Tobacco Monopoly Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of implementing tobacco monopoly administration, organizing the production and operation of tobacco monopoly commodities in a planned manner, improving the quality of tobacco products, safeguarding the interests of consumers, and ensuring the State's fiscal revenue.

Article 2 — The "tobacco monopoly commodities" mentioned in this Law means cigarettes, cigars, cut tobacco, redried tobacco leaves, tobacco leaves, cigarette paper, filter rods, cigarette filter tow, and special tobacco machinery.

Cigarettes, cigars, cut tobacco and redried tobacco leaves are collectively referred to as tobacco products.

Article 3 — The State shall implement monopoly administration over the production, sale, import and export of tobacco monopoly commodities in accordance with law, and shall implement a tobacco monopoly licensing system.

Article 4 — The administrative department in charge of tobacco monopoly under the State Council shall be responsible for tobacco monopoly work nationwide. The administrative departments in charge of tobacco monopoly of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for tobacco monopoly work within their respective jurisdictions, and shall be subject to the dual leadership of the administrative department in charge of tobacco monopoly under the State Council and the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government, with the leadership of the administrative department in charge of tobacco monopoly under the State Council as the primary one.

Article 5 — The State shall strengthen scientific research on and technological development of tobacco monopoly commodities, improve the quality of tobacco products, and reduce the tar content and the content of other harmful constituents.

The State and society shall strengthen publicity and education on the harm of smoking to health, prohibit or restrict smoking on public transport and in public places, dissuade adolescents from smoking, and prohibit primary and secondary school students from smoking.

Article 6 — In implementing tobacco monopoly administration in ethnic autonomous areas, the State shall, in accordance with this Law and the relevant provisions of the Law on Regional Ethnic Autonomy, take into account the interests of ethnic autonomous areas and give preferential treatment to tobacco leaf planting and the production of tobacco products in ethnic autonomous areas.

Chapter II — Tobacco Leaf Planting, Purchasing and Allocation

Article 7 — The "tobacco leaves" mentioned in this Law means the flue-cured tobacco and renowned air-cured tobacco needed for the production of tobacco products, and the list of renowned air-cured tobacco shall be prescribed by the administrative department in charge of tobacco monopoly under the State Council.

Air-cured tobacco other than that included in the list of renowned air-cured tobacco may be sold at rural fair trade markets.

Article 8 — In tobacco planting, fine varieties shall be cultivated and popularized in light of local conditions. Fine varieties shall be supplied by local tobacco companies in an organized manner.

Article 9 — Plans for the purchasing of tobacco leaves shall be issued by the planning departments of local people's governments at or above the county level in accordance with the plans issued by the planning department under the State Council, and no other entity or individual may alter them.

Tobacco companies or their entrusted entities shall sign tobacco leaf purchasing contracts with tobacco leaf growers. The tobacco leaf purchasing contracts shall stipulate the tobacco leaf planting area and the tobacco

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leaf purchasing price.

Article 10 — Tobacco leaves shall be purchased uniformly by tobacco companies or their entrusted entities in accordance with the purchasing standards prescribed by the State, and no other entity or individual may purchase them.

Tobacco companies and their entrusted entities shall purchase, at the contracted purchasing price, all of the tobacco leaves produced by tobacco leaf growers within the planting area stipulated in the tobacco leaf purchasing contracts, shall not depress the grade or price, and shall properly handle disputes arising from the purchasing of tobacco leaves.

Article 11 — Plans for the allocation of tobacco leaves and redried tobacco leaves among provinces, autonomous regions and municipalities directly under the Central Government shall be issued by the planning department under the State Council, and plans for the allocation of tobacco leaves and redried tobacco leaves within provinces, autonomous regions and municipalities directly under the Central Government shall be issued by the planning departments of the provinces, autonomous regions and municipalities directly under the Central Government; no other entity or individual may alter such plans.

Contracts must be signed for the allocation of tobacco leaves and redried tobacco leaves.

