

Tentative Translation*

CONTROL OF MARKETING PROMOTION OF INFANT AND YOUNG CHILD FOOD ACT,
B.E. 2560 (2017)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 9th Day of July B.E. 2560;

Being the 2nd Year of the Present Reign.

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

Whereas it is expedient to have the law on the control of marketing promotion 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 serving as the National Assembly, as follows.

Section 1. This Act is called the “Control of Marketing Promotion of Infant and Young Child Food Act, B.E. 2560 (2017)”

Section 2.¹ This Act shall come into force after the expiration of sixty days as from the date of its publication in the Government Gazette.

Section 3. In this Act:

“infant” means a child at birth up to the age of twelve months;

“young child” a child of over twelve months up to three years of age;

“infant food” means:

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 134, Part 72a, dated 10th July 2017.

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(1) milk or any other product used as food which contains, as an ingredient thereof, nutrients appropriate and sufficient for feeding infants under the law on food;

(2) milk or any other product used as food, where it contains a statement indicating that it can be used for feeding infants;

“young child food” milk or any other product used as food, where it contains a statement indicating that it can be used for feeding young children and only where it is prescribed in the Notification of the Minister with the recommendation of the Commission;

“infant food supplement” means food which supplements nutritious value and creates food consumption familiarity for an infant of six months of age upwards under the law on food;

“producer” means a person who carries out the making, mixture, modification, separating packaging, assembling packaging or change of a container;

“importer” means a person who carries out the importation or makes orders for importation into the Kingdom;

“distributor” means a person who sells, supplies, disposes of, exchanges, gives or has in possession for distribution, for the purpose of trade;

“label” means a label under the law on food;

“advertising” means an act, by whatever method, done with a view to causing members of the public to have notice or knowledge of a statement, for the purpose of trade;

“statement” includes an act of causing an appearance through a letter, a figure, an artificial mark, an image, a cinematographic movie, a light, a sound or a mark or any act enabling persons in general to comprehend the meaning;

“marketing promotion” means any act aimed at distributing, creating an image for or causing publicity of, or supporting or encouraging the use of, infant food, young child food, or infant food supplements, as the case may be, for the purpose of trade;

“public health service centre” means a medical establishment under the law on medical establishments or a medical establishment operated by a Ministry, Sub-Ministry, Department, local administrative organisation, State enterprise, State-owned educational institution or any other State agency or the Thai Red Cross Society and shall also include a non-governmental organisation which has a non-profit seeking object and undertakes activities in connection with mothers’ and children’s health and a professional organisation in public health;

“professional organisation in public health” means a professional commission in each of varying fields under the law on medical practice, the Medical Council of Thailand under

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the law on healing arts practice, the Nursing and Midwifery Council under the law on the nursing and midwifery profession, the Dental Council under the law on the dental profession, the Pharmacy Council of Thailand under the law on the pharmaceutical profession, the Physical Therapy Council under the law on the physical therapy profession, the Medical Technology Council under the law on the medical technology profession, the Thai Traditional Medical Council under the law on the Thai traditional medical profession, the Council of Community Public Health under the law on the community public health profession or any other professional council in medicine and public health under the law on particular matters;

“public health personnel” means personnel in all branches of occupation performing the work at a public health service centre and shall also include volunteers performing the work in connection with public health services;

“Commission” means the Commission on the Control of Marketing Promotion of Infant and Young Child Food;

“competent official” means the person appointed by the Minister to perform activities under this Act;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 4. The Minister of Public Health shall have charge and control of the execution of this Act and shall have the power to appoint competent officials and issue Notifications in the execution of this Act.

Such Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I

COMMISSION ON THE CONTROL OF MARKETING PROMOTION OF INFANT AND YOUNG CHILD FOOD

Section 5. There shall be a commission called the “Commission on the Control of Marketing Promotion of Infant and Young Child Food” and abbreviated as “CMPI”, consisting of:

- (1) Permanent Secretary for Public Health, as Chairperson;
- (2) eight *ex officio* members, viz, Director-General of the Department of Children and Youth, Director-General of the Department of Health Service Support, Director-General of the

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Department of Local Administration, Secretary-General of the Consumer Protection Board, Secretary-General of the Food and Drug Administration, Secretary-General of the National Broadcasting and Telecommunications Board, Secretary-General of the National Health Commission and Permanent Secretary of the Bangkok Metropolitan Administration;

(3) five qualified members appointed by the Minister from the 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;

(4) five qualified members appointed by the Minister from representatives of non-governmental organisations which have non-profit seeking objects and undertake activities in the areas in connection with mothers' and children's health, child rights, health-related consumer protection, one being appointed from each of these areas, and from persons possessing knowledge, ability and experience in the areas of marketing communication and law, one being appointed from each of these areas.

