

Law on Tobacco Monopoly of People's Republic of China

(Adopted at the 20th Meeting of the Standing Committee of the Seventh National People's Congress on June 29, 1991. Firstly amended by "The Decision of the Standing Committee of the National People's Congress on Amending Several Laws" at the 11th Meeting of the Standing Committee of the Eleventh National People's Congress, August 27, 2009. Secondly amended by "Decision on Amending Seven Laws including Law of Ocean Environment" at the 6th Meeting of the Standing Committee of the Twelfth National People's Congress, December 28, 2013. Thirdly amended by "Decision on Amending Five Laws Including Metrological Law" at the 14th Meeting of the Standing Committee of the Twelfth National People's Congress, April 24, 2015.)

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Chapter I General Provisions

Article 1 This Law is enacted with a view to exercising tobacco monopoly administration, organizing the manufacture and management of tobacco monopoly commodities in a planned way, improving the quality of tobacco products, safeguarding consumers' interests and ensuring the national revenue.

Article 2 As used in this Law, “tobacco monopoly commodities” refer to cigarettes, cigars, cut tobacco, redried leaf tobacco, leaf tobacco, cigarette paper, filter rods, cigarette tow and cigarette manufacturing equipment.

Cigarettes, cigars, cut tobacco and redried leaf tobacco are generally referred to as tobacco products.

Article 3 The State shall according to law exercise monopoly administration over the manufacture, sale, import and export of tobacco monopoly commodities, and practice a tobacco monopoly license system.

Article 4 The department of tobacco monopoly administration under the State Council shall be responsible for the nation-wide tobacco monopoly. The departments of tobacco monopoly administration in the provinces, Autonomous regions and municipalities directly under the Central Government shall be responsible for the tobacco monopoly within the areas under their respective jurisdiction, and shall be under the dual leadership of the department of tobacco monopoly administration under the State Council and the people's governments of the relevant provinces, autonomous regions and municipalities directly under the Central Government, with the leadership of the department of tobacco monopoly administration under the State Council as the main leading authority.

Article 5 The State shall strengthen the scientific research and technical development of tobacco monopoly commodities, so as to improve the quality of tobacco products and reduce the content of tar and other hazardous ingredients in such products.

The State and society shall intensify the publicity of and education in the fact that smoking is hazardous to health, forbid or restrict smoking on public traffic vehicles and in public places, dissuade teen-agers and youngsters from smoking, and forbid primary school pupils and middle school students from smoking.

Article 6 The State shall exercise administration of tobacco monopoly in national autonomous areas, and shall, according to the relevant provisions of this Law and the Law on Regional National Autonomy, take the interests of national autonomous areas into account and give preferential treatment to the plantation of leaf tobacco and the manufacture of tobacco products in such areas.

Chapter II Plantation, Purchase and Allocation of Leaf Tobacco

Article 7 For the purpose of this Law, the term “leaf tobacco” means flue-cured tobacco and selected air- and sun-cured tobacco needed for the manufacture of tobacco products. The catalogue of selected air- and sun-cured tobacco items shall be determined by the department of tobacco monopoly administration under the State Council.

Other air- and sun-cured tobacco items which are not included in the above mentioned catalogue may be sold at rural or urban trade markets.

Article 8 In growing tobacco, good varieties of tobacco shall be cultivated and popularized in line with the local conditions. Good varieties of tobacco shall be supplied by local tobacco companies.

Article 9 Leaf tobacco purchasing plans shall be assigned by the planning departments of the local people's governments at or above the county level on the basis of the plans assigned by the planning department under the State Council. No other organizations or individuals shall make any modifications thereto.

A tobacco company and its trustee entity shall sign contract with leaf tobacco growers for purchasing tobacco leaf. The contract shall agree on areas for planting tobacco and price for purchasing leaf tobacco.

Article 10 A unified purchase of leaf tobacco shall be effected by tobacco companies or their authorized agencies in accordance with the standards set by the State. No other organizations or individuals may effect any leaf tobacco purchase.

Tobacco companies or their authorized agencies shall, according to the price agreed in the contract, purchase all the leaf tobacco grown by leaf tobacco growers within the plantation areas specified in the leaf tobacco purchasing contracts. The grades and prices thereof shall not be forced down, and disputes arising from leaf tobacco purchasing shall be dealt with properly.

