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TITLE

**Anti-Smoking Draft Bill of the Republic of Armenia
Whether the Armenian Anti-Smoking Draft Bill is in Violation of Rights of
Business Entities in Armenia**

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LIST OF ABBREVIATIONS

WHO	World Health Organization
FCTC	Framework Convention of Tobacco Control
LFAAP	Law of the Republic of Armenia on “Fundamentals of Administration and Administrative Procedure

INTRODUCTION

On 12 October 2004 the National Assembly of the Republic of Armenia ratified the World Health Organization's (the “WHO”) Framework Convention of Tobacco Control (the “FCTC”); its subsequent entry into force was on 27 February 2005.

The aim of the Convention is:

*“to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.”*¹

In 2015, Armenia was ranked by the World Cancer Research Fund International as a country with the 15th highest incidence of lung cancer in the world.²

¹ The WHO Framework Convention of Tobacco Control, June 16, 2003 - June 29, 2004, *available at:* (<http://apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1>) (accessed Feb. 12, 2018).

² World Cancer Research Fund International, *Lung Cancer Statistics*, *available at:* (<https://www.wcrf.org/int/cancer-facts-figures/data-specific-cancers/lung-cancer-statistics>) (accessed Feb. 12, 2018).

According to the WHO 2016-2017 STEPS survey of non-communicable disease risk factors in Armenia, 51.5% of males and 1.8% of females, among adults aged 18-69, currently smoke. Moreover, 56.4% of adults are subjected to secondhand smoke effects at home, and 26.6% - at their workplaces. Women and children are the most vulnerable groups. The highest incidence of lung cancer was registered in Northern America and Europe; and the lowest incidence – in Africa, Latin America and the Caribbean.³

As a follow-up to the WHO Framework Convention of Tobacco Control, in August 2017 the Government of the Republic of Armenia approved the anti-smoking strategy and the 2017-2020 action plan, aimed at the reduction of smoking rates by 30-40 percent.

According to the approved anti-smoking strategy, *“the current provisions do not provide for effective monitoring of the acting legislation. The efficient and factual implementation of the legislation requires corresponding proportionate measures, such as monitoring, control by the designated authorities, fines, and public awareness. During the introduction of the anti-smoking strategy, it is expected to conduct changes in and amendments to a number of legislative documents, in line with the requirements of the WHO Framework Convention of Tobacco Control.”*⁴

Later on, in January 2018, the Ministry of Health of the Republic of Armenia proposed a new Draft Bill on “Reducing and Preventing the Negative Impact of Tobacco Products” (the “Draft Bill”).⁵

Under the proposed Draft Bill, tobacco products will be banned from public places, including airports, railways, bus stops, universities, medical institutions, museums, libraries, hotels, eating and drinking establishments, such as cafés, restaurants, bars, etc. Those who will not comply with the anti-smoking law will face fines 50,000-700,000 Armenian drams (“AMD”). The given legislative package envisages changes also in the Law of the Republic of Armenia on “Administrative Offences”. Hence, smoking in an unprescribed area will entail a

³ World Health Organization, *ARMENIA STEPS Survey 2016-2017*, available at: (http://www.who.int/ncds/surveillance/steps/Armenia_2016_STEPS_FS.pdf) (accessed Feb. 12, 2018).

⁴ “IRTEK” Legal Information Center, *Strategy for Struggle against Smoking and 2017-2020 Events Program for that Strategy*, available at: (<http://www.irtek.am/views/act.aspx?aid=91361>) (accessed Feb. 12, 2018).

⁵ Draft Bill of the Republic of Armenia on “Reducing and Preventing the Negative Impact of Tobacco Products” (2018), available at: (<https://www.e-draft.am/projects/684/about>) (accessed Feb. 12, 2018).

fine of 250,000 AMD. If within 3 months the person commits the same offence for the second time, he will face a fine of 500,000 AMD.⁶

According to the then Minister of Health of the Republic of Armenia Mr. Levon Altunyan, by setting high rates of fines, the Armenian Ministry of Health wanted to eliminate smoking, as in case of low fines people would pay off and ignore the anti-smoking law by continuing smoking.

The envisaged goals of the Draft Bill are: smoking-rate reduction by 1.5-2 percent annually; relative reduction of up to 10 percent of the current tobacco use prevalence among men aged 15 and above; and a decrease in secondhand smoke health effects.

Currently the anti-smoking field is regulated by the Law of the Republic of Armenia on “Restrictions on the Sale, Consumption, and Use of Tobacco.”

In contrast to the proposed anti-smoking Draft Bill, the active Law on “Restrictions on the Sale, Consumption, and Use of Tobacco” does not impose a total ban on smoking *inter alia* in eating and drinking establishments, providing for separate, enclosed smoking rooms.

The Draft Bill is expected to come into force from 1 November 2018, with the Armenian Law on “Restrictions on the Sale, Consumption, and Use of Tobacco” losing its effect.

The Draft Bill imposing a total ban on smoking in public places has stirred rather active public debates. Most of both smokers and non-smokers criticize the proposed Draft Bill.

The list of factors causing concerns is not exhaustive. To name a few:

1. The high rates of fines in case of violations, e.g. for smoking in public places, such as cafés, bars, restaurants the fine is 250,000 AMD whereas for smoking while driving the fine is 50,000 AMD.⁷

2. Lack of any information on the designated body and mechanisms to control the implementation of the Draft Bill, once it becomes effective. There are no clear and well-defined enforcement mechanisms in case of an alleged violation of the Draft Bill as well. It is unclear how the designated body will know if someone is smoking in a public place. Moreover, it is not defined what the further steps of the relevant body will be once it finds out that someone is smoking or has smoked in a café. A potential question that might arise is how the enforcement of

⁶ Draft Bill of the Republic of Armenia on “Making Changes in and Amendments to the Law of the Republic of Armenia on Administrative Offences” (2018), *available at*: (https://www.e-draft.am/files/project_file/1/15168152870535.docx) (accessed March 18, 2018).

⁷ *Id.* at 6.

the relevant tobacco control law will take place when the alleged violator is a foreigner, or an Armenian with no ID in his/her possession at the moment.

3. Absence of encouraging mechanisms, psychological or specified medical assistance for those who want to quit smoking – a psychological dependence uneasy to overcome.

Under Article 12 of the Draft Bill, persons who smoke and who apply to medical establishments are provided with medical assistance and service aimed at treatment of tobacco addiction and elimination of smoking consequences. The medical assistance and service are provided in accordance with the order prescribed by the authorized body in the health sector.

However, the Draft Bill does not specify whether the needed medical assistance or service is free of charge or no.