The Director-General of the Department of Health shall be a member and secretary and the Director-General of the Department of Health shall appoint two Government officials of the Department of Health as assistant secretaries.

The appointment of *ex officio* members shall be in accordance with the rules, procedures and conditions prescribed in the Notification of the Minister with the recommendation of the Commission.

Section 6. A qualified member must possess the qualifications and must not be under the prohibitions, as follows:

- (1) being of Thai nationality;
- (2) not being a political official, a holder of a political position, a member of a local assembly, a local administrator, an executive member or administrator of a political party or an official of a political party;
- (3) not being an incompetent person or a quasi- incompetent person;
- (4) not being a bankrupt or having previously been a dishonest bankrupt;
- (5) not having been imprisoned by a final judgment to imprisonment except for an offence committed through negligence or a petty offence;
- (6) not being a person having interests or acquiring benefits, whether directly or indirectly, in any business in connection with infant food, young child food or infant food supplements;

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(7) not having been sentenced by a judgment or order of the Court to the effect that the property shall vest in the State on the ground of unusual wealthiness or an unusual increase of assets;

(8) not having been expelled, dismissed or removed, or had employment terminated, by a State agency or a private agency by reason of corruption in office, grave misconduct or any deemed corrupt practice or malfeasance in the Government service.

Section 7. A qualified member shall hold office for a term of three years as from the date of appointment. The person who vacates office may be re-appointed but may not serve for more than two consecutive terms.

In the case where a qualified member vacates office before the expiration of the term, the Minister shall appoint a qualified member in the same area to fill the vacancy, and the person appointed to fill the vacancy shall be in office for the remaining term of the replaced qualified member, except that where less than ninety days remain in the term of office of the qualified members the Minister may omit the appointment of a qualified member to fill the vacancy, and in such a case, the Commission shall consist of the remaining members.

At the expiration of the term under paragraph one, if the appointment of new qualified members has not yet been made, the qualified members who vacate office upon the expiration of the term shall remain in office in the interest of the continuance of work until the qualified members newly appointed take office.

Section 8. In addition to the vacation of office upon the expiration of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by an order of the Minister on the ground of neglect, misbehavior, dishonesty in the performance of duties or lack of competence;
- (4) being disqualified or being under any of the prohibitions under section 6.

Section 9. At a meeting of the Commission, the presence of not less than one-half of the total number of members is required to constitute a quorum.

At a meeting of the Commission, if the Chairperson is not present or is unable to perform the duty, one member shall be elected at the meeting to preside over it.

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At a meeting, if any matter in which any member is interested is to be considered, such member has the duty to make a declaration thereof to the meeting and has the right provide explanations of facts or express opinions on such matter with no right to attend the meeting and cast a vote.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

Section 10. The Commission shall have the powers and duties as follows:

(1) to lay down policies, strategies and measures for the control of marketing promotion of infant food, young child food and infant food supplements;

(2) to promote and support the development of systems for surveillance of marketing promotion of infant food, young child food and infant food supplements;

(3) to give the Minister advice or opinions on the issuance of Notifications in the execution of this Act;

(4) to give the Minister advice or opinions on the control of marketing promotion of infant food, young child food and infant food supplements to ensure compliance with this Act;

(5) to perform any other act as provided by law to be the powers and duties of the Commission or as entrusted by the Council of Ministers or the Minister.

Section 11. The Commission may appoint a sub-committee for considering or performing any particular act as entrusted by the Commission.

The provisions of section 6, section 8 and section 9 shall apply to sub-committees *mutatis mutandis*.

Section 12. In the performance of duties under this Act, the Commission and a sub-committee may request any agency, organisation or person to furnish technical documents or statistics pertinent to the marketing promotion of infant food, young child food and infant food supplements and have the power to issue an order in writing demanding any person to provide facts or express opinions or furnish explanations, documents, information, evidence or any other relevant article for assisting the consideration.

