo Lwin and the tobacco is described to be similar to the tobacco farmlands of Pinar del Rio, Cuba.⁷ By 2018, BTTC announced they have increased the tobacco growing acreage from 80 acres to about 125 acres.</p> <p>The Union Tax Law of 2019 made tax exemption to tobacco industries of cheroots, cigars and raw tobacco if their annual product cost does not exceed MMK 20 million (kyats).</p>						
INDICATOR 4: Forms of Unnecessary Interaction						
<p>8. Top level government officials (such as President/ Prime Minister or Minister⁸) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)</p>	0					
There is no record of top-level government officials meeting with tobacco companies' social events.						
<p>9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)</p>	0					
The government does not accept any assistance/ offers of assistance from the tobacco industry on enforcement activities.						
<p>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <i>not</i> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</p>				3		
<p>The government does not accept, support, endorse, or enter into partnerships or agreements with the tobacco industry. In September 2018, EuroCham Myanmar announced it has established an Anti-Illicit Trade Advisory Group to fight illicit trade and intensify partnership with the Government of Myanmar. “We’re trying to solve illicit trade in all possible ways,” says U Ko Lay, Director of the Ministry of Commerce. “But we need law and order first, and that will pave the way for legal trade.”⁹</p> <p>BAT is included as a member of the Anti-illicit trade group, which has the mandate to: “Raise awareness of the volume of illicit trade across industries to both the government and the general public, whilst advocating solutions and best practices that can be implemented to improve enforcement. The key activities will include advocacy, research, engagement and capacity building to support further understanding and enforcement of illicit trade.” Established in 2018, this initiative has continued into 2019. EuroCham Myanmar organized the second edition of the Anti-Illicit Trade Forum in 2019 and established itself as a major stakeholder and partner to the Government to fight against illicit trade in Myanmar. EuroCham teamed up with TRACIT to conduct its activity in Myanmar.¹⁰ In March 2019, TRACIT received a fund of US\$21million from PMI-IMPACT to conduct anti-smuggling projects.¹¹</p>						

⁷ <https://www.prnewswire.com/news-releases/robaina-tobacco-family-partners-with-the-burmese-tobacco-trading-company-300568777.html>

⁸ Includes immediate members of the families of the high-level officials

⁹ <https://www.maritime-executive.com/article/call-for-myanmar-to-act-on-illicit-trade>

¹⁰ EuroCham Myanmar Partnership with the Transnational Alliance to Combat Illicit Trade (TRACIT): <https://eurocham-myanmar.org/post/522/EuroCham-Myanmar-partnership-with-the-Transnational-Alliance-to-Combat-Illicit-Trade-TRACIT>

¹¹ TobaccoTactics. TRACIT <https://tobaccotactics.org/wiki/tracit/>



Among EuroCham’s objectives are: “Coordinate regular consultation meetings between the group and the authorized government officials to develop a shared understanding of challenges and issues.”



Anti-Illicit trade forum, 19 Sep2019
 Source: <https://eurocham-myanmar.org/event/161/Anti-Illicit-Trade-Forum-2019>

INDICATOR 5: Transparency

11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)					4	
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There is no mechanism or rule available for disclosure of meetings/interactions with tobacco industries. The Ministry of Health and Sports is working on this rule now.

12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)					5	
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The Special Goods Tax law requires all facilities and distribution chain to register with the government. However, there is no registry for affiliated organizations, and individuals acting on their behalf including lobbyists.

INDICATOR 6: Conflict of Interest

13. The government does not 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				
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Ministry of Planning and Finance, Directorate of Investment and Company Administration issued the Anti-Corruption Code of Ethics for Companies and Corporate Bodies on 3rd August 2018. Although the code is not specifically for tobacco industry, it applies to all companies and corporate bodies incorporated within the Republic of the Union of Myanmar when making business deals with ministries concerned or government organizations, and companies or organizations in the private sector. The code prohibits the private sector from:

- (a) Making and offering, directly or indirectly, gift, entertainment and other preferential treatment;
- (b) Providing directly or indirectly, necessary assistance in travelling; Conferring, directly or indirectly, a financial advantage to get a business opportunity;
- (c) Offering, directly or indirectly, charitable donations;
- (d) Conferring, directly or indirectly, political contributions; and
- (e) Providing, directly or indirectly, assistance to get employment in companies or organizations for personal interest.

On 19 October 2018, Myanmar Anti-corruption Commission issued a Notification concerning the need for all business to establish a strong business code of ethics to prevent corruption (Republic of the Union of Myanmar Anti-Corruption Commission Notification No. 14 /2018). The following fundamental principles have therefore been identified for private sector organizations to develop a strong business code of ethics as well as to establish appropriate internal control measures to prevent corruption:

- (a) Strong, effective policy and support from top-level management to fight corruption;
- (b) Risk assessment to effectively identify and evaluate exposure to corruption;
- (c) Enhanced and detailed measures for high-risk and vulnerable areas;
- (d) Application of anti-corruption measures to business partners;
- (e) Accurate books and accounting records;
- (f) Human resource management policies complementary to anti-corruption measures;
- (g) Establish trust worthy reporting mechanisms to report suspected corrupt behaviours; and
- (h) Periodic review and evaluation of anti-corruption prevention measures.

Ministry of Investment and Foreign Economic Relations, Directorate of Investment and Company Administration issued an announcement for the fundamental principles of the Anti-Corruption Code of Ethics for Companies and Corporate Bodies on 16th January 2019.¹² The directorate had advised companies and body corporates to follow the notification issued by the Anti-Corruption Commission.

14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)				3		
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While there are no publicly available records found, there are retired senior government officials who have now joined the tobacco industry.

¹² https://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/anti-corruption_announcement_revised_by_dg_1_.pdf

	0	1	2	3	4	5
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)			2			
<p>While current government officials do not hold any positions, however government officials are supportive of investment of foreign tobacco companies in Myanmar as shown in Q7.</p>						
INDICATOR 7: Preventive Measures						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)						5
<p>The government has not put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives.</p>						
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)			2			
<p>The Ministry of Planning and Finance, Directorate of Investment and Company Administration issued the Anti-Corruption Code of Ethics for Companies and Corporate Bodies on 3rd August 2018. However, this does not prescribe the standards on how to deal with the tobacco industry. Implementation status of the code of ethics is also not strong.</p>						
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, political contributions and all other activities. (5.2)						5
<p>The government does not require the tobacco companies to report market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy and other activities.</p>						
19. The government has a program /system/plan to consistently ¹³ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)						5
<p>There is no systematic programme to raise awareness of Article 5.3 among government departments.</p>						

¹³ For purposes of this question, “consistently” means: a) Each time the FCTC is discussed, 5.3 is explained; and, b) Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

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20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)					4		
<p>Except for the Ministry of Health and Sports, the rest of the government agencies have not put in place a policy to disallow acceptance of all forms of contributions/gifts from the tobacco industry.</p> <p>New rule for revising the anti-corruption rules issued by the Anti-corruption Commission of Myanmar on 10th July 2015 is still under review.</p>							
TOTAL						54	

**“Working together for effective
evidence-based tobacco control measures
in South-East Asia”**

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