

## Administrative Measures for Tobacco Monopoly Licenses

Promulgation date: 02-05-2007  
Effective date: 03-07-2007  
Department: NATIONAL DEVELOPMENT AND REFORM COMMISSION  
Subject: OTHER PROVISIONS

Order of the National Development and Reform Commission  
(No. 51)

With a view to regulating the administration of tobacco monopoly licenses, the Administrative Measures for Tobacco monopoly licenses, which were formulated in accordance with the Law of the People's Republic of China on Tobacco Monopoly, Administrative License Law of the People's Republic of China, Regulation on the Implementation of the Law of the People's Republic of China on Tobacco Monopoly and other relevant laws and administrative regulations, and were deliberated at the executive meeting of the directors of the National Development and Reform Commission, are hereby promulgated and shall come into force as of March 7, 2007.

Director of the National Development and Reform Commission Ma Kai  
February 5, 2007

### Administrative Measures for Tobacco Monopoly Licenses

#### Chapter I General Provisions

Article 1 With a view to regulating the administration of tobacco monopoly licenses, protecting the lawful rights and interests of the citizens, legal persons and other organizations, these Measures are formulated in accordance with the Law of the People's Republic of China on Tobacco Monopoly, Administrative License Law of the People's Republic of China, Regulation on the Implementation of the Law of the People's Republic of China on Tobacco Monopoly and other relevant laws and administrative regulations.

Article 2 These Measures shall apply to the administration on the licenses for exclusive sale of tobacco within the territory of the People's Republic of China (including the customs surveillance areas and duty-free areas, but excluding Hong Kong, Macao and Taiwan regions).

Article 3 The administrative department for the exclusive sale of tobacco shall, according to its statutory power, scope, conditions and procedures, examine, approve and issue tobacco monopoly licenses and carry out effective supervision and administration.

Article 4 The citizens, legal persons or other organizations may have the rights to make statements and arguments about tobacco monopoly licenses and apply for administrative reconsideration or lodge administrative lawsuits in pursuance of the law. If their legitimate rights and interests are impaired due to the illegal issuance of tobacco monopoly licenses by the tobacco monopoly administrative departments, they have the right to claim compensations according to the law.

Article 5 The tobacco monopoly licenses which the citizens, legal persons or other organizations have obtained in pursuance of law shall be protected by law.

If any law, regulation or rule on which the tobacco monopoly licenses are based is amended or abolished or if the objective situation on which the tobacco monopoly licenses are based has undergone a big change, the administrative department for the exclusive sale of tobacco may, for the sake of public interests, modify or revoke the tobacco monopoly licenses which have already become valid.

Article 6 The term “tobacco monopoly licenses” as mentioned in these Measures are classified into 4 categories, namely, the tobacco monopoly license for production enterprises, the tobacco monopoly license for wholesale enterprises, the special tobacco monopoly license for commercial enterprises, and the tobacco monopoly license for retail trade.

Article 7 The tobacco monopoly administrative departments shall examine, approve, issue and administer the tobacco monopoly licenses in pursuance of the law.

## Chapter II Application and Acceptance

Article 8 To engage in the production, wholesale, retail, import and export of tobacco monopoly products, the citizens, legal persons or other organizations shall file an application to the tobacco monopoly administrative department for a tobacco monopoly license.

If an entity without the legal person status under a legal person intends to separately obtain a tobacco monopoly license for a production enterprises or a tobacco monopoly license for wholesale enterprises, the entity with the legal person status shall file with the relevant tobacco monopoly administrative department an application and submit the pertinent application materials.

Article 9 Generally, the application filed by an applicant shall be in written form, but it may also be filed by way of letter, telegraph, fax, exchange of electronic data or email and the standard text shall be completed according to the requirements of the tobacco monopoly administrative department.

An applicant may entrust an agent to file an application. If the agent files an application, he shall provide the authorization of the principal and the identity certification of the agent shall be provided.

Article 10 A tobacco monopoly administrative department shall, according to the different items for which the applicants apply, determine the application types and require the applicants to provide corresponding application materials.

The types of applications for tobacco monopoly licenses include initial applications, and applications for renewal, modification, suspension of business, resumption of business and closure

of business, etc.