Section 13. The Department of Health, Ministry of Public Health, shall be responsible for clerical work of the Commission and sub-committees and shall have the powers and duties as follows:

(1) to prepare policies, strategies and measures for the control of marketing promotion of infant food, young child food and infant food supplements for submission to the Commission;

(2) to co-ordinate and co-operate with domestic and foreign State agencies and private agencies concerned, in connection with the implementation of the policies, strategies and measures for the control of marketing promotion of infant food, young child food and infant food supplements;

(3) to monitor and assess the implementation of the policies, strategies and measures for the control of marketing promotion of infant food, young child food and infant food supplements of the Department of Health and agencies concerned for submission to the Commission;

(4) to serve as an informational focal point for publicising and disseminating data and information on the control of marketing promotion of infant food, young child food and infant food supplements as well as data and information on the promotion, encouragement, campaign and creation of knowledge and understanding of breastfeeding;

(5) to perform any other act as entrusted by the Minister, the Commission or a sub-committee or as provided by law to be the powers and duties of the Department of Health, Ministry of Public Health.

CHAPTER II

CONTROL OF MARKETING PROMOTION

PART I

INFANT FOOD AND YOUNG CHILD FOOD

Section 14. No person shall advertise infant food.

No person shall advertise young child food by the use of a statement concerning infants or young children in an advertising medium in a manner associating with or causing the understanding that it is infant food or suitable for feeding infants.

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Section 15. A producer, importer or distributor of infant food or young child food or an agent must take action to ensure that a label for infant food and a label for young child food are clearly different and are capable of easy notice or differentiation.

Labels for infant food and labels for young child food under paragraph one must be clearly different from labels for other food.

Section 16. Subject to section 14, information on infant food or young child food, as provided by a producer, importer or distributor of infant food or young child food or an agent, must contain the same statement as that which appears on labels for infant food or young child food as permitted under the law on food, without any statement making a claim as to nutritious or health value, and must, in the case of infant food, contain the following particulars:

- (1) overall information on costs and the quantity for the use of infant food;
- (2) cautions for the preparation or use of infant food.

The rules, procedures, conditions and details for the preparation of information under paragraph one shall be as prescribed in the Notification of the Minister with the recommendation of the Commission.

Channels for providing the information under paragraph one shall be as prescribed in the Notification of the Minister with the recommendation of the Commission.

Section 17. Information on infant food or young child food, as provided by a producer, importer or distributor of infant food or young child food or an agent to public health personnel, must be supported by scientific evidence. In this regard, scientific evidence shall be as prescribed in the Notification of the Minister with the recommendation of the Commission.

Section 18. In conducting marketing promotion of infant food and young child food, a producer, importer or distributor of infant food or young child food or an agent shall not carry out the following:

- (1) providing or giving a coupon or an entitlement to a discount or conducting a tie-in sale or an exchange for or a grant of a prize, a gift or any other article;
- (2) providing infant food or young child food or a sample of infant food or young child food, whether directly or indirectly;

(3) giving infant food or young child food, things or any other articles to a pregnant woman, a woman whose child is an infant or a young child or a member of a family having an infant or a young child;

(4) contacting a pregnant woman, a woman whose child is an infant or a young child or a member of a family having an infant or a young child, whether directly or indirectly, for promoting, supporting or recommending the use of infant food or young child food or for conveying any association with infant food or young child food.

Section 19. In the case where a producer, importer or distributor of infant food or young child food or an agent intends to offer or give any article, equipment or material to a public health service centre, such article, equipment or material must not bear any name, seal or symbol which conveys an impression that it is infant food or young child food. In the case where it bears any other name, seal or symbol, it shall not convey any association with infant food or young child food.

Section 20. A producer, importer or distributor of infant food or young child food or an agent shall not offer or promise to offer any gift, money, incentive gift or any other benefit to public health personnel.

The provisions of paragraph one shall not apply to gifts made in a customary manner or in compliance with a moral duty, in accordance with the rules, procedures and conditions prescribed in the Notification of the Minister with the recommendation of the Commission.

Section 21. A producer, importer or distributor of infant food or young child food or an agent shall not organise, or grant any support of the organisation of, an academic conference, training or seminar on infant food or young child food for or to public health service centres, public health personnel, pregnant women or women whose children are infants or young children, unless it is a support granted to professional organisations in public health and State-owned higher educational institutions which provide education relating to mother and child health for the operation of such activities in accordance with the rules, procedures and conditions prescribed in the Notification of the Minister with the recommendation of the Commission.

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Section 22. A producer, importer or distributor of infant food or young child food or an agent shall not carry out or support a demonstration of the use of infant food or young child food in a public health service centre or any other place with a view to supporting or promoting the use of infant food or young child food, for the purpose of trade.

