

DECREES

Executive Decree No. 04-331 of 4 Ramadhan 1425 corresponding to October 18, 2004, concerning regulation of activities involving the manufacture, importation and distribution of tobacco products.

The Head of the Government,

In consultation with the Minister of Finance,

In light of the Constitution, particularly its Articles 85-4 and 125 (paragraph 2);

In light of Ordinance No. 76-104 of December 9, 1976, concerning the Code of Indirect Taxation;

In light of Law No. 2000-06 of Ramadhan 1421, corresponding to December 23, 2000, concerning the law of finance for 2001, particularly its Articles 32 and 33;

In light of Presidential Decree No. 04-136 of 29 Safar 1425, corresponding to April 19, 2004, concerning the nomination of the Head of Government;

In light of Presidential Decree No. 04-138 of 6 Rabie El Aouel 1425, corresponding to April 26, 2004, concerning the nomination of members of the government;

In light of Executive Decree No. 01-396 of 24 Ramadhan 1422, corresponding to December 9, 2001, concerning the regulation of activities involving the manufacture and distribution of tobacco;

In light of Executive Decree No. 01-397 of 24 Ramadhan 1422, corresponding to December 9, 2001, setting the conditions for the importation of tobacco manufactured by juridical persons entrusted with a license to operate as a manufacturer of tobacco, hereby

Decrees:

PRELIMINARY PROVISION

Art. 1. – In application of the provisions of Articles 32 and 33 of Law No. 2000-06 of 27 Ramadhan 1421, corresponding to December 23, 2000, concerning the Finance Law for 2001, the purpose of this decree is to regulate the activities involved in the manufacture, importation and distribution of tobacco products.

Section 1

Manufacture of tobacco products

Art. 2. – The status of manufacturer of tobacco products is reserved for juridical persons in the form of corporations, 49% of whose capital is owned by nationals residing in Algeria.

Art. 3. – Manufacturers of tobacco products must be organized in the form of a partnership.

Partnership should be understood to indicate foreign capital holding 51% of the company stock.

Within this participation, at least one shareholder should be engaged in the exploitation of brands of international renown.

The status of exploiter of renowned international brands is not required for manufacturers of snuff and chewing tobacco.

Art. 4. – The provisions of Articles 2 and 3 above are not applicable in the case of companies whose stock is held exclusively by the State.

Section 2

Conditions for the issuance and revocation of a temporary permit and of a license

Art. 5. – Engaging in activities of tobacco manufacturing is contingent upon issuance by the authority regulating the market for tobacco and tobacco products of a license pursuant to the signing of terms of reference by the applicant, following the requirements of the template attached hereto in the annex.

The license is to be issued within 60 days following signing of the terms of reference.

Art. 6. – Fulfillment of the requirements set forth in the terms of reference, as duly verified by the regulatory authority, entitles the applicant to a license as a manufacturer of tobacco products.

By the same token it can be revoked in the event of:

- An infringement of the legislative or regulatory provisions in force,
- Failure to fulfill the signed commitments associated with the activity,
- Lack of entry into production within a period of at most two (2) year counting from the date of the license or of that mentioned in the terms of reference and accepted by the regulatory authority.
- Revocation cannot be pronounced, however, except following a period of one month subsequent to notification of the manufacturer.

Section 3

Distribution of tobacco products

Art. 7. – Manufacturers of tobacco products can also be authorized to operate as distributors. The conduct of this activity can be undertaken through an affiliate established for such purpose.

Art. 8. – Apart from manufacturers, only natural persons of Algerian nationality residing in Algeria, or companies whose partners or shareholders are of Algerian nationality and residing in Algeria, can be authorized to operate as tobacco distributors

Art. 9. – Temporary authorization for distributors of tobacco products is to be issued within a period of thirty (30) days following the signing of a book of tasks, a template of which is attached to this Decree in an annex.

Art. 10. – Fulfillment of the requirements set forth in the book of tasks, duly verified by the regulatory authority, entitles the applicant to a license as a distributor of tobacco products.

Art. 11. – The temporary permits and licenses indicated in Articles 5 and 9 above are exclusive of any other private fiscal regime.

Section 4

Obligations

Paragraph 1

**Special obligations involving
the manufacture of tobacco products**

Art. 12. – Duly licensed tobacco manufacturers must assume the role of bonded warehouse managers during the phase of production, as far as the purchase of raw tobacco leaf is concerned, whether cut or packed.

The bonded warehouse status confers the authorization granted to manufacturers to store tobacco products without having to pay tax on them in advance.