Article 11 To apply for a tobacco monopoly license for a production enterprise, the applicant shall satisfy the following conditions:

- (1) Having a capital which can meet the needs of production of tobacco monopoly products;
- (2) Having technologies and equipments which can meet the needs of production of tobacco monopoly products;
- (3) Conforming to the industrial policies of the national tobacco industry and catering to the needs enterprises in terms of structural adjustment; and
- (4) Other conditions as prescribed by the tobacco monopoly administrative department of the State Council.

Article 12 To apply for a tobacco monopoly license for a wholesale enterprise, the applicant shall satisfy the following conditions:

- (1) Having a capital which can meet the needs of engaging in the wholesale business of tobacco products;
- (2) Having a fixed place of business and necessary professionals;
- (3) Meeting the requirements for the reasonable distribution of tobacco monopoly wholesale enterprises; and
- (4) Other conditions as prescribed by the tobacco monopoly administrative department of the State Council.

Article 13 To apply for a special tobacco monopoly license for a commercial enterprise, the applicant shall satisfy the following conditions:

- (1) Having a capital which can meet the needs of engaging in the business of special tobacco monopoly products;
- (2) Having a fixed place of business and necessary professionals;
- (3) Meeting the requirements for the reasonable distribution of enterprises engaging in business of foreign tobacco monopoly products;
- (4) Other conditions as prescribed by the tobacco monopoly administrative department of the State Council.

Article 14 To apply for a tobacco monopoly license for retail trade, the applicant shall meet the following conditions:

- (1) Having a capital which can meet the needs of engaging in the business of retail trade of monopoly products;
- (2) Having a fixed place of business which is independent of his domicile;
- (3) Meeting the requirements for the reasonable distribution of the local retail networks of tobacco products;
- (4) Other conditions as prescribed by the tobacco monopoly administrative department of the State Council.

Article 15 "Other conditions as prescribed by the tobacco monopoly administrative department of the State Council" as mentioned in Articles 11 through 14 of these Measures shall be announced

before these Measures come into force.

Article 16 When a tobacco monopoly administrative department works out a plan on the reasonable distribution of retail networks of tobacco products, it shall, on the basis of the population, transport, economic development level, consumption capacity and other factors of the area under its jurisdiction, determine the reasonable distribution of the retail networks after a hearing.

The reasonable distribution plan, capital requirements and place of business requirements for the retail networks of tobacco products shall be set forth by the tobacco monopoly administrative departments at or above the county level and shall be submitted to the tobacco monopoly administrative department at the next higher level for archival purposes.

Article 17 When a chain enterprise applies for a tobacco monopoly license for retail trade, each of its branch stores shall file an application with the local tobacco monopoly administrative department.

Article 18 No foreign-funded commercial enterprise or no individual industrial and commercial household may engage in the wholesale or retail business of tobacco monopoly products, or do so in any disguised form such as franchise, taking in member store or other re-investments.

Article 19 A tobacco monopoly administrative department shall, through the announcement column, electronic inquiry system or internet, announce the conditions, requirements, procedures, time limit, other contents necessary to be announced, for handling tobacco monopoly licenses.

Article 20 The following contents shall be publicized at a place for handling tobacco monopoly licenses:

- (1)The name of the tobacco monopoly licenses;
  - (2)The laws, regulations and rules on which tobacco monopoly licenses are based;
  - (3)The organs for the examination and approval of tobacco monopoly licenses;
  - (4)The conditions for apply for tobacco monopoly licenses;
  - (5)The list of all materials which an applicant is required to submit;
  - (6)How to apply for tobacco monopoly licenses;
  - (7)The procedures and time limit for the examination and approval of tobacco monopoly licenses;
  - (8)The exact address and contact information of the office for handling tobacco monopoly licenses;
- and
- (9)Contents necessary to be publicized.

Article 21 Where an applicant requires the tobacco monopoly administrative department to give an account or explanation about any contents as publicized, the tobacco monopoly administrative department shall do so and provide accurate and reliable information.