Among those who have raised their concerns are representatives of relevant business entities, such as cafés, bars, restaurants, pubs, discotheques, tobacco products manufacturers: They claim that they will suffer considerable losses due to the potential total smoking ban.

Regardless of the above-listed alleged gaps in the Draft Bill, the scope of the research will be limited to those concerning business entities.

Accordingly, the Paper will include research on the international anti-smoking legislation, enforcement mechanisms, as well as best practices in the field. Potential issues that might arise in light of fines imposed against business entities, other possible violations of the rights of business entities if the Draft Bill is enforced will be subsequently discussed. Finally, the Paper will advance to making recommendations based on the analysis of the respective international best practices. All the sources for the relevant information pertaining to the Master's Paper will be listed in the bibliography, preceded by the Conclusion that will sum up the main findings of the research.

One of the bases for the paper literature is the research of the Armenian Constitution and the administrative legislation, namely the Law of the Republic of Armenia on “Fundamentals of Administration and Administrative Procedure.

Besides that, the paper makes references to a number of research and electronic journal articles, agency reports and statistical data, as well as to international tobacco control laws and legal instruments, such as the World Health Organization's Framework Convention of Tobacco Control.

CHAPTER 1

International Anti-Smoking Legislation and Enforcement Mechanisms

International Anti-Smoking Legislation

As it has been mentioned earlier, the Framework Convention on Tobacco Control entered into force in the Republic of Armenia on 27 February 2005.

According to the World Health Organization's "Global Report: Mortality Attributable to Tobacco", "*tobacco is the only legal drug that kills many of its users when used exactly as intended by manufacturers. Direct tobacco smoking is currently responsible for the death of about 5 million people across the world each year with many of these deaths occurring prematurely. An additional 600 000 people are also estimated to die from the effects of second-hand smoke. In the next two decades, the annual death toll from tobacco is expected to rise to over 8 million, with more than 80% of those deaths projected to incur in low- and middle-income countries. If effective measures are not urgently taken, tobacco could, in the 21st century, kill over 1 billion people.*"⁸

To address the international threat of tobacco, the World Health Assembly in 2003 unanimously adopted the World Health Organization Framework Convention on Tobacco Control. The WHO FCTC is the first treaty negotiated under the aegis of the World Health Organization.

"To assist countries comply with a part of their WHO FCTC commitments, in 2008 WHO introduced a package of six evidence-based tobacco control measures that must decrease tobacco use. These measures known as the MPOWER package measures reflect one or more provisions of the WHO FCTC. MPOWER refers to:

M: Monitoring tobacco use and prevention policies

P: Protecting people from tobacco smoke

O: Offering help to quit tobacco use

W: Warning about the dangers of tobacco

E: Enforcing bans on tobacco advertising, promotion and sponsorship, and

R: Raising taxes on tobacco."⁹

"Through the FCTC, governments have unanimously agreed that the only efficient way to protect their citizens from the harm of second-hand smoke is to create 100% smoke-free indoor public places. Guidelines for Article 8 of the FCTC, adopted at the Second Conference of the Parties in July 2007, sum up the main principles of efficient smoke-free laws. Their aim is to:

⁸ World Health Organization, *WHO Global Report: Mortality Attributable to Tobacco* (2012).

⁹ *Id.*

1. Eliminate tobacco smoke to create 100% smoke-free places;
2. Protect everyone, not allowing exemptions;
3. Use legislation, not voluntary measures;
4. Provide resources for implementing and enforcing the law;
5. Include civil society as an active partner;
6. Monitor and evaluate smoke-free laws;
7. Be prepared to amend the law if needed.”¹⁰

The WHO FCTC was open to signing by all Members of the World Health Organization (WHO), all States that are not Members of WHO but are Members of the United Nations and any regional economic integration organization until 29 June 2004. The treaty is now closed for signing; however, those countries that wish to become a Party to the Convention may do so by means of accession. At present there are 181 Parties to the WHO FCTC.¹¹

The respective legislation and enforcement mechanisms of some of WHO FCTC Member-States are considered below.

Some countries, such as Thailand and South Africa, have had strong comprehensive legislation in force for many years.

Thailand became a party to the WHO Framework Convention on Tobacco Control on 27 February of 2005. Smoking is banned in almost all indoor public places, indoor workplaces, and public transport. Nevertheless, international airports may have designated smoking areas and hotels may allow smoking in guest rooms. “Non-air conditioned facilities serving food and/or drinks are smoke free only in the areas where food and/or drinks are served. Smoking is prohibited in the following outdoor places: facilities for exercise, sports training, sports playing, and sports competitions of every kind, public parks, zoological parks, and amusement parks, children’s playgrounds, and markets.”

Entered into force on July 4, 2017, the Tobacco Products Control Act of 2017 (TPCA) is the primary piece of legislation governing tobacco control in Thailand. The TPCA 2017 repeals

¹⁰ Guidelines for Implementation of Article 8 of the WHO FCTC, July, 2007, *available at*: (http://www.who.int/fctc/cop/art%208%20guidelines_english.pdf?ua=1) (accessed March 31, 2018).

¹¹ Parties to the WHO Framework Convention on Tobacco Control, *available at*: (<http://www.who.int/fctc/cop/en/>) (accessed March 31, 2018).

and replaces the Tobacco Products Control Act of 1992 and the Non-Smokers Health Protection Act of 1992.¹²

With the Tobacco Products Control Act of 2017 even stricter measures are implemented. To name a few: the violators of the new law will face imprisonment up to three months and a fine of up to 30,000 baht (approximately 950 USD). However, there have been little public protests about the new anti-smoking law as many Thais seem to support it.¹³

As of February 1, 2018 smoking and cigarette-butt littering are prohibited on Thailand beach areas, but allowed in designated smoking areas.

The violators will be subject to a fine of 100,000 baht (approximately 3140 USD) and a maximum jail sentence of one year, or both. However, warnings are also provided for during the initial stages of implementing the ban. “It has yet to be confirmed how long the grace period will be before violators are slapped with a fine or jail time.”¹⁴

According to the previously mentioned WHO 2016-2017 STEPS survey, the lowest incidence of lung cancer was registered, among others, on the continent of Africa.

In South Africa that became a Party to the WHO Framework Convention on Tobacco Control on July 18, 2005, designated smoking areas in indoor workplaces, public places, and public transport are allowed. “For workplaces and specified public places, up to 25 percent of floor space may be set aside for smoking. Specified public places include: smoking establishments, bars, pubs, taverns, night clubs, casinos, restaurants, hotels, guesthouses.