Art. 13. – In addition to the indications set forth in the declaration of profession noted in Article 4 of the Code of Indirect Taxation, the following things must also be indicated:

- 1) a list along with technical specifications of equipment to be used in the processing of tobacco, as well as its mode of operation;
- 2) the models to be adopted for boxes, cases, pouches or packs, their shape, dimensions, as well as the nature and weight of the pouches or packs of tobacco or the number of cigarettes/cigars that they will hold
- 3) the factory schedule, in terms of working hours and days.

Art. 14. – Any internal communication between the site or sites constituting the factories and warehouses and other locations, whether or not they are occupied by the manufacturer, is prohibited.

Doors and windows directly giving onto public thoroughfares or neighboring properties must be equipped with appropriate locks so as to prevent any kind of removal of materials.

The fiscal authorities may, moreover, require the factory and its outbuildings to have only one commonly opened entranceway, and for others to be sealed and closed with two locks, with the keys to one of the locks to be entrusted to the fiscal authorities.

Art. 15. – Without impairment to special provisions concerning preventive health measures, each box, case, pouch or pack must have printed on the packaging itself, the net weight of the tobacco or the number of cigarettes or cigars, as well as, for tobacco intended for sale on the market, the express statement, “For Sale in Algeria,” followed by indication of the regulatory authority.

Art. 16. –Boxes, cases, pouches, or packs must be kept in a special location under lock and key.

Manufacturers are required to place boxes, cases, pouches or packs set aside for export or shipment to other factories with transfer of tax credit in a separate storage area within the same facility, or in another location under lock and key. If these boxes, cases, pouches or packs are subject to packaging by lot, such packaging must display the words, “For Export” or “Shipped under bonded warehouse regime.”

Art. 17. – The same applies to products intended to be placed on the market, as to products intended for transfer of credit or for export: the boxes, cases, pouches or packs must be arranged in their respective storage areas by category of weight so as to facilitate the taking of inventory of manufactured products.

When inventory is taken, declarations of remnants are to be made by the purpose and nature of products.

Declaration of materials in the process of manufacture being held in workshops when such operations are conducted is to be done by assessing the weight of such materials at normal moisture levels for dried tobacco leaf.

Paragraph 2

Inventory Management

Art. 18. – Three inventories must be kept by manufacturers:

- 1) leaf tobacco and raw materials;
- 2) materials in process;
- 3) finished products.

The above inventories are to be kept separately for smoking tobacco and snuff and chewing tobacco.

Art. 19. – The inventory of leaf tobacco and raw materials shall consist of the following:

- 1) The amounts registered in the first inventory or remaining at the previous inventory closing comprising the remnants thereof;
- 2) the amounts received;
- 3) surpluses registered when inventory is taken.

It is not required to keep track of:

- 1) amounts delivered for manufacture;
- 2) amounts accepted as exempt under the conditions indicated in **Article 31** of the Code of Indirect Taxation;
- 3) shortfalls registered when inventory is taken.

Art. 20. –The inventory for manufacturing materials must include the following:

- 1) the amounts registered in the first inventory or remaining at the previous inventory closing comprising the remnants thereof;
- 2) amounts delivered for processing by the bonded warehouse of the factory;
- 3) amounts coming from outside;
- 4) surpluses registered when inventory is taken;
- 5) amounts delivered for processing.

It is not required to keep track of:

- 1) amounts that have been processed, placed in boxes, cases, pouches or packs, whether they are to be placed on the market for sale, or routed for export or sent to other factories;
- 2) amounts assigned for disposal, whether after destruction performed in the presence of revenue agents, or due to implementation of the provisions of Article 31 of the Code of Indirect Taxation. The aforesaid assignments for disposal apply to weight of materials at normal moisture conditions for dry tobacco leaf;
- 3) shortfalls registered when inventory is taken.

Art. 21. –The inventory of manufactured products is to be stated in net weight of tobacco:

- 1) amounts registered in the first inventory or remaining at the previous inventory closing comprising the remnants thereof;
- 2) amounts that have been processed, placed boxes, cases, pouches or packs, whether they are to be placed on the market for sale, routed for export or sent to other factories;
- 3) amounts coming from outside;
- 4) surpluses registered when inventory is taken.

Unofficial Translation

It is not required to keep track of:

- 1) amounts released to distributors of tobacco products;
- 2) amounts shipped for export or to other factories;
- 3) amounts accepted as exempt under the conditions indicated in Article 31 of the Code of Indirect Taxation, or re-entered in the manufacturing inventory to be delivered for processing;
- 4) shortfalls registered when inventory is taken.

Art. 22. – On a weekly basis, tobacco manufacturers must enter in the registers indicated in article 10 of the Code of Indirect Taxation the amounts of raw tobacco in processing, on one hand, and on the other hand, the amounts processed and placed into boxes, cases, pouches or packs.