Article 22 The tobacco monopoly administrative department shall handle the application filed by an applicant in light of different circumstances as follows:

- (1) If the item applied for is not subject to tobacco monopoly administrative license in accordance with the law, it shall inform the applicant of non-acceptance immediately;
- (2) If the item applied for does not fall within the scope of functions of the tobacco monopoly administrative department, it shall make a decision of rejection immediately and inform the applicant to file an application with the competent administrative organ;
- (3) Where there are any errors in the application materials, which can be corrected on the spot, it shall allow the applicant to correct them on the spot;
- (4) Where the application materials are incomplete or inconsistent with the statutory form, it shall inform the applicant, all at once, the items that need to be supplemented or corrected within 5 days. If it fails to do so within the time limit, the day when the application materials are received shall be deemed as the acceptance day; or
- (5) Where the item applied for falls within the functions of the tobacco monopoly administrative department and the application materials are complete and in consistency with the statutory form, or the applicant has supplemented and corrected all the items as required by the tobacco administrative department, the tobacco monopoly administrative department shall accept the application for tobacco monopoly license.

Article 23 If the tobacco monopoly administrative department accepts or rejects an application for a tobacco monopoly license, it shall issue to the applicant a written voucher affixed with its special seal and indicated the date.

### Chapter III Examination, Approval and Issuance

Article 24 If, upon examination, the application of an applicant conforms to the statutory requirements, the tobacco monopoly administrative department shall make a written decision of approval within 20 days from the day when the application is accepted. If it can not make a decision within 20 days, it may be extended for 10 days upon approval of the person-in-charge of this entity and shall inform the applicant of the reason for the extension. However, if it is otherwise provided for in any law and regulation, such law or regulation shall prevail.

The tobacco monopoly administrative department shall, within 10 days after it makes a decision of issuance of a tobacco monopoly license, serve a tobacco monopoly license on the applicant.

Article 25 If the tobacco monopoly administrative department makes a written decision of disapproval of issuance of tobacco monopoly license, it shall make an explanation to the applicant and inform him of the right to apply for administrative reconsideration or to lodge an administrative lawsuit.

Article 26 Under any of the following circumstances, no tobacco monopoly license for retail trade may be issued:

- (1) It is improper to trade cigarettes at the business place due to reasons of safety;
- (2) Being within the vicinity of any middle or primary school;
- (3) 3 years have not lapsed since the cancellation of its tobacco monopoly qualification;
- (4) The tobacco monopoly administrative department makes a decision of rejection or decision of

disapproval of issuance of license because the applicant has concealed the relevant information or provided any false materials, and the applicant files a new application within 1 year;

(5)After the tobacco monopoly license obtained by the applicant by cheating, bribery or any other improper means is revoked, and the applicant files a new application within 3 years;

(6)The applicant engages in trading tobacco monopoly products without obtaining a tobacco monopoly license, has been punished by the law enforcement organ for two times or more within 1 year, and files a new application for a tobacco monopoly license within 3 years; or

(7)Other circumstances as prescribed by the tobacco monopoly administrative department of the State Council, under which the issuance of license shall be disapproved.

Article 27 The information about the issuance tobacco monopoly licenses by the tobacco monopoly administrative department shall be open, available and convenient for the general public to consult.

Article 28 The maximum valid term of a tobacco monopoly license shall be 5 years, calculating from the date of issuance.

#### Chapter IV Use of Tobacco Monopoly Licenses

Article 29 Anyone who has obtained a tobacco monopoly license shall, according to the scope and valid term of the tobacco monopoly license, produce and trade tobacco monopoly products.

Article 30 A citizen, legal person or any other organization who has obtained a tobacco monopoly license for retail trade may engage in retail business of home made and foreign cigarettes and may purchase tobacco products from the local tobacco wholesale enterprises as indicated in the his tobacco monopoly license for retail trade.

Article 31 The holder of a tobacco monopoly license shall put the original of the tobacco monopoly license it has obtained at an eye-catching position at its place of business.

Article 32 If the enterprise type of an enterprise which holds a tobacco monopoly license for a production enterprise, or tobacco monopoly license for a wholesale enterprise, or special tobacco monopoly license for a commercial enterprise changes, the said enterprise shall apply for a new tobacco monopoly license.

If the holder, enterprise type, or address of the holder of a tobacco monopoly license for retail trade changes, the said holder shall apply for a new tobacco monopoly license for retail trade.