Article 11 The plans for allocating leaf tobacco and redried leaf tobacco among the provinces, autonomous regions and municipalities directly under the Central Government shall be

assigned by the planning department under the State Council; the plans for allocating leaf tobacco and redried leaf tobacco within areas under the jurisdiction of each province, autonomous region or municipality directly under the Central Government shall be assigned by the planning department of the relevant province, autonomous region or municipality directly under the Central Government. No other organizations or individuals may make any modifications thereto.

A contract must be concluded for any allocation of leaf tobacco or redried leaf tobacco.

Chapter III Manufacture of Tobacco Products

Article 12 The establishment of an enterprise producing tobacco products shall be subject to the approval of the department of tobacco monopoly administration under the State Council and the acquisition of a license for the tobacco monopoly manufacture enterprise, and then to the registration upon its examination and approval by the administrative department for industry and commerce; the split up, merger or dissolution of an enterprise producing tobacco products shall be subject to the approval of the department of tobacco monopoly administration under the State Council and go through formalities for the change and cancellation

of the registration with the administrative department for industry and commerce. The administrative department for industry and commerce shall not approve and register an enterprise that has not obtained a license for the tobacco monopoly manufacture enterprise.

Article 13 Capital construction or technological innovation to be conducted by an enterprise producing tobacco products for expanding manufacture capacity shall be subject to the approval by the department of tobacco monopoly administration under the State Council.

Article 14 The total annual manufacture plans for cigarettes and cigars of the provinces, autonomous regions and municipalities directly under the Central Government shall be assigned by the planning department under the State Council. The total annual manufacture plans for cigarettes and cigars of an enterprise producing tobacco products shall be assigned by the department of tobacco monopoly administration at the provincial level on the basis of the plans assigned by the planning department under the State Council and in light of the marketing conditions. Local people's governments shall not assign additional manufacture quotas to an enterprise producing tobacco products. If an enterprise producing tobacco products, in light of the marketing

conditions, finds it necessary to manufacture cigarettes and cigars exceeding the total annual manufacture plans, it must obtain the approval of the department of tobacco monopoly administration under the State Council.

The national tobacco company shall, on the basis of the total annual manufacture plans set by the planning department under the State Council, assign cigarette output targets with grading and classification specifications to the tobacco companies at the provincial level, which shall, on the basis of the cigarette output targets with grading and classification specifications set by the national tobacco company and in light of the marketing conditions, assign cigarette output targets with grading and classification specifications to the enterprise producing tobacco products. An enterprise producing tobacco products may, in light of the marketing conditions, make appropriate adjustments to the cigarette output targets with grading and classification specifications, within the scope of the total annual manufacture plans of the enterprise.

Chapter IV Sale and Transportation of Tobacco Products

Article 15 Any enterprise which is to engage in the wholesale trade of tobacco products shall be subject to the approval of the

department of tobacco monopoly administration under the State Council or the department of tobacco monopoly administration at the provincial level, and the acquisition of a license for the tobacco monopoly whole sale enterprise, and then to the approval and registration by the administrative department for industry and commerce.

Article 16 Any enterprise or individual that is to engage in the retail trade of tobacco products shall be subject to the examination and approval of, before the issuance of a license for tobacco monopoly retail trade by, the administrative department for industry and commerce under the people's government at the county level on the commission of the department of tobacco monopoly administration at the next higher level. In areas where departments of tobacco monopoly administration at the county level have been set up, such departments may, after their examination and approval, also issue tobacco monopoly retail licenses.

Article 17 The State shall lay down the tar content grading standards for cigarettes and cigars. The packages of cigarettes and cigars shall indicate the grade of tar content and that smoking is hazardous to your health.

Article 18 Advertising for tobacco products shall be banned on broadcasting stations, television stations, or in newspapers or periodicals.

Article 19 Applications must be made for the registration of trade marks of cigarettes, cigars and packed cut tobacco, which shall not be manufactured and marketed before the trade mark is registered upon approval.

The manufacture and sale of tobacco products with counterfeit trade marks shall be forbidden.

Article 20 Trade mark labels for tobacco products must be printed by enterprises designated by the administrative department for industry and commerce at the provincial level. Non-designated enterprises may not print trade mark labels for tobacco products.

Article 21 Whoever consigns the transportation of tobacco monopoly commodities to others or undertakes the transportation thereof by himself must hold a transportation permit signed and issued by the department of tobacco monopoly administration or its authorized agency; consignees may not undertake the transportation for any consignor who does not hold a transportation permit.