The provisions of paragraph one shall not apply to producers that are public health personnel and that carry out the activity for a medical purpose or for the purpose of treatment of infants or young children.

Section 23. A producer, importer or distributor of infant food or young child food or an agent shall not donate infant food or young child food to a public health service centre or public health personnel.

The provisions of paragraph one shall not apply to donations of infant food or young child food for a specific purpose of using the same for patients with specific diseases or those with physical abnormality and donations in case of necessities, as prescribed in the Notification of the Minister with the recommendation of the Commission.

The rules, procedures and conditions for the donations under paragraph two shall be as prescribed in the Notification of the Minister with the recommendation of the Commission.

Section 24. The preparation or dissemination of technical information on mother and child health by a producer, importer or distributor of infant food or young child food or an agent must not be carried out in a manner of promoting or supporting the use of infant food or young child food, whether directly or indirectly, or conveying any association with infant food or young child food.

The provisions of paragraph one shall not apply to producers that are public health personnel and that carry out the activity for a medical purpose or for the purpose of treatment of infants or young children.

PART II INFANT FOOD SUPPLEMENTS

Section 25. No person shall advertise infant food supplements.

Section 26. A producer, importer or distributor of infant food supplements or an agent must take action to ensure that labels for infant food supplements are clearly different from labels for infant food, labels for young child food or labels for other food and are capable of easy notice or differentiation.

Section 27. In conducting marketing promotion of infant food supplements, a producer, importer or distributor of infant food supplements or an agent shall not conduct marketing promotion of infant food supplements towards any person in a medical establishment under the law on medical establishments or a medical establishment operated by a Ministry, Sub-Ministry, Department, local administrative organisation, State enterprise, State-owned educational institution or any other State agency, or the Thai Red Cross Society, in the following manners:

- (1) providing or giving a coupon or an entitlement to a discount or conducting a tie-in sale or an exchange for or a grant of a prize, a gift or any other article;
- (2) providing or giving infant food supplements or a sample of infant food supplements, things or any other articles, whether directly or indirectly.

Section 28. A producer, importer or distributor of infant food supplements or an agent shall not conduct marketing promotion of infant food supplements towards a pregnant woman or a woman whose child is an infant of not over six months of age.

Section 29. The provisions of section 17, section 19, section 20, section 21 and section 22 shall also apply to infant food supplements.

CHAPTER III COMPETENT OFFICIALS

Section 30. In the performance of duties, the competent official shall have the powers and duties as follows:

- (1) to enter into any place, during office hours, for examining documents, advertising media or any other articles connected with the commission of an offence in the case where there is a reasonable cause to suspect that there is the commission of an offence under

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this Act; in this regard, the competent official shall also have the power to record videos or carry out other acts to the extent necessary for acquiring information or evidence;

(2) to seize or attach documents, advertising media or any other articles reasonably suspected to be connected with the commission of an offence under this Act;

(3) to summons, in writing, any person to give statements or provide explanations in writing or furnish documents or any evidence for examination or for assisting the consideration of the competent official.

In the performance of duties of the competent official under paragraph one, persons concerned shall render assistance to the competent official as is reasonable in a particular case.

Section 31. In the performance of duties, the competent official must show an identification card to persons concerned.

The identification card of the competent official shall be in accordance with the form prescribed in the Notification of the Minister.

Section 32. Documents, advertising media or any other articles seized or attached by the competent official under section 30 (2) shall vest in the State and the Director-General of the Department of Health shall have the power to order destruction thereof or any other operation as prescribed in the Notification of the Minister with the recommendation of the Commission when it is apparent that:

(1) no owner thereof is found or nobody makes an appearance to claim ownership or possession thereof within ninety days as from the date of the seizure or attachment;

(2) no legal proceedings are taken and the owner or possessor fails to apply for a return thereof within ninety days as from the date of receipt of the notification of the order that no legal proceedings are taken;

(3) legal proceedings are taken, whereby the alleged offender agrees to the settlement or the Public Prosecutor has a final order for non-prosecution or the Court does not render judgment for seizure thereof and the owner or possessor fails to apply for a return thereof within ninety days as from the date of payment of a fine or the date of the knowledge of the final order for non-prosecution or the date of the final judgment of the Court, as the case may be.

Section 33. In the performance of duties under this Act, the competent official shall be an official under the Penal Code.

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CHAPTER IV
PENALTIES

Section 34. Any person who advertises infant food or young child food in violation of section 14 paragraph one or paragraph two or any person who advertises infant food supplements in violation of section 25 shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand Baht or to both and to a daily fine not exceeding ten thousand Baht per day throughout the period in which correct performance fails to be carried out.