The Tobacco Products Control Act 83 of 1993 is the primary tobacco control law in South Africa and governs many aspects of tobacco control, including, but not limited to, public smoking restrictions; packaging and labeling of tobacco products; and tobacco advertising, promotion and sponsorship.”¹⁵

Among the European countries, the country with the lowest smoking rate is Sweden (5 %).

¹²Tobacco Control Laws, *Thailand*, available at:

(<https://www.tobaccocontrolaws.org/legislation/country/thailand/summary>) (accessed April 02, 2018).

¹³ *Thailand's smoking laws more extreme as of July 2017 with new bans now in effect*, Tasty Thailand, available at:

(<http://tastythailand.com/thailands-smoking-laws-more-extreme-as-of-july-2017-with-new-bans-now-in-effect/>) (accessed April 27, 2018).

¹⁴ Soo Kim, *Thailand Bans Smoking on Its Beaches*, The Telegraph (Feb. 2, 2018), available at:

(<https://www.telegraph.co.uk/travel/destinations/asia/thailand/articles/smoking-ban-on-thailand-beaches/>) (accessed April 27, 2018).

¹⁵ Tobacco Control Laws, *South Africa*, available at:

(<https://www.tobaccocontrolaws.org/legislation/country/south-africa/summary>) (accessed April 02, 2018).

According to the World Health Organization, among EU countries the lung cancer and tobacco-attributable death rate in Sweden is 40 percent lower.¹⁶

Sweden acceded to the WHO Framework Convention on Tobacco Control on October 5, 2005. The Tobacco Act of 1993 is the primary piece of tobacco control legislation in Sweden which has been amended several times since then.¹⁷

Under the Swedish legislation, smoking is allowed in designated smoking areas in most workplaces and public places. Restaurants and bars are smoke-free; however, they have a separately ventilated designated smoking room without servers.

In 2000, Sweden became the first country in the world to reach WHO's goal of a maximum of 20 per cent smokers in the population. Nevertheless, Sweden started its anti-smoking campaign long before acceding to the WHO FCTC.

In 1974 the Swedish National Board of Health and Welfare published a report that marked the beginning of a new era when the solving of tobacco problems was considered as a responsibility for politicians, not surgeons.

In 1977 an obligatory text warning was included on all cigarette packaging.

In 1983 the National Board of Health and Welfare jointly with the National Board of Occupational Safety and Health, elaborated guidelines for smoke-free environments.

In 1993 a new Tobacco Act came into force. An important part was restrictions of smoking in public places. Hospitality establishments were, however, excluded.

In 1997 sale of tobacco to persons under 18 years of age became prohibited.

On the 1st of June of 2005 the legislation on smoke-free restaurants, bars and cafés came into force. It allowed smoking in separate rooms where eating and drinking was prohibited. On the 2nd of June the Swedish Government ratified the WHO Framework Convention on Tobacco Control.

In 2007 Sweden increased tobacco taxes.¹⁸

Moreover, Sweden has adopted a "harm reduction" strategy - a moist tobacco product called "snus." Snus is manufactured using a process that lowers the levels of cancer-causing

¹⁶*Supra.* at 8.

¹⁷ Tobacco Control Laws, *Sweden*, available at: (<https://www.tobaccocontrol.org/legislation/country/sweden/summary>) (accessed March 31, 2018).

¹⁸ Swedish Network for Tobacco Prevention, Progress & Challenge, *Swedish Tobacco Control* (2009), available at: (<https://www.tobaccoorhealthsweden.org/wp-content/uploads/2014/06/Tidning.pdf>) (accessed April 02, 2018).

chemicals in the finished product. It supplies users with both nicotine and tobacco, yet without the inhalation of smoke. It is placed under the user's lip and is produced in different flavors including mint, lemon and coffee.

Due to the process of its production, snus may be less dangerous than other types of tobacco, but it still contains these chemicals at a low level, is not absolutely harmless, and is linked to pancreatic cancer and diabetes.

There are researches who believe that health effects of snus use are serious; it should not be recommended as a replacement for cigarettes, regardless of how much more harmful smoking may be. According to them, "one or more pots of snus per day increase the risk of developing type 2 diabetes by 70 % - the same risk level as smoking a packet of cigarettes a day."¹⁹

Based on this, snus is prohibited in all EU states except Sweden.

Another European country with a long history of anti-smoking legislation is France. France became a party to the WHO Framework Convention on Tobacco Control on February 27, 2005.

Prior to becoming a party to the WHO Framework Convention on Tobacco Control, France had strong tobacco control legislation providing a ban on tobacco advertising and a ban on smoking in indoor public places and workplaces. The ratification of the FCTC in 2004 contributed to the enforcement and regulation of tobacco control measures and to the improvement of existing legislation to ensure that France complies with best practices.

The primary law regulating tobacco control in France was known first as the Veil Law, passed in 1976, and then the Evin Law, passed in 1991 and now codified in the Code of Public Health.

Under the current anti-smoking legislation in France, smoking is generally prohibited in indoor public places and workplaces; however, in some of these places, owners or managers may create designated smoking areas.²⁰

¹⁹ *Swedes Warned Snus Tobacco Raises Diabetes Risk*, BBC News (Febr. 7, 2017), available at: (<http://www.bbc.com/news/world-europe-38892402>) (accessed March 31, 2018).

²⁰ *Tobacco Control Laws, France*, available at: (<https://www.tobaccocontrolaws.org/legislation/country/france/summary>) (accessed March 31, 2018).

One of the countries with the world's most stringent anti-smoking legislation is United Kingdom.²¹

The anti-smoking legislation prohibited smoking in all enclosed public places when it entered into force in England on July 1, 2007.

As a result, it had its impact on some business entities. For example, the number of pubs in the UK decreased. Accordingly, between 2007 and 2015, nearly 7 000 pubs ceased to exist in the UK. According to the smokers' rights lobby group *Forest* "the impact has been devastating."²²

The same threat emerged for some business entities in Germany which became a Party to the WHO Framework Convention on Tobacco Control on March 16, 2005.

In Germany under federal law, smoking is restricted in indoor workplaces and public places. Sub-national laws apply at the Länder (state) level, and all 16 states have enacted laws restricting or banning smoking in public places.²³

However, smoking ban exceptions were allowed at the end of July 2008 when the German Constitutional Court upheld complaints against some parts of the smoking bans in the city-state of Berlin and Baden-Wuerttemberg. For example, in Berlin, bars are legally able to allow smoking "as long as the space is no larger than 75sqm, there's no possibility of creating a separate smoking room, and the venue doesn't sell hot food or allow minors."²⁴

It should be mentioned that not all the Parties to the FCTC succeed in its implementation, one of them being Greece. "Greece became a party to the WHO FCTC on 27 January 2006."²⁵

²¹ Mark Baker, *Has the UK's Anti-Smoking Efforts Reached Its Peak*, Independent (Feb. 6, 2018), available at: (<https://www.independent.co.uk/news/are-the-uks-antismoking-efforts-enough-a8187491.html>) (accessed May 2, 2018).