Article 22 Whoever sends by post or brings from another place leaf tobacco or tobacco products shall not exceed the quantity

limits prescribed by the competent department under the State Council.

Article 23 Any individual who enters the territory of China shall not carry tobacco products more than the quantity limits prescribed by the competent department under the State Council.

Chapter V Manufacture and Sale of Cigarette Paper, Filter Rod, Cigarette Tow and Cigarette Manufacturing Equipment

Article 24 Any enterprise which is to engage in the manufacture of cigarette paper, filter rods, cigarette tow or cigarette manufacturing equipment must apply to the department of tobacco monopoly administration under the State Council for approval and obtain a license for the tobacco monopoly manufacture enterprise.

As used in this Law, the term “cigarette manufacturing equipment” means a complete set of equipment for cigarette manufacturing.

Article 25 Any enterprise engaged in the manufacture of cigarette paper, filter rods, cigarette tow or cigarette manufacturing equipment shall organize manufacture in accordance with the plans assigned by the department of tobacco monopoly administration under the State Council and the order contracts concluded with the enterprises producing tobacco products.

Article 26 Any enterprise engaged in the manufacture of cigarette paper, filter rods, cigarette tow or cigarette manufacturing equipment may sell its products only to tobacco companies or enterprises producing tobacco products with the license for tobacco monopoly manufacture enterprises.

Chapter VI Import and Export Trade and Foreign Economic and Technological Co-operation

Article 27 The department of tobacco monopoly administration under the State Council shall, in accordance with the relevant regulations of the State Council, exercise control over tobacco industry's import and export trade and its foreign economic and technological cooperation.

Chapter VII Legal Responsibility

Article 28 Whoever, in violation of this Law, purchases leaf tobacco without authorization shall be fined by the department of tobacco monopoly administration, and the leaf tobacco illegally purchased shall be repurchased by the said department at 70% of the average price for purchasing tobacco in last year certificated by the provincial tobacco monopoly administration; if the illegal

purchase involves large quantities, the leaf tobacco purchased and the illegal income derived therefrom shall be confiscated.

Article 29 Whoever transports or consigns to others the transportation of tobacco monopoly commodities without a transportation permit, or in excess of the quantity specified in the transportation permit, shall be fined by the department of tobacco monopoly administration, the leaf tobacco thus involved may be purchased by the said department at 70% of the average price for purchasing leaf tobacco in last year certificated by the provincial tobacco monopoly administration, and other tobacco monopoly commodities at 70% of the market wholesale price; if the circumstances are serious, the tobacco monopoly commodities illegally transported and the illegal income derived therefrom shall be confiscated.

A consignee who, knowing that the goods to be transported are tobacco monopoly commodities, undertakes the transportation thereof for units or individuals that do not hold transportation permits, shall be confiscated of the illegal income derived therefrom by the department of tobacco monopoly administration, with the concurrent punishment of a fine.

Whoever brings from another place leaf tobacco or tobacco products far in excess of the quantity limits prescribed by the State

shall be dealt with in accordance with the provisions of the first paragraph of this Article.

Article 30 Where an enterprise that does not hold a license for the tobacco monopoly manufacture enterprise produces tobacco products, the department of tobacco monopoly administration shall order it to close down, confiscate the illegal income derived therefrom and concurrently impose a fine.

Where an enterprise that does not hold a license for the tobacco monopoly manufacture enterprise produces cigarette paper, filter rods, cigarette tow or cigarette manufacturing equipment, the department of tobacco monopoly administration shall order it to stop the manufacture of the said products, confiscate the illegal income derived therefrom and may concurrently impose a fine.

Article 31 Where an enterprise that does not hold a license for the tobacco monopoly wholesale enterprise engages in the wholesale trade of tobacco products, the department of tobacco monopoly administration shall order it to close down or to stop the wholesale trade of tobacco products, confiscate the illegal income derived therefrom and concurrently impose a fine.

Article 32 Where an enterprise or individual that does not hold a tobacco monopoly retail license engages in the retail sale of

tobacco products, the administrative department for industry and commerce shall order it or him/her to stop retail business, confiscate the illegal income derived therefrom and concurrently impose a fine.

Article 33 Where an enterprise or individual produces or sells cigarettes, cigars or packed cut tobacco without registered trade marks, the administrative department for industry and commerce shall order it or him/her to stop the manufacture and sales thereof and shall concurrently impose a fine.

