

THE MINISTRIES

THE MINISTRY OF INDUSTRY AND TRADE

CIRCULAR No. 14/2008/TT-BCT OF NOVEMBER 25, 2008, GUIDING THE IMPLEMENTATION OF A NUMBER OF PROVISIONS OF THE GOVERNMENT'S DECREE No. 119/2007/ND-CP OF JULY 18, 2007, ON TOBACCO PRODUCTION AND TRADE

Pursuant to the Government's Decree No. 189/2007/ND-CP of December 27, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade;

Pursuant to the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trade;

The Ministry of Industry and Trade guides a number of provisions of the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trading as follows:

I. GENERAL PROVISIONS

1. This Circular guides conditions for trading and processing of tobacco raw materials; conditions for manufacture of tobacco products; conditions for import of specialized tobacco machinery and equipment, tobacco raw materials and cigarette paper; management of investment

in and use of specialized tobacco machinery and equipment, tobacco production capacity and tobacco product output; conditions for trading in tobacco products; competence, procedures for and order of grant of tobacco product trading and processing eligibility certificates and tobacco product manufacture and trading licenses as prescribed in the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trade.

2. This Circular applies to domestic and foreign organizations and individuals engaged in tobacco production and trade and related activities in the Vietnamese territory.

This Circular does not apply to the import of tobacco products as well as the trade of tobacco products at duty free shops.

3. Trading in and processing tobacco raw materials are conditional business lines. Only eligible enterprises and individuals that are granted by state management agencies in charge of industry and trade tobacco raw material trading or processing eligibility certificates may trade in or process tobacco raw materials and shall observe prescribed conditions throughout the course of operation.

4. The State holds a monopoly on the manufacture of tobacco products; only enterprises that are granted tobacco product manufacturing licenses by the Ministry of Industry and Trade may manufacture tobacco products and shall comply with the guidance in this Circular during the course of tobacco product manufacture.

Foreign-invested tobacco product manufacturing enterprises may only manufacture tobacco products within the scope of their investment licenses and shall comply with Vietnam's laws and relevant guidance in this Circular.

The State controls the supply of tobacco products to the market and performs the state commercial management of the import of tobacco products.

5. Imported specialized tobacco machinery and equipment (specified in Appendix 1 to this Circular), tobacco raw materials and cigarette paper (paper for rolling tobacco shreds of a cigarette) are subject to the line management by the Ministry of Industry and Trade and managed and used with the guidance in this Circular.

6. Investment in the processing of tobacco raw materials and the production of cigarette paper must be in line with the strategy and master plan of the tobacco industry and the planning on development of tobacco material zones.

7. Investment in the manufacture of tobacco products must be in line with the strategy and master plan of the tobacco industry and ensure that tobacco product output does not exceed total production capacity determined and announced by the Ministry of Industry and Trade.

8. Tobacco products are subject to trade restriction. Only traders that are granted by state management agencies in charge of industry and trade tobacco product wholesale trade (or wholesale agency) licenses or tobacco product

retail trade (or retail agency) licenses may trade in tobacco products within the scope of their permits.

9. Tobacco product trading licenses

a/ Each trader may only be granted a tobacco product trading license by a state agency in charge of industry and trade;

b/ Wholesale traders, apart from wholesaling tobacco products to other traders as prescribed in their tobacco product wholesale trade (or wholesale agency) licenses, may retail tobacco products at their business places without having to applying for a tobacco product retail trade (or retail agency) license.

10. Wholesale and retail of tobacco products

a/ Tobacco product-supplying enterprises may, apart from selling tobacco products to traders within their distribution systems, directly retail their tobacco products at their attached shops for the purpose of product introduction.

b/ Wholesale traders (or wholesale agents) may purchase tobacco products from other wholesale traders (or wholesale agents) if such is consented by enterprises supplying