Chapter III — Production of Tobacco Products

Article 12 — The establishment of an enterprise producing tobacco products must be approved by the administrative department in charge of tobacco monopoly under the State Council, and the enterprise must obtain a tobacco monopoly production enterprise license and be registered upon verification and approval by the administrative department for industry and commerce; its division, merger or dissolution must be approved by the administrative department in charge of tobacco monopoly under the State Council, and the formalities for change or cancellation of registration shall be handled with the administrative department for industry and commerce. Where an enterprise has not obtained a tobacco monopoly production enterprise license, the administrative department for industry and commerce shall not approve its registration.

Article 13 — The capital construction or technical renovation of a tobacco product production enterprise for the purpose of expanding production capacity must be approved by the administrative department in charge of tobacco monopoly under the State Council.

Article 14 — The annual total output plans for cigarettes and cigars of provinces, autonomous regions and municipalities directly under the Central Government shall be issued by the planning department under the State Council. The annual total output plans for cigarettes and cigars of tobacco product production enterprises shall be issued by the provincial administrative departments in charge of tobacco monopoly in accordance with the plans issued by the planning department under the State Council and in light of market sales conditions, and local people's governments shall not assign over-quota production tasks to tobacco product production enterprises. Where a tobacco product production enterprise needs, in light of market sales conditions, to produce cigarettes and cigars in excess of the annual total output plan, it must obtain the approval of the administrative department in charge of tobacco monopoly under the State Council.

The China National Tobacco Corporation shall, in accordance with the annual total output plans issued by the planning department under the State Council, issue graded and classified cigarette output quotas to provincial tobacco companies. The provincial tobacco companies shall, in accordance with the graded and classified cigarette output quotas issued by the China National Tobacco Corporation and in light of market sales conditions, issue graded and classified cigarette output quotas to tobacco product production enterprises. Tobacco product production enterprises may, in light of market sales conditions, appropriately adjust the graded and classified cigarette output quotas within the scope of their annual total output plans.

Chapter IV — Sale and Transport of Tobacco Products

Article 15 — Enterprises engaged in the wholesale business of tobacco products must be approved by the administrative department in charge of tobacco monopoly under the State Council or the provincial administrative department in charge of tobacco monopoly, obtain a tobacco monopoly wholesale enterprise license, and be registered upon verification and approval by the administrative department for industry and commerce.

Article 16 — Enterprises or individuals engaged in the retail business of tobacco products shall be examined, approved and issued a tobacco monopoly retail license by the administrative department for industry and commerce of the people's government at the county level upon the entrustment of the administrative department in charge of tobacco monopoly at the next higher level. In places where an administrative department in charge of tobacco monopoly at the county level has been established, the license may also be issued upon examination and approval by such county-level administrative department in charge of tobacco monopoly.

Article 17 — The State shall formulate standards for the tar content grades of cigarettes and cigars. Cigarettes and cigars shall have their tar content grade and the words "smoking is harmful to health" marked on the packaging.

Article 18 — It is prohibited to broadcast or publish advertisements for tobacco products on radio stations and television stations, and in newspapers and periodicals.

Article 19 — Cigarettes, cigars and packaged cut tobacco must apply for trademark registration, and shall not be produced or sold without approval of registration.

It is prohibited to produce or sell tobacco products that counterfeit the registered trademarks of others.

Article 20 — Trademark labels for tobacco products must be printed by enterprises designated by the provincial administrative departments for industry and commerce; enterprises not so designated shall not print trademark labels for tobacco products.

Article 21 — The consignment or self-transport of tobacco monopoly commodities requires holding a transport permit issued by the administrative department in charge of tobacco monopoly or by an institution authorized by it; without a transport permit, the carrier shall not undertake the carriage.

Article 22 — The mailing or out-of-town carrying of tobacco leaves or tobacco products shall not exceed the quantity limits prescribed by the relevant competent departments under the State Council.

Article 23 — Individuals entering the territory of China carrying tobacco products shall not exceed the quantity limits prescribed by the relevant competent departments under the State Council.

Chapter V — Production and Sale of Cigarette Paper, Filter Rods, Cigarette Filter Tow, and Special Tobacco Machinery

Article 24 — Enterprises producing cigarette paper, filter rods, cigarette filter tow and special tobacco machinery must report to the administrative department in charge of tobacco monopoly under the State Council for approval and obtain a tobacco monopoly production enterprise license.