Section 35. Any producer, importer or distributor of infant food, young child food or infant food supplements or any agent who fails to comply with section 15 or section 26 shall be liable to a fine not exceeding three hundred thousand Baht and to a daily fine not exceeding ten thousand per day throughout the period in which correct performance fails to be carried out.

Section 36. Any producer, importer or distributor of infant food or young child food or any agent who fails to comply with section 16 or provides information under section 16 paragraph one which is false shall be liable to a fine not exceeding two hundred thousand Baht.

Section 37. Any producer, importer or distributor of infant food or young child food or any agent who fails to comply with section 17, section 19 or section 24 shall be liable to a fine not exceeding two hundred thousand Baht.

Section 38. Any producer, importer or distributor of infant food or young child food or any agent who violates section 18 shall be liable to a fine not exceeding three hundred thousand Baht.

Section 39. Any producer, importer or distributor of infant food or young child food or any agent who violates section 20 paragraph one shall be liable to a fine not exceeding two hundred thousand Baht.

Section 40. Any producer, importer or distributor of infant food or young child food or any agent who violates section 21 or section 23 shall be liable to a fine not exceeding one hundred thousand Baht.

Section 41. Any producer, importer or distributor of infant food or young child food or any agent who violates section 22 paragraph one shall be liable to a fine not exceeding two hundred thousand Baht.

Section 42. Any producer, importer or distributor of infant food supplements or any agent who violates section 27 or section 28 shall be liable to a fine not exceeding three hundred thousand Baht.

Section 43. Any producer, importer or distributor of infant food supplements or any agent who provides information on infant food supplements to public health personnel without being supported by scientific evidence, which constitutes failure to comply with section 17 in conjunction with section 29, shall be liable to a fine not exceeding two hundred thousand Baht.

Section 44. Any producer, importer or distributor of infant food supplements or any agent who offers or gives any article, equipment or material to a public health service centre where it bears a name, seal or symbol of an infant food supplement or where the use of such name, seal or symbol conveys any association with an infant food supplement, which constitutes failure to comply with section 19 in conjunction with section 29, shall be liable to a fine not exceeding two hundred thousand Baht.

Section 45. Any producer, importer or distributor of infant food supplements or any agent who offers or promises to offer any gift, money, incentive gift or any other benefit to public health personnel, which constitutes a violation of section 20 paragraph one in conjunction with section 29, shall be liable to a fine not exceeding two hundred thousand Baht.

Section 46. Any producer, importer or distributor of infant food supplements or any agent who organises or supports the organisation of an academic conference, training or

seminar on infant food supplements, which constitutes a violation of section 21 in conjunction with section 29, shall be liable to a fine not exceeding one hundred thousand Baht.

Section 47. Any producer, importer or distributor of infant food supplements or any agent who violates section 22 paragraph one in conjunction with section 29 shall be liable to a fine not exceeding two hundred thousand Baht.

Section 48. Any person who fails to comply with an order of the competent official under section 30 paragraph one (3) or obstructs or fails to render assistance to the competent official who carries out the duties under section 30 paragraph two shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding ten thousand Baht or to both.

Section 49. All offences under this Act may be settled, by way of payment of a fine, by the Director-General of the Department of Health or the person entrusted by the Director-General of the Department of Health, in accordance with the rules on settlement prescribed by the Commission and, upon payment by the alleged offender of the fine in an amount required for the settlement within thirty days as from the date of the settlement, it shall be deemed that the case has been extinguished under the Criminal Procedure Code.

TRANSITORY PROVISIONS

Section 50. In the initial stage, the Commission shall consist of members under section 5 (1) and (2) and the Director-General of the Department of Health shall be a member and secretary, for the purpose of the performance of duties of the Commission under this Act *pro tempore* until the appointment of qualified members is made under this Act, which shall not take place later than ninety days as from the date on which this Act comes into force.

Section 51. Labels for infant food, labels for young child food or labels for infant food supplements already prepared on the date prior to the date on which this Act comes into force, which do not conform to section 15 or section 26, shall continue to be used, provided that it shall not exceed one year as from the date on which this Act comes into force.

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Section 52. The issuance of Notifications under this Act shall be completed within one hundred eighty days as from the date on which this Act comes into force. If their completion cannot be achieved, the Minister shall report the reasons therefor to the Council of Ministers for information.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

Office of the Council of State

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