²² Nick Triggle, *Pub Smoking Ban: 10 Charts that Show the Impact*, BBC News (July 1, 2017), available at: (<http://www.bbc.com/news/health-40444460>) (accessed March 31, 2018).

²³ Tobacco Control Laws, *Germany*, available at: (<https://www.tobaccocontrolaws.org/legislation/country/germany/summary>) (accessed March 31, 2018).

²⁴ Serita Braxton, *Smokers on the Spree*, Exberliner (March 7, 2017), available at: (<http://www.exberliner.com/features/zeitgeist/smokers-on-the-spree/>) (accessed March 31, 2018).

²⁵ WHO FCTC Implementation database, *Greece*, available at: (<http://apps.who.int/fctc/implementation/database/parties/Greece>) (accessed April 02, 2018).

Greece, with its 27%, is at the top of Eurostat's league tables of daily smokers.²⁶

Despite the fact that the law against smoking in public places went into effect in 2008, Greece does not comply with it.²⁷

At the moment, there are very few Greek bars, restaurants or cafés where smoking is banned.

According to "PanARMENIAN.Net", it is claimed that the replenishment of the budget in Greece in 2015-2016 at the expense of the anti-smoking legislation was equal to zero, whereas the fines for the violation of the law were considerable – 50-200 Euros.

Besides the creation of 100% smoke-free indoor public places, the WHO FCTC also provides for specific packaging and labeling. According to Article 11 of the WHO FCTC, Parties to the Convention are required to implement large, rotating health warnings on all tobacco products packaging and labeling.

A few countries have introduced plain packaging legislation, Australia being among them.

Australia became a Party to the WHO Framework Convention on Tobacco Control on February 27, 2005. In Australia smoking is prohibited in virtually all indoor workplaces, indoor public places, and on public transport, as well as in some outdoor places, through a combination of federal and state-based law, with each state having its own anti-smoking regulations.

In December 2012, Australia became the first country to implement plain packaging. The packages must be "identical, "drab dark brown," made of cardboard, rectangular in shape, with no trademarks or other marks anywhere on the outer surface or inner surface of the package. Other than health warnings, the tobacco packages may contain only: brand, business or company name; relevant legislative requirements; and any other mark or trade mark permitted by regulations. Packages may not have inserts or onserts, make a noise, or produce a scent, and may not include any features designed to change after retail sale. Misleading packaging and labeling, including terms such as "light" and "low tar" and other signs, is prohibited."²⁸

²⁶ Eurostat, *Tobacco Consumption Statistics*, available at: (http://ec.europa.eu/eurostat/statistics-explained/index.php/Tobacco_consumption_statistics) (accessed April 02, 2018).

²⁷ Philip Chrysopoulos, *Anti-Smoking Law in Greece a Lost Cause*, Greek Reporter (May 31, 2017), available at: (<http://greece.greekreporter.com/2017/05/31/anti-smoking-law-in-greece-a-lost-cause/>) (accessed April 02, 2018).

²⁸ Tobacco Control Laws, *Australia*, available at:

However, there are opponents to plain packaging who claim that “there must be compelling evidence to suggest that plain packaging is effective in discouraging young people from smoking, encouraging existing smokers to quit or preventing quitters from taking up smoking again.”²⁹

Enforcement Mechanisms

As to enforcement mechanisms, different jurisdictions have different approaches to enforcement. Most jurisdictions provide for imposition of fines against business entities and smokers for violating no-smoking laws, while others fine only business entities rather than individual smokers. The enforcement protocol of some of the above-stated countries is given below.

In the United Kingdom, “a differentiation is made between violating and misunderstanding the law or lacking diligence in its enforcement, in which case only advice and guidance is given, with penalties being used only in cases of persistent lack of cooperation or antagonism.”

In France prefectures, police, and regional health and social directorates monitor and enforce the anti-smoking legislation by carrying out inspection visits. During their visits inspectors are instructed to look for the presence of appropriate signage; people who are smoking; the presence of ashtrays, and the compliance with rules regarding smoking areas.

NGOs in France have also the right, by law to take legal action against violators of the anti-smoking laws. The government can appoint NGOs “to make written complaints and otherwise assist in monitoring and even enforcement.”

However, the real emphasis is not placed on law enforcement but rather on ensuring public compliance.

As to fines, “they are lower for smokers caught while smoking in public places, and are higher for managers and owners caught placing ashtrays in smoke-free areas, not posting signs properly, or otherwise encouraging non-compliance with the law. The rationale for that is the fact that it is difficult to catch individual non-compliant smokers, but easier to catch non-compliant

(<https://www.tobaccocontrol.org/legislation/country/australia/summary>) (accessed March 31, 2018).

²⁹British American Tobacco, *Plain Packaging*, available at:

(<http://www.bat.com/plainpackaging>) (accessed March 31, 2018).

managers or owners, especially with the constant presence of the evidence, such as tell-tale ashtrays, failure to hang the correct sign in a visible location, or cigarettes for sale.”³⁰

Quite a unique way of anti-smoking enforcement mechanisms exists in Bangladesh. “Rather than having to bring offenders to court, the court can actually go to the offenders, through what is known as a mobile court. A magistrate may bring out this court which has the power to enforce the law by, for example, removing banned advertising and fining offenders.”³¹

After signing the Framework Convention of Tobacco Control in June, 2003 and ratifying it in May, 2004, the government of Bangladesh passed ‘The Smoking and Tobacco Products Usage (Control) Act, 2005’ and issued rules in 2006.

“For effective enforcement of the Tobacco Control Act, the Government established taskforces at national, district and sub-district levels. The district and sub-district task force committees are the bodies entrusted with the tobacco control, including enforcement of law under their jurisdiction. Government officials, especially officers under the Ministry of Health and Family Welfare and the NGO activists report the violation of the law to civil administration and request the administration to call out a mobile court to deal with the violation. The law defines which acts it can address.

An authorized magistrate tries the case in the spot, ensures immediate removal of the advertisement and punishes the perpetrators according to the law. Power under the court is limited to a relatively small fine of Taka 50 (approximately 0,60 USD) for smoking in public place and public transports and Taka 1,000 (approximately 12 USD) for illegally advertising tobacco products. Representatives of the law enforcing agencies including the police, provide the magistrate with the necessary support.”³²

As it has been previously mentioned, fines for owners of business entities are higher than for individual smokers for violation of the anti-smoking law.