However, when revenue agents come to conduct inspections of inventory, manufacturers of tobacco products must make the entries indicated in the foregoing paragraph whenever they are requested to do so.

Art. 23. – The inventories indicated above are to be definitively closed, balanced and settled each year between July 1st and 31st.

Art. 24. – Shortfalls are not settled except when administrative orders are issued at the end of the year or seasonally, that is, on July 31st, or in the event of inventory closure.

However, if at times other than those thus determined, shortfalls registered exceed 5% of stock, taking into account supplementary and one-time deductions indicated in Article 295 of the Code of Indirect Taxation, any surplus of shortfalls is to be immediately and definitively taxable.

Art. 25. –If surpluses registered for the inventory of tobacco leaf and raw materials exceed 5% of the amounts that have been held in storage in the deposit since the previous inventory, only the surplus is subject to confiscation. The same is true of surpluses in the manufacturing inventory.

As far as snuff and chewing tobacco are concerned, in powder or grains, surpluses in the manufacturing inventory are not subject to confiscation; they are simply to be added to stock.

Art. 26. –Boxes, cases, pouches or packs whose net weight in tobacco exceeds the weight taken for the imposition of tax in an amount greater than 13% for cigars, 9% for cigarettes and 6% for other manufactured products are subject to confiscation.

Paragraph 3

Other obligations

Art. 27. –Manufacturers of tobacco products must make available to distributors of tobacco products, all of the brands and types of tobacco processed or imported, pursuant to the provisions of Articles 32 and 33 hereafter, that are to be put on the market.

Art. 28. – Tobacco manufacturers must send a statement of sales for the previous month to the territorially competent administrative district of taxation in the first ten days of each month, including the following:

- first and last name (s), address, registration number in the commercial registry and tax identification number of each client;
- the number of boxes, cases, pouches or packs, by type and brand of tobacco delivered to each client.

Paragraph 4

**Special obligations involving the distribution
of tobacco products**

Art. 29. –Distributors must keep a property inventory of tobacco products at each distribution center.

This inventory is to be stated in net weight of tobacco:

- 1) the amounts registered in the first inventory or remaining at the previous closing comprising the remnants thereof;
- 2) those acquired from manufacturers or coming from another distribution center;
- 3) surpluses registered when inventory is taken.

It is not required to keep track of:

- 1) amounts sold to retailers or shipped to another distribution center;
- 2) amounts accepted as exempt under the conditions indicated in Article 31 of the Code of Indirect Taxation;
- 3) shortfalls registered when inventory is taken.

This inventory is to be definitively closed, balanced and settled each year on December 31st.

Art. 30. –Tobacco distributors must make available to tobacco retailers duly licensed by the tax authorities all of the brands and types of tobacco intended to be put on the market.

The list of tobacco retailers is to be made available to distributors by the administrator of taxation of the territorially competent administrative district.

Lists of modifications can be sent to distributors in the same fashion.

Art. 31. –At the end of each quarter, distributors of tobacco products must submit a list of clients, including the following:

- first and last name (s), address, registration number in the commercial registry and tax identification number of each client,
- the number of boxes, cases, pouches or packs, by type and brand of tobacco delivered to each client.

Art. 32. –Manufacturers that are also licensed as distributors must have separate premises for each activity.

Transfer of tobacco products to distribution sites is considered to be placement on the market and incurs the payment of fees and taxes due.

Section 5

Prices of tobacco products

Art. 33. –The price for tobacco products is freely determined by manufacturers. It is uniform for the entire national territory.

This price is to be published by joint administrative order of the Minister of Finance and the Minister of Commerce.

Section 6

Importation of tobacco and tobacco products

Art. 34. –Only tobacco manufacturers can import leaf tobacco, whether cut or packed.

Art. 35. – Only tobacco manufacturers can import processed tobacco.

Importation of this sort can only involve brands sold by the manufacturer or the controlling shareholder of the company licensed as a tobacco manufacturer within the limits, schedules and amounts determined by the regulatory authority. For this purpose, the manufacturer is required to report the development of the international shareholder composition of the company.

Art. 36. – Juridical persons licensed as manufacturers of tobacco products can be authorized before commencing production to import tobacco products under the following conditions:

- the importation can only involve brands intended for manufacture in Algeria;
- in light of the present provisions, the importation can only be carried out for a period equivalent to that of the entry into production in Algeria. In any case, this period is to be determined following examination of the license file, by the regulatory authority for tobacco and tobacco products, and after undertaking concrete work to carry out the investment;
- the importation can only be carried out for the amounts determined by the regulatory authority created by Article 33 of Law No. 2000-06 of 27 Ramadhan 1421, corresponding to December 23, 2000, concerning the Finance Law for 2001;
- the amounts authorized correspond to one share of those that must be manufactured for the same period;
- the importation can only be carried out on the basis of a decision on authorization of importation issued by the regulatory authority, following verification of the complete release of all company stock.