The "special tobacco machinery" mentioned in this Law means complete sets of special tobacco machinery.

Article 25 — Enterprises producing cigarette paper, filter rods, cigarette filter tow and special tobacco machinery shall organize production in accordance with the plans of the administrative department in charge of tobacco monopoly under the State Council and the ordering contracts signed with tobacco product production enterprises.

Article 26 — Enterprises producing cigarette paper, filter rods, cigarette filter tow and special tobacco machinery may only sell their products to tobacco companies and to tobacco product production enterprises holding tobacco monopoly production enterprise licenses.

Chapter VI — Import-Export Trade and Foreign Economic and Technical Cooperation

Article 27 — The administrative department in charge of tobacco monopoly under the State Council shall, in accordance with the provisions of the State Council, administer the import-export trade and foreign economic and technical cooperation of the tobacco industry.

Chapter VII — Legal Liability

Article 28 — Whoever purchases tobacco leaves without authorization in violation of this Law shall be fined by the administrative department in charge of tobacco monopoly, and the unlawfully purchased tobacco leaves shall be purchased at 70 percent of the average tobacco leaf purchasing price of the previous year as issued by the provincial administrative department in charge of tobacco monopoly of the place where they are seized; where the quantity is huge, the unlawfully purchased tobacco leaves and the illegal gains shall be confiscated.

Article 29 — Whoever consigns or self-transports tobacco monopoly commodities without a transport permit or in excess of the quantity specified in the transport permit shall be fined by the administrative department in charge of tobacco monopoly, which may purchase the unlawfully transported tobacco leaves at 70 percent of the average tobacco leaf purchasing price of the previous year as issued by the provincial administrative department in charge of tobacco monopoly of the place where they are seized, and purchase the unlawfully transported tobacco monopoly commodities other than tobacco leaves at 70 percent of the market wholesale price; where the circumstances are serious, the unlawfully transported tobacco monopoly commodities and the illegal gains shall be confiscated.

Where a carrier transports tobacco monopoly commodities for entities or individuals without a transport permit while knowing them to be tobacco monopoly commodities, the administrative department in charge of tobacco monopoly shall confiscate the illegal gains and impose a fine.

Where tobacco leaves or tobacco products are carried out of town in excess of the quantity limits prescribed by the State and the quantity is relatively large, they shall be handled in accordance with the provisions of paragraph 1.

Article 30 — Whoever produces tobacco products without a tobacco monopoly production enterprise license shall be ordered by the administrative department in charge of tobacco monopoly to close down, and the illegal gains shall be confiscated and a fine imposed.

Whoever produces cigarette paper, filter rods, cigarette filter tow or special tobacco machinery without a tobacco monopoly production enterprise license shall be ordered by the administrative department in charge of tobacco monopoly to stop producing the aforesaid products, and the illegal gains shall be confiscated and a fine may be imposed.

Article 31 — Whoever engages in the wholesale business of tobacco products without a tobacco monopoly wholesale enterprise license shall be ordered by the administrative department in charge of tobacco monopoly to close down or to stop engaging in the wholesale business of tobacco products, and the illegal gains shall be confiscated and a fine imposed.

Article 32 — Whoever engages in the retail business of tobacco products without a tobacco monopoly retail license shall be ordered by the administrative department for industry and commerce to stop engaging in the retail business of tobacco products, and the illegal gains shall be confiscated and a fine imposed.

Article 33 — Whoever produces or sells cigarettes, cigars or packaged cut tobacco without a registered trademark shall be ordered by the administrative department for industry and commerce to stop production or sale, and a fine shall be imposed.

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Whoever produces or sells tobacco products counterfeiting the registered trademarks of others shall be ordered by the administrative department for industry and commerce to stop the infringing act and compensate the infringed party for losses, and a fine may be imposed; where the act constitutes a crime, criminal liability shall be investigated in accordance with law.

Article 34 — Whoever unlawfully prints trademark labels for tobacco products in violation of Article 20 of this Law shall have the printed trademark labels destroyed by the administrative department for industry and commerce, and the illegal gains shall be confiscated and a fine imposed.