An unprecedented high amount of compensation for violation of the no-smoking law within the premises of a business entity was registered in Israel.

³⁰ Debra Efrogmson & Syed Mahbubul Alam, *Enforcement of Tobacco Control Law: A Guide to the Basics* (Feb., 2009).

³¹ *Id.*

³² National Tobacco Control Cell, *Mobile Court Drives Control in Bangladesh*, available at: (<http://ntcc.gov.bd/front/information/5>) (accessed May 12, 2018).

The Israeli Anti-Smoking Law imposes specific requirements on “persons who manage, either as owners or lessees, restaurants, cafés, clubs, discothèques, and other public venues where food and drink are served to prevent patrons from smoking and from being exposed to smoking.” The law permits designated smoking rooms in other indoor public places and indoor workplaces, such as malls, restaurants, bars, pubs, and nightclubs.³³

There are two primary laws governing tobacco control in Israel. The Prevention of Smoking and Exposure to Smoking in Public Places Law, 1983 regulates smoke free environments. The Restriction on Advertising and Marketing of Tobacco Products Law, 1983 regulates tobacco advertising, promotion and sponsorship. It also establishes the framework for health warnings on tobacco packaging and labeling.

As to the WHO FCTC, Israel became a Party to it on November 22, 2005.³⁴

The roots of the given case went back to 2008, when former Russian immigrants Mark and Yelena Litvin and Maxim Tutionik sued the *Bella Shlomkin's* club for not preventing illegal smoking on its premises despite their protests.

After turning to the Central District Court, they received the Court order according to which *Bella Shlomkin's* club was to pay the Israel Cancer Association NIS 90,000 (approximately 25 500 USD) for failing to ensure no smoking on the premises. However, the relatively small amount of the original compensation was appealed against in the Supreme Court, sitting as the Court of Civil Appeals.

Accordingly, on May 20, 2013, the Supreme Court of Israel approved a plea bargain in a class-action suit for violation of the prohibition on smoking in public places, in accordance with the Prevention of Smoking and Exposure to Smoking Law. The decision of the Supreme Court was to increase the compensation payment in a class-action suit to NIS 1 160 000 (approximately 325 363 USD), “to be used to fight and prevent lung cancer”, having calculated the number of people exposed to secondhand smoke, 1 160, and multiplied by the compensation of NIS 1 000 (approximately 300 USD) for each.

³³ Judy Siegel-Itzkovich, *Court Orders 10-Fold Increase in Smoking Compensation*, The Jerusalem Post (June 7, 2013), available at: (<http://www.jpost.com/Health-and-Science/Court-orders-increase-in-smoking-compensation-315772>) (accessed Apr.27, 2018).

³⁴ Tobacco Control Laws, *Israel*, available at: (<https://www.tobaccocontrolaws.org/legislation/country/israel/summary>) (accessed Apr.27, 2018).

There is an opinion that the decision of the Supreme Court of Israel might serve as precedent against owners of Israeli business entities who fail to enforce the anti-smoking law on their premises.³⁵

According to the previously mentioned Guidelines for Implementation of Article 8 of the WHO FCTC, the anti-smoking legislation should identify the authority or authorities responsible for enforcement, and should provide for a system both for monitoring compliance and for prosecuting violators. Effective monitoring may be in the form of regular inspections with unscheduled, surprise inspections, as well as visits made in response to complaints.

The Guidelines also impose obligations upon the owner, manager or other person responsible for the relevant premises. One of these obligations is to take reasonable specified steps to discourage individuals from smoking on the premises. To name a few: to ask the person not to smoke; ask the person to leave the premises, and to contact a law enforcement agency or other authority.

The Guidelines draw on the best available practice of the Parties that have successfully implemented effective measures to reduce exposure to second-hand tobacco smoke.³⁶

CHAPTER 2

Proportionality of Potential Interfering Administrative Acts Imposed against Business Entities in the Form of Fines

Under Article 13 of the Draft Bill, legal and physical persons violating the norms provided for by the given law are to be held liable as prescribed by the legislation of the Republic of Armenia.

On 31 May, 2017 the then Armenian Health Minister Mr. Levon Altunyan stated in an interview to the “Orakarg” /Agenda/ program of the Armenian 1st Public TV Company that violators of the total and comprehensive ban of smoking in public places will face punitive measures – fines in drams equivalent to 10,000 USD. As Mr. Altunyan clarified, the fines would concern not the smoker but the owner of the public place because, according to him, only

³⁵ *Supra* at 32.

³⁶ *Supra* at 9.

through high rate of fines one could eliminate the phenomenon; otherwise, it would be a source of budget replenishing.

Smoking ban violations fall within the realm of administrative law that regulates legal relationships between individuals and public authorities. The field is governed *inter alia* by the Law of the Republic of Armenia on “Fundamentals of Administration and Administrative Procedure” (LFAAP).

Fines provided for by the proposed legislative package are considered interfering administrative acts per Article 53 of the LFAAP:

“Article 53. Definition and Types of Administrative Act:

1. Administrative act is the decision, instruction, order or other individual legal act having external effect that administrative body adopted for the purpose of regulating a concrete case in the field of public law, and is directed to the prescription, amendment, elimination or recognition of rights and obligations for persons.

2. According to the meaning of this law,

*b) interfering administrative act is the administrative act through which administrative bodies refuse, interfere, up to restrict the enjoyment of the rights of persons, impose any obligation on them or in any other way worsen their legal or factual situation.”*³⁷

Thus, the proposed fines, being interfering administrative acts, raise concerns from the perspective of proportionality of administration.

The principle of proportionality is one of the basic principles of administration. This principle is envisaged under Article 8 of the LFAAP:

“Administration shall pursue the aims set by the Constitution and laws of the Republic of Armenia, and the means for achieving these aims shall be useful, necessary and moderate.”

³⁷ HO-41-N (“ARLIS” 2004 & Supp. 2017), available at: (<http://www.arlis.am/DocumentView.aspx?docid=95088>) (accessed Feb. 12, 2018).

The legal basis for the principle of proportionality is Article 78 of the Constitution of the Republic of Armenia:

“The means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the basic right or freedom being restricted.”³⁸

So to what extent the high rates of fines looming over business entities for potential smoking violations comply with the principle of proportionality of administration and are useful, necessary and moderate?

In analyzing the proportionality issue of the fines it is necessary to establish whether the proposed measure places heavier burden on business entities than it is necessary to achieve the legitimate aim.

As declared, the overall legitimate aim set by the Draft Bill is improvement of public health by reducing and preventing the negative impact of tobacco products.