If the qualifications of an enterprise with the legal person status change, the enterprise shall timely apply for new tobacco monopoly license or modify its tobacco monopoly license.

Article 33 At the expiration of the valid period of a tobacco monopoly license, if the holder of the license needs to continue its production and business operations, it shall file a renewal application with the original issuing organ not later than 30 days prior to the expiration of the valid period of

the said license.

Article 34 If the holder of a tobacco monopoly license needs to continue its production and business operations at the expiration of the valid period of the tobacco monopoly license, but it does not conform to the statutory requirements because there is any big change in its capacity or conditions of production and business operations or because it has conducted any serious violation, the tobacco monopoly license shall not be renewed.

## Chapter V Supervision and Administration

Article 35 The issuing organ of tobacco monopoly licenses shall have the power to supervise and inspect the production and business operations conducted by the citizens, legal persons or other organizations under its jurisdiction which have obtained a tobacco monopoly license, and may authorize or entrust the inferior tobacco administrative departments to carry out supervision and inspection thereon.

Article 36 The superior tobacco monopoly administrative department shall strengthen the supervision and inspection over the tobacco monopoly licenses handled by the inferior tobacco monopoly administrative departments, timely correct the violations, if any, and establish a sound responsibility system and an evaluation mechanism for the administrative law enforcement activities relating to tobacco monopoly.

Article 37 The supervision and inspection may be carried out by inspection in writing, on-the-spot inspection or by combining the inspection in writing with the on-the-spot inspection.

The tobacco monopoly administrative department may, by taking samples, check, inspect and test the tobacco monopoly products produced or traded by a license holder, and conduct an on-the-spot inspection over its production and place of business (including its warehouses). During the inspection, it may consult or require the license holder to provide the relevant information and submit the relevant materials. The license holder shall faithfully provide the relevant information and materials.

Article 38 The supervision and inspection shall mainly cover the following aspects:

- (1)The information about a license holder's compliance of the laws, regulations and rules on tobacco monopoly;
- (2)Whether or not a license holder's name or brand, legal representative (person-in-charge), address, business form, business scope, business term and other important matters conform to the registered contents in the tobacco monopoly license;
- (3)The information about the implementation and handling of the formalities for the modification, deregistration and renewal of a tobacco monopoly license; and
- (4)Other aspects which the tobacco monopoly administrative department of the State Council requires to inspect.

Article 39 When the tobacco monopoly administrative department supervises and inspects the

production and business operations of the holder of a tobacco monopoly license, 2 or more tobacco monopoly law enforcers shall be present, make transcripts of the information about the supervision and inspection as well as the result of punishment, affix their signatures to the transcripts and complete the archival filing procedure. The general public may consult the supervision and inspection records of the tobacco monopoly administrative department.

Article 40 A citizen, legal person or any other organization who has obtained a tobacco monopoly license may accept the supervisions and inspection conducted by the tobacco monopoly administrative department in accordance with the relevant laws, regulations, rules and these Measures.

Article 41 No citizen, legal person or any other organization may sell tobacco products by automats.

Except that the enterprises which have obtained tobacco monopoly licenses for production enterprises, tobacco monopoly licenses for wholesale enterprises or special tobacco monopoly licenses for commercial enterprises may sell tobacco monopoly products, no citizen, legal person or any other organization may sell tobacco products through the information networks.

Article 42 No enterprise or individual may alter or forge any tobacco monopoly license. No tobacco monopoly license may be bought, sold, rented, lent or transferred by any other means.

Article 43 Where any registration item has changed, if the citizen, legal person or any other organization which has obtained a tobacco monopoly license has failed to go through the formalities for modifying the registration, the tobacco monopoly administrative department shall order him (it) to modify the registration in accordance with the law. If he (it) refuses to do so, it shall revoke its business operation qualifications and take back the tobacco monopoly license.

Article 44 Where a citizen, legal person or any other organization without a tobacco monopoly license engages in the production and business operations, the tobacco monopoly administrative department shall investigate and punish him (it) in pursuance of the law. Where any crime is constituted, he (it) shall be transferred to the judicial organ for criminal liabilities.