Article 35 — Whoever resells tobacco monopoly commodities at a profit shall be investigated for criminal liability in accordance with law if the act constitutes a crime; where the circumstances are minor and the act does not constitute a crime, the administrative department for industry and commerce shall confiscate the resold tobacco monopoly commodities and the illegal gains, and a fine may be imposed.

Where staff members of the administrative department in charge of tobacco monopoly or of tobacco companies commit the crime mentioned in the preceding paragraph by taking advantage of their positions, they shall be given heavier punishment in accordance with law.

Article 36 — Whoever forges or alters, or buys or sells, tobacco monopoly production enterprise licenses, tobacco monopoly business licenses and other licenses and transport permits provided for in this Law shall be investigated for criminal liability in accordance with the relevant provisions of the Criminal Law.

Where staff members of the administrative department in charge of tobacco monopoly or of tobacco companies commit the crime mentioned in the preceding paragraph by taking advantage of their positions, they shall be given heavier punishment in accordance with law.

Article 37 — Whoever smuggles tobacco monopoly commodities, where the act constitutes the crime of smuggling, shall be investigated for criminal liability in accordance with the relevant provisions of the Criminal Law; where tobacco monopoly commodities are smuggled but the amount is not large and the act does not constitute the crime of smuggling, the customs shall confiscate the smuggled goods, articles and illegal gains, and a fine may be imposed.

Where staff members of the administrative department in charge of tobacco monopoly or of tobacco companies commit the crime mentioned in the preceding paragraph by taking advantage of their positions, they shall be given heavier punishment in accordance with law.

Article 38 — The administrative department in charge of tobacco monopoly shall have the power to inspect the implementation of this Law. Whoever obstructs tobacco monopoly inspection personnel from performing their duties in accordance with law by violence or threats shall be investigated for criminal liability in accordance with law; whoever refuses or obstructs tobacco monopoly inspection personnel from performing their duties in accordance with law without using violence or threats shall be punished by the public security organ in accordance with the provisions of the Law on Penalties for Administration of Public Security.

Article 39 — Where staff members of people's courts or of the relevant departments handling illegal cases privately divide up confiscated tobacco products, they shall be investigated for criminal liability in accordance with the relevant provisions of the Criminal Law.

Where staff members of people's courts or of the relevant departments handling illegal cases purchase confiscated tobacco products, they shall be ordered to return them, and administrative sanctions may be imposed.

Article 40 — Where staff members of the administrative department in charge of tobacco monopoly or of tobacco companies abuse their powers, engage in malpractices for private gain or neglect their duties, administrative sanctions shall be imposed; where the circumstances are serious and the act constitutes a crime, criminal liability shall be investigated in accordance with law.

Article 41 — Where a party is dissatisfied with an administrative penalty decision made by the administrative department in charge of tobacco monopoly or the administrative department for industry and commerce, the party may, within 15 days from the date of receipt of the penalty notice, apply for reconsideration to the authority at the next higher level over the authority that made the decision; the party may also, within 15 days from the date of receipt of the penalty notice, directly bring a lawsuit in a people's court.

The reconsideration authority shall make a reconsideration decision within 60 days from the date of receipt of the reconsideration application. Where the party is dissatisfied with the reconsideration decision, the party may bring a lawsuit in a people's court within 15 days from the date of receipt of the reconsideration decision; where the reconsideration authority fails to make a reconsideration decision within the prescribed time limit, the party may bring a lawsuit in a people's court within 15 days from the date of expiration of the reconsideration period.

Where a party neither applies for reconsideration nor brings a lawsuit in a people's court within the prescribed time limit, nor performs the penalty decision, the authority that made the penalty decision may apply to a people's court for compulsory enforcement.

Chapter VIII — Supplementary Provisions

Article 42 — The State Council shall formulate implementing regulations in accordance with this Law.

Article 43 — This Law shall come into force as of January 1, 1992. The Regulations on Tobacco Monopoly promulgated by the State Council on September 23, 1983 shall be repealed simultaneously.

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