The word “preventing” implies that the potential law should have a really preventative, not a punitive impact.

A fine is a monetary penalty that ensures budgetary inflows. Its implied goal is punitive in nature. However, based on the spirit of Article 8 of the LFAAP, one should start from a moderate, less severe and intrusive penalty necessary to achieve the legitimate aim – to protect the public from the danger stemming from smoking and second-hand smoke, as well as to prevent subsequent violations.

Types of penalties for administrative offences are covered by Article 23 of the Law of the Republic of Armenia on “Administrative Offences.” The given Article reads that a warning can be applied as well for committing an administrative offence.

Based on the above-stated, it worth mentioning that for the sake of balance between the competing public and private interests at stake, it would be proportionate to envisage in the Draft Bill a warning as an administrative penalty for violation of the smoking ban.

³⁸ RA Const.

Otherwise, if a warning is not provided for by the Draft Bill, the interfering administrative act imposing a fine against a business entity can be appealed against.

According to Article 69 of the LFAAP,

“For the purpose of protection of their rights, the persons shall have the right to lodge complaint against administrative acts, action or inaction of administrative body.”

As to the procedure of the appeal, it is covered in Article 70 of the LFAAP, reading as follows:

- “1. Act may be appealed against according to administrative or judicial procedure.*
- 2. Administrative complaint may be lodged with the;*
 - a) administrative body that adopted the act,*
 - b) superior administrative body of the administrative body that adopted the act.*
- 3. If the complaint against the act was lodged in both administrative and judicial procedure, then the complaint shall be considered through judicial procedure, in which case the procedure commenced in administrative body shall be terminated. The administrative acts can be appealed both administratively and judicially.”*

According to Article 74 of the Constitution of the Republic of Armenia, concerning the applicability of basic rights and freedoms with respect to legal persons:

“The basic rights and freedoms shall also extend to legal persons to the extent these rights and freedoms, by virtue of their nature, are applicable thereto.”³⁹

According to Article 50 of the Constitution of the Republic of Armenia pertaining to the right to proper administrative action:

“1. Everyone shall have the right to impartial and fair examination by administrative bodies of a case concerning him or her, within a reasonable time period.”⁴⁰

³⁹ *Id.*

⁴⁰ *Id.*

Moreover, Article 63 of the Constitution of the Republic of Armenia states that:

“1. Everyone shall have the right to a fair and public hearing of his or her case, within a reasonable time period, by an independent and impartial court.”⁴¹

However, if the relevant business entity decides to lodge a complaint against the interfering administrative act of the administrative body to the administrative court, there will be a danger of the violation of its right to a fair trial within a reasonable time period. The reason is the overloading of administrative courts.

According to the information available on the Armenian E-government portal, the conducted studies revealed that that the administrative acts were mostly appealed against in a judicial order. Per the statistics, as of November 2017 nearly 9 200 cases were at the stage of judicial review. According to the same data, the day of the first hearing of the cases, filed with the administrative court in November 2017, was scheduled for January 2018, as to the judicial review of the cases in administrative court of appeals, it was scheduled for 2019.

According to the same information, the similar overloading of the administrative court created serious risks for the persons’ right to a fair trial, as well as for the protection of business environment.⁴²

Hence, based on the information stated above, one can conclude that the potential interfering administrative acts, issued for the violation by business entities of the smoking ban, that do not envisage a warning as a type of administrative penalty, violate the principle of proportionality envisaged by the LFAAP and Constitution of the Republic of Armenia.

Moreover, once a business entity decides to lodge an appeal against the interfering administrative act of the administrative body according to judicial procedure, a threat exists that his rights to a fair trial will also be violated.

⁴¹ *Id.*

⁴² *Overloading of the Administrative Court Creates Serious Risks*, available at: (<http://www.gov.am/am/news/item/13270/>) (accessed May 12, 2018).

CHAPTER 3

Potential Consequences for Business Entities in Light of the Draft Bill

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Representatives of the respective business entities are already alarmed by the proposed Draft Bill. They claim that the Draft Bill will create rather unfavorable conditions for them. A number of potential consequences is given below:

The total indoor smoking ban envisaged under the Draft Bill threatens the existence of certain business entities.

An example of a small cafe might be illustrated here. When drafting his business plan, before the introduction of the given Draft Bill, the potential owner of the café calculates his investments and returns for his investments in conditions when there is no total indoor smoking ban. His “trademark” or rather “service mark” in this case is offering coffee and selling tobacco products: His cafe is a place where people can come to have a cup of coffee and a cigarette. He registers his trademark under the conditions when this does not contradict the public policy, as envisaged by Article 9(6) of the Law of the Republic of Armenia on “Trademarks”. Once the Draft Bill enters into force, the owner of the café may face considerable losses with no compensation from the State. In a way, the State interferes in his business activities by limiting his freedom to get income and creating unnecessary barriers to his trade.

The Draft Bill, under its Articles 11 (2) and 13, implies that the relevant business entities will also be fined for the smoking of their clientele.

Due to the given provision of the Draft Bill, the owner of the relevant business entity becomes vulnerable to different provocations. For example, someone from a competing hospitality sector, out of a desire to hurt his “competitor’s” business, comes and starts smoking in his “competitor’s” café or restaurant. Thus, additional and uncontrolled burden is imposed on the owner of the entity in question when he has to pay the fine for the smoking of another person whom he cannot control. Moreover, the Draft Bill does not specify the moment when the violation is considered to have taken place. For example, the owner of a business entity sees that someone smokes within his premises, approaches that person and asks to extinguish the cigarette. It is unclear from the Draft Bill whether the owner of the business entity in this case is liable for the violation of the anti-smoking law: The smoking occurred but was stopped in its subsequent “process.”

Or like in the previously cited Israeli case, a group of people might enter a café, start smoking, and one of their “accomplices” who does not smoke, can claim damages from the business owner for being subjected to second-hand smoke. In this case again, the business owner is not protected against different provocations.

As the Draft Bill does not specify mechanisms to regulate the control over the implementation of the Draft Bill, the specific authorized bodies entrusted with the enforcement of the Draft Bill, as well as the requirements for their accountability, cases of corruption might emerge. Alternatively, the designated enforcers may be too busy with other violations of the law to have the time to address tobacco control law; or the enforcement provisions may be so burdensome as to prevent them ever being brought into force. The owners of the business entities in question as well might prefer “devious paths” in order to avoid pending huge fines.

The Draft Bill might cause distortions of competitive neutrality. As a rule, the notion of “competitive neutrality” is applied with respect to government business activities competing with the private sector, i.e. the former should not have a competitive advantage or disadvantage simply by virtue of government ownership and control.⁴³ Nevertheless, the elements of violations of competitive neutrality, in a certain sense, might be traced in the Draft Bill, as certain industry is in disadvantage with respect to the other one.