Article 45 Where license holder is under any of the following circumstances, the issuing organ may order him (it) to suspend the tobacco monopoly business, make a rectification, or even revoke his (its) tobacco monopoly business qualifications:

(1) Upon inspection, he (it) is found to have violated the Tobacco Monopoly Law, Regulation on the Implementation of the Tobacco Monopoly Law and these Measures;

(2) He (It) buys, sells, rents out, lends or illegally transfers any tobacco monopoly license;

(3) He (It) is punished by the tobacco monopoly administrative department or by any other law enforcement organ for 2 times or more within 1 year;

(4) Upon inspection, he (it) was seized 50 cartons of counterfeit or smuggled cigarettes or more in a single action of the tobacco monopoly administrative department or by any other law enforcement organ;

(5)He (It) is subjected to criminal liabilities for illegally producing or trading tobacco monopoly products;

(6)He (It) refuses to execute the administrative punishment decision made by the tobacco monopoly administrative department;

(7)His (Its) business license is revoked by the administrative department for industry and commerce;

(8)He (It), as the holder of a tobacco monopoly license for a wholesale enterprise, illegally sells tobacco leaves, cigarette paper, filter sticks, cigarette filter tows or special machines of tobacco to any enterprise without tobacco monopoly license for a production enterprise or without tobacco monopoly license for a wholesale enterprise; or

(9)Other circumstances as prescribed by any law, regulation or rule.

Article 46 If the issuing organ of the tobacco monopoly licenses or its superior tobacco monopoly administrative department finds any of the following circumstances, it may, at the request of the interested party or according to its functions, revoke and take back the tobacco monopoly license:

(1)Examining, approving and issuing tobacco monopoly licenses by abusing the power or neglecting the duties;

(2)Examining, approving and issuing tobacco monopoly licenses by exceeding the power;

(3) Examining, approving and issuing tobacco monopoly licenses by violating the statutory procedures;

(4) Examining, approving and issuing a tobacco monopoly license to any applicant who does not have the application qualifications or does not conform to the requirements for applying for a tobacco monopoly license;

(5)Other circumstances under which the tobacco monopoly license may be revoked according to the law.

Article 47 Where a citizen, legal person or any other organization obtains a tobacco monopoly license by cheating, bribery or any other improper means, the tobacco monopoly administrative department shall revoke and take back the tobacco monopoly license.

Article 48 Where the legal person status of an entity engaging in the production and business operation of tobacco monopoly products changes, if it is necessary to take back the tobacco monopoly license, the issuing organ shall take it back in a timely manner.

Article 49 Under any of the following circumstances, the issuing organ shall cancel the tobacco monopoly license in pursuance of the law:

(1)The valid period of the tobacco monopoly license expires and it is not renewed;

(2)The natural person, who is indicated as the business operation subject in the tobacco monopoly license, is deceased or loses the civil capacity;

(3)The legal person or any other organization, which is indicated as the business operation subject in the tobacco monopoly license, is terminated under the law;

(4)The business operation subject is unable to continue the production and business operation of tobacco monopoly productions due to any force majeure; or

(5)Any other circumstance as prescribed by any law or regulation under which the tobacco

monopoly license shall be cancelled.

Article 50 Where a citizen, legal person or any other organization which has obtained a tobacco monopoly license needs to suspend its business, it shall, within 7 years prior to the suspension of business, file with the issuing organ an application for the suspension of business. The maximum period of the suspension of business shall not exceed one year. When the period of suspension of business expires, or when the business is to be resumed earlier than scheduled, the license holder shall file with the issuing organ application for the resumption of business.

Article 51 Where a citizen, legal person or any other organization which has obtained a tobacco monopoly license suspends its business operation for one or more years, if it fails to go through the relevant formalities after the lapse of 3 months from the announcement of the issuing organ, the issuing organ shall take back the tobacco monopoly license.

Article 52 A citizen, legal person or any other organization, which fails to carry out production and business operations after the lapse of 6 months after his (its) obtainment of a tobacco monopoly license, shall be deemed to have closed the business. The tobacco monopoly administrative department shall take back his (its) tobacco monopoly license.

Article 53 No enterprise which has obtained a tobacco monopoly license for a production enterprise may provide tobacco monopoly product processing services to any enterprise or individual without a tobacco monopoly license.