Where an enterprise or individual produces or sells tobacco products with counterfeit trade marks, the administrative department for industry and commerce shall order it or him/her to stop the infringing act and to compensate the losses of the infringed, and may concurrently impose a fine; if the infringement constitutes a crime, the offender's criminal responsibility shall be investigated according to law.

Article 34 Where an enterprise or individual, in violation of the provisions of Article 20 of this Law, illegally prints trade mark labels for tobacco products, the administrative department for industry and commerce shall destroy the printed trade mark labels, confiscate the illegal income derived therefrom and concurrently impose a fine.

Article 35 Where an enterprise or individual resells tobacco monopoly commodities and the resale constitutes a crime, criminal responsibility shall be prosecuted according to law; if the circumstances are not so serious as to constitute a crime, the administration for industry and commerce shall confiscate the resold tobacco monopoly commodities as well as the illegal income derived therefrom and may concurrently impose a fine.

Personnel of a department of tobacco monopoly administration or of a tobacco company, who, by taking advantage of their office, commit the crime specified in the preceding paragraph, shall be subjected to heavier punishments according to law.

Article 36 Any enterprise or individual that forges or alters or sell/buy the licenses prescribed in this Law such as those for tobacco monopoly manufacture enterprises, tobacco monopoly business, as well as transportation permits, shall be investigated for criminal responsibility according to criminal law.

Personnel of a department of tobacco monopoly administration or of a tobacco company who, by taking advantage of their office, commit the crimes specified in the preceding paragraph shall be subjected to heavier punishments according to law.

Article 37 Where the smuggling of tobacco monopoly commodities constitutes the crime of smuggling, the smuggler's

criminal responsibility shall be investigated in accordance with the criminal law; if the smuggling does not involve tobacco monopoly commodities in large quantities, thus not constituting the crime of smuggling, the smuggled commodities and articles as well as the illegal income derived therefrom shall be confiscated by the Customs, and a fine may concurrently be imposed.

Personnel of a department of tobacco monopoly administration or of a tobacco company who, by taking advantage of their office, commit the crime specified in the preceding paragraph shall be subjected to heavier punishments according to law.

Article 38 The department of tobacco monopoly administration shall have the right to carry out inspection on the implementation of this Law. Whoever by means of violence or threat obstructs such inspectors from carrying out their duties according to law shall be investigated for criminal responsibility according to law; whoever refuses or obstructs such inspectors from carrying out their duties according to law, but without resorting to violence or threat, shall be punished by the public security organs in accordance with the Regulations on the Administrative Penalties for Public Security.

Article 39 Personnel from a people's court or a relevant department dealing with lawbreaking cases who share out the

confiscated tobacco products shall be investigated for criminal responsibility in accordance with the provisions of criminal law.

Personnel from a people's court or a relevant department dealing with lawbreaking cases who purchase the confiscated tobacco products shall be ordered to return the products and may be subjected to disciplinary sanctions.

Article 40 Personnel from the department of tobacco monopoly administration or from a tobacco company who abuse their power, seek personal interests and commit malpractice or neglect their duties shall be subjected to administrative sanctions; if the circumstances are so serious as to constitute a crime, the offender shall be investigated for criminal responsibility according to law.

Article 41 A party, if not satisfied with the decision on administrative sanctions made by the department of tobacco monopoly administration or the administrative department for industry and commerce, may, within 15 days after receiving the notice about the decision on punishment, apply for reconsideration to the authorities at the next higher level over the authorities that made the decision on punishment; the party may also, within 15 days after receiving the notice about the decision on punishment, directly bring a suit in a people's court.

The reconsideration department shall, within 60 days after receiving the application for reconsideration, make a reconsideration decision. The party, if not satisfied with the reconsideration decision, may, within 15 days after receiving the reconsideration decision, bring a suit in a people's court; if the reconsideration department fails to make a reconsideration decision within the time limit, the party may, within 15 days after the expiration of the time limit for reconsideration, bring a suit in a people's court.

If a party has not applied for reconsideration, nor brought a suit in a people's court within the time limit, nor complied with the decision on punishment, the department that has made the decision may apply to a people's court for compulsory execution.

Chapter VIII Supplementary Provisions

Article 42 The State Council shall formulate implementing regulations on the basis of this Law.

Article 43 This Law shall enter into force on January 1, 1992. The Regulations on Tobacco Monopoly promulgated by the State Council on September 23, 1983 shall be annulled simultaneously.