Under Article 8 (5) of the Draft Bill, the production and import of toys or foodstuffs imitating tobacco products is prohibited. The provision implies that the toy manufacturing entities are banned to produce toys imitating cigarettes.

Based on the overall rationale of the given Draft Bill, the promotion of public health, one can conclude that the ban under Article 8 (5) is aimed at preventing children from taking up smoking in their youth. Being guided by the logic of the Draft Bill, it will also be reasonable to ban the production and import of toy guns: Their potential impact upon children can be much worse. A contradiction comes forth when a legislative ban is imposed only on the production and import of toy cigarettes, and not on the production and import of toy guns as well, as ultimately both types of toys are dangerous for life.

⁴³ UNCTAD Research Partnership Platform, *Competitive Neutrality and Its Application in Selected Developing Countries* (2014).

Another potential consequence for the business entities in question, namely tobacco companies, might become the violation of their intellectual property rights.

Under Article 5 of the Draft Bill, each unit packet and package of tobacco products and any outside packaging and labeling of such products must carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. These warnings and messages should be 50% or more of the principal display areas.

However, as the international practice shows, the anti-smoking legislation entails among others, a plain packaging of tobacco products, the vivid example of which is illustrated in Australia's anti-smoking legislation noted earlier.

With plain packaging requirements, tobacco companies will have no freedom to include their own unique logo, design or slogan on their packaging, which is their intellectual property. It will be much harder for them to find their own unique space in the marketplace and stand out from the competition. As a result, they are destined to see a significant fall in both sales and public brand recognition. In a certain way, government takes away their intellectual property without giving any just compensation in return.

The Draft Bill, once enforced, will affect the Armenian manufacturers of tobacco products who are among the major tax payers of the Republic of Armenia.

According to “PanARMENIAN.Net”, the leading players in the market are *Philip Morris*, *JTI International*, *Grand Tobacco*, *International Masis Tabak*, *Cigaronne*. All of them are major tax payers.

According to the same data, in 2016 *Philip Morris* paid 9.2 billion drams, *JTI International* paid 9.3 billion drams, *Grand Tobacco*, which is also a major exporter, paid more than 22.5 billion drams, *International Masis Tabak* paid 9.4 billion drams. *Cigaronne* paid nearly 814 million drams of taxes.

In 2016 nearly 20,9 billion of cigarettes were exported from Armenia, with the overall cost of \$ 209 million. The main destination country was Iraq.

It is obvious that the losses they will suffer from the enforcement of the Draft Bill will negatively impact the economy of the Republic of Armenia. According to the report conducted by the World Bank and the National Statistical Service of the Republic of Armenia, in 2016 the economic growth in the Republic of Armenia was only 0,5% instead of the planned 2,2%.

According to the same information, at least during the last 5 years, Armenia had the highest unemployment rate among the countries of the Commonwealth of Independent States. More than 18% (nearly 224 thousand people) of the economically active part of the population of Armenia is unemployed.⁴⁴

Once the Armenian manufacturers face the stringent restrictions imposed by the Draft Bill, this will negatively impact the employment rate in the Republic of Armenia.

According to the report conducted by the Global Smoke-Free Partnership, “there are benefits for employers, including increased productivity, reduced sickness in employees from smoking and secondhand smoke exposure, reduced injuries, and reduced risk of fire damage”. However, according to the same report, “the only industry guaranteed to lose business after the implementation of smoke-free laws is the tobacco industry.”⁴⁵

The Draft Bill is not thoroughly elaborated. The vague definition in the Draft Bill of an enclosed public place testifies to this.

According to Article 7 of the Draft Bill, the use of tobacco products is prohibited in enclosed places, public places.

According to paragraph 14 of Article 1 of the Draft Bill, an enclosed place is any temporary or permanent structure with a roof made of any material or without it, with one or several walls.

Under paragraph 16 of Article 1 of the Draft Bill, a public place is a place of collective use available to the public, regardless of the way of its ownership or accessibility to it.

However, will it be a violation, according to the Draft Bill, if someone is smoking outside the premises of the business entity of the owner but leaning against a huge billboard with the name of the business entity and under its ownership? In this case, under the Draft Bill, the billboard can be considered an enclosed public place, as it has no roof but has one wall. Many people can lean against the billboard while smoking, i.e. a place of collective use under the Draft Bill, regardless of the way of its ownership.

⁴⁴ Gagik Aghbalyan & Astghik Gevorgyan, *The Unemployment Rate is the Highest in the CIS*, Ampop (March 27, 2017), available at: (<http://ampop.am/unemployment-in-armenia/>) (accessed March 27, 2018).

⁴⁵ Global Smoke-Free Partnership, *Smoking Ban Do Not Hurt Business*, available at: (http://www.ftc.org/images/stories/Key%20facts%20on%20Article%208_%20smokefree.pdf) (accessed March 25, 2018).

A rather vague wording of an enclosed public place that might cause quite broad interpretations of the Draft Bill, again not in favor of the owner of the relevant business entity.

CHAPTER 4

Steps to Protect Rights of Business Entities Without Hurting Public Policy

Based on the analysis of the previous chapters one might conclude that the potential new anti-smoking legislation of the Republic of Armenia introduced in the form of the Draft Bill will cause a number of negative consequences for the pertinent business entities. The following steps and recommendations could mitigate to a certain degree the impact of the Draft Bill upon the relevant business sector:

The amount of fines envisaged under the Draft Bill should be lowered. Moreover, a warning as a type of an administrative penalty should be envisaged for the violation of a smoking ban, as required by the spirit of Article 78 of the Constitution of the Republic of Armenia, according to which *“the means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution.”*

The same requirement for proportionality is provided for by the previously mentioned anti-smoking strategy itself that was approved by the Government of the Republic of Armenia, *“the efficient and factual implementation of the legislation requires corresponding proportionate measures.”*

The international anti-smoking practice also provides for a warning. The vivid example of this is Thailand, a country with one of the most stringent anti-smoking legislation in the world: Warnings are also provided for during the initial stages of implementing the smoking ban.

In the United Kingdom as well penalties are used only in cases of persistent lack of cooperation, as a differentiation is made between violating and misunderstanding the law or lacking diligence in its enforcement, in which case only advice and guidance is given.

With that in mind, an initial period of soft enforcement, during which violators are cautioned but not penalized should be provided for by the respective anti-smoking legislation.

Both the proportionate amounts of fines and the existence of a warning as an administrative interfering act for the non-compliance with the anti-smoking law will prevent the violation of the right to a fair trial, a right business entities are constitutionally entitled to.