Article 54 No enterprise which has obtained a tobacco monopoly license may provide its inferior tobacco leaves or discarded tobacco leaves or tobacco powder to any enterprise or individual without a tobacco monopoly license. It shall destroy the inferior tobacco leaves or discarded tobacco leaves or tobacco powder which can not be recycled.

## Chapter VI Legal Liabilities

Article 55 An applicant who conceals the relevant information or provides any false material shall be rejected or given a disapproval of issuance of license, and be given a warning. He (it) shall not reapply for a tobacco monopoly license within 1 year.

Article 56 If the tobacco monopoly license obtained by an applicant by cheating, bribery or any other improper means is revoked, the applicant shall not reapply for such license within 3 years.

Article 57 Anyone who alters or forges any tobacco monopoly license shall be fined 1, 000 yuan or less by the tobacco monopoly administrative department.

Article 58 For anyone who violates these Measures due to failure to timely go through the formalities for the modification and cancellation of the tobacco monopoly license, the tobacco monopoly administrative department shall order it to make a correction. If he (it) fails to make a correction, it shall fine him (it) 1, 000 yuan or less.

Article 59 Where a tobacco monopoly administrative department or any of its functionaries violates these Measures, if it (he) is under any of the following circumstances, it (it) shall be ordered to make a correction by the superior tobacco monopoly administrative department. If the circumstance is serious, the directly liable person-in-charge and other directly liable persons shall be given an administrative sanction:

- (1) Refusing to accept any application which satisfies the statutory conditions;
- (2) Failing to publicize in the office the materials as required by law;
- (3) Failing to perform the statutory obligation to inform the applicant or interested party during the course of acceptance, examination or issuance of a tobacco monopoly license;
- (4) Failing to inform the applicant, all at once, the items that need to be supplemented or corrected in case the application materials submitted by an applicant are incomplete or do not conform to the statutory form; or
- (5) Failing to make an explanation about the rejection of application or disapproval of issuance of license.

Article 60 Where any functionary of a tobacco monopoly administrative department extorts or accepts any property of others or seeks other benefits when he handles a tobacco monopoly license or conducts supervision and inspection, he shall be given an administrative sanction. If any crime is constituted, he shall be subject to the criminal liabilities.

Article 61 When a tobacco monopoly administrative department is under any of the following circumstances in the issuance of tobacco monopoly licenses, its superior tobacco monopoly administrative department shall order it to make a correction and shall give an administrative sanction to the directly liable person-in-charge and other directly liable persons. If any crime is constituted, the directly liable person-in-charge and other directly liable persons shall be subject to the criminal liabilities:

- (1) Issuing a tobacco monopoly license to any applicant who does not satisfy the statutory conditions, or issuing any tobacco monopoly license by surpassing its power; or
- (2) Refusing to issue a tobacco monopoly license to any applicant who satisfies the statutory conditions, or failing to issue a tobacco monopoly license to any applicant, who satisfies the statutory conditions, within the statutory time limit.

## Chapter VII Supplementary Provisions

Article 62 The formats of the tobacco monopoly licenses shall uniformly prescribed by the tobacco monopoly administrative department of the State Council.

Article 63 The term “foreign-funded commercial enterprises” refers to Sino-foreign equity joint enterprises, Sino-foreign contractual enterprises, solely foreign-funded enterprises, and enterprises invested by Hong Kong, Macao and Taiwan investors.

Article 64 The time limits as mentioned in these Measures shall be calculated on the basis of working days. If the deadline falls on any legal holiday, it shall be the next day after the holiday.

Article 65 The National Development and Reform Commission authorizes the tobacco monopoly administrative department of the State Council to interpret these Measures.

Article 66 These Measures shall come into force as of March 7, 2007. The Administrative Measures for Tobacco Monopoly Licenses issued by the State Tobacco Monopoly Administration (Order No. 2 of the State Tobacco Monopoly Administration) in 1998 shall be repealed simultaneously.

The relevant provisions on tobacco monopoly licenses promulgated by tobacco monopoly administrative departments at all levels prior to the implementation of these Measures shall be sorted out by the formulation organs in accordance with these Measures. Those inconsistent with these Measures shall not be implemented any longer as of the date of implementation of these Measures.