Art. 37. – Boxes, cases, pouches or packs of imported tobacco must satisfy the conditions for placement on the market, particularly those enunciated in the provisions of Article 13 of this Decree.

Art. 38. –For every importation, tobacco manufacturers are required to submit a statement of delivery to the territorially competent office of tax inspection within a period of 48 hours of the arrival of the products.

The office of tax inspection has a period of 48 hours counting from the receipt of the statement of delivery to conduct a review of the amounts received.

Upon expiration of this period, tobacco manufacturers may freely dispose of the imported products.

Section 7

Conditions for Sanitary Prevention

Art. 39. – For the manufacture of tobacco products, only healthy tobacco leaf can be used, free of all infestations of insect larvae.

The growing or importation of different kinds of tobacco can be prohibited. A joint administrative order of the Minister of Finances, of Health and of Agriculture shall determine the list of varieties in question, should the need arise.

Art. 40. – Substances allowed in the processing of tobacco and the content of toxic products, additives such as aromatic substances, moistening agents, products for whitening ash and combustion accelerators, preservative agents and authorized adhesives and binders are to be determined by a joint administrative order of the Minister of Finance, the Minister of Health and the Minister of Industry.

Art. 41. – Tar and nicotine content per cigarette as measured by standards ISO 4387 and 3400, or as approved by the World Health Organization, must not exceed the levels set by a joint administrative order of the Minister of Finance, the Minister of Health and the Minister of Industry.

The accuracy of the statements displayed on packs is to be verified in accordance with standard ISO 8243.

Art. 42. – In addition to the requirements of Article 11 of this Decree, boxes, cases, pouches or packs of tobacco must display on the lateral portion of the pack, in national languages and in French, in plainly legible characters on a contrasting background, and within a frame:

- tar and nicotine content;
- the prohibition of sale to minors;
- the general warning, "tobacco consumption is harmful to your health;"
- and for packs of cigarettes, a specific supplementary warning issued by the Ministry of Health.

The specific supplementary warning indicated above must cover 15% of each large surface of the pack, and exhibit one of the following warnings:

- smoking causes cancer;
- smoking causes cardio-vascular disease;
- smoking is harmful to your lungs;
- smoking weakens you;
- smoking is harmful to the people around you.

The use of the warnings must be made on an alternating basis.

The list of warnings may be supplemented, should the need arise, by a joint administrative order of the Minister of Finance and the Minister of Health.

Art. 43. – Boxes, cases or pouches containing snuff or chewing tobacco must exhibit in national languages and French, in plainly legible characters, the aforementioned requirements:

- the general warning, "tobacco consumption is harmful to your health;"

Unofficial Translation

- the statements indicated in Article 13 of this Decree;
- the prohibition of sale to minors.

The requirements set forth above are to be displayed on an adhesive stamp that must be prominently affixed on boxes, cases or pouches.

Art. 44. – Pending implementation by the regulatory authority of the market for tobacco and tobacco products, the attributions assigned to this authority are to be exercised by the General Bureau of Taxation.

Art. 45. – Manufacturers and distributors of tobacco products are allowed to form an association. This association is to study issues of interest to the conduct of the profession, particularly the improvement of techniques of manufacture, stimulation of competition, efforts against impediments to competition, the introduction of new technology, organization and management of services of common interest, training of personnel and relations with labor representatives. It can be consulted by the Ministers of Finance, Health, Industry and Commerce on all matters of professional interest. Within the context of the profession's ethical rules, it can propose to regulatory authorities sanctions against one or more of its members.

Procedures concerning the creation and organization of the association are to be determined by an administrative order of the Minister of Finance.

Art. 46. – Juridical persons licensed as manufacturers of tobacco products have a period of 60 days counting from the date of publication of this Decree to comply with these new provisions.

Art. 47. – The following executive orders are hereby rescinded:

- No. 01-396 of 24 Ramadhan 1422, corresponding to December 9, 2001, concerning the regulation of activities involved in the manufacture and distribution of tobacco;
- No. 01-397 of 24 Ramadhan 1422, corresponding to December 9, 2001, setting the conditions for the importation of tobacco manufactured by juridical persons licensed as tobacco manufacturers.

Art. 48. – This Decree is to be published in the Official Journal (*Journal officiel*) of the Algerian democratic people's republic.

Done in Algiers, on 4 Ramadhan 1425, corresponding to October 18, 2004.

Ahmed OUYAHIA