As a way of just compensation for limiting the way to get their income if a total smoking ban is enforced, the State should encourage business entities (e.g. restaurants, cafés, and other entities of entertainment industry) to have a smoke-free environment. This could be achieved through offering some privileges, (e.g. in the form of tax incentives) to those business entities in question that would ensure a smoke-free environment by prohibiting smoking within their premises.

The State should not endanger the existence of the relevant business entities by imposing a complete and comprehensive indoor smoking ban.

The previously cited example of the English pubs shows that the comprehensive smoking ban endangered their existence.

One of the way of prevention of the negative impact upon small business entities is practice of a number of European countries, like Germany: Relevant small business entities, such as bars, are legally able to allow smoking as long as the space is no larger than 75sqm, there's no possibility of creating a separate smoking room, and the venue doesn't sell hot food or allow minors.

Even the German Constitutional Court in 2008 ruled for the right of owners of smaller bars who claimed that “if they couldn't offer a separate smoking space it would bankrupt them due to the loss of their clientele”.

The example of Greece is evidence of the aforementioned statement as well. Proprietors of cafés and bars claim that they cannot prohibit smoking because they will lose customers, who would go somewhere else where smoking is allowed.⁴⁶

⁴⁶ Philip Chrysopoulos, *Anti-Smoking Law in Greece a Lost Cause*, Greek Reporter (May 31, 2017), available at: (<http://greece.greekreporter.com/2017/05/31/anti-smoking-law-in-greece-a-lost-cause/>) (accessed April 02, 2018).

In South Africa as well specified public places exist, including smoking establishments, bars, pubs, taverns, night clubs, casinos, restaurants, hotels, guesthouses.

Hence, closed rooms with strict technical standards should be allowed in the relevant business entities.

The specifications of what the enclosed public area is will help the relevant business entities to protect themselves against frivolous interpretations of the pertinent clause of the Draft Bill and to create designated parts of outdoor areas where their patrons can smoke, without violating the anti-smoking legislation, once it is enforced.

One can find guidelines for determining what enclosed public places are in Clause 8 of the Smoke-Free Environment Regulation 2016 of the Australian state of New South Wales.

Accordingly, “a public place is considered to be substantially enclosed if the total area of the ceiling and wall surfaces (the *total actual enclosed area*) of the public place is more than 75 per cent of its total notional ceiling and wall area; the *total notional ceiling and wall area* is the sum of:

- (a) what would be the total area of the wall surfaces if:
 - (i) the walls were continuous (any existing gap in the walls being filled by a surface of the minimum area required for that purpose), and
 - (ii) the walls were of a uniform height equal to the lowest height of the ceiling, and
- (b) what would be the floor area of the space within the walls if the walls were continuous as referred to in paragraph (a).”⁴⁷

The given clause lists further specifications of what constitutes a ceiling, “locked-open door” or “locked-open window”, “moveable structure”, or “walls.”

While examining the international timeframes between the first anti-smoking legislation and the one envisaging a total and comprehensive smoking ban, one can see that gradual restrictions and solutions should be offered. The best practice of Sweden, as the first European country to reach WHO's goal, is the vivid example of the smooth transformation to a smoke-free environment. Swedish practice shows that the country achieved its aim not through drastic and

⁴⁷ NSW, Smoke-Free Environment Regulation 2016 cl. 8 (Sept. 1, 2016), *available at*: (<https://www.legislation.nsw.gov.au/#/view/regulation/2016/558/sec8>) (accessed May 14, 2018).

rapid legislation changes but through phased and long-term commitments, that had started since 1974.

The similar gradual development of the anti-smoking legislation can be observed in South Africa (anti-smoking law has developed since 1993) and in France (since 1976).

Besides that a grace period should be given to relevant business entities for shifting and adapting to the new anti-smoking legislation.

For example, the cigarette and tobacco manufacturing company *Philip Morris International* (PMI) and owners of the *Marlboro* brand has declared about its intention to transit its resources from cigarettes to smoke-free alternatives, and to switch its adult smokers to these alternatives as quickly as possible around the world.⁴⁸

In Armenia as well, the manufacturers of tobacco products should also be given a grace period as they might be inclined as well towards transition of their resources to harmless products once relevant research is made.

Besides that, close collaboration with the government and business owners is absolutely necessary. Evidence based and scientific data should be provided to assure the owners of the relevant business entities that they will not suffer losses.

Moreover, an active campaign to educate owners of respective business entities about their responsibilities under the pertinent anti-smoking legislation should be launched. Messages can include the reasons for the measure, and how businesses can prepare themselves and their customers, and recommendations on making places smoke-free and overcoming any difficulties. Guidelines for Article 8 of the FCTC also provide for the provision of resources for implementing and enforcing the law.

Given all the pending negative consequences in light of the present Draft Bill, it is essential to ensure the existence of a thoroughly elaborated and well-considered new anti-smoking Draft Bill that would take into account all the interests at stake.

⁴⁸ *Supra* at 20.

CONCLUSION

The best international practice in the fight against smoking shows that only through small steps one can achieve outstanding results.

Nevertheless, interests of proprietors of respective business entities should also be taken into account. The State should offer alternative solutions in exchange for binding restrictions and burden imposed upon them.

Reaching out to owners of the relevant business entities, hospitality venues, and others likely to oppose the law can also increase the chances of smooth enforcement of the anti-smoking Draft Bill.

It is simply not possible for enforcers to ensure compliance with the proposed anti-smoking law if the public opposes it. The level and cost of the effort required would be too high to sustain, and the law could become even more unpopular due to the perception of its being forced on the population.

As the Draft Bill implies, public health is superior to the interests of the tobacco industry. However, when introducing and enforcing an anti-smoking legislation, one should take into account the economic peculiarities of the country in question, bearing in mind that the abrupt limitations applied, *inter alia*, against tobacco industry will also have undesirable consequences for the economy of the Republic of Armenia, among which is a high rate of unemployment.

The Republic of Armenia can achieve the desired goal through a comprehensively elaborated public policy, legislation, as well as regulating mechanisms. This will prevent loopholes and obstacles, as well as will discover strong and efficient tools for successful enforcement of the anti-smoking legislation.

No doubt, the proposed Draft Bill pursues aim of utmost public importance – the public health. Nevertheless, while striving for the best and most perfect goals, one should be extremely careful in making any drastic and abrupt changes in order not to cause more harm than good.

And as one of the world's most outstanding state figures Winston Churchill, who was a heavy smoker himself, was saying, "*However beautiful the strategy, you should occasionally look at the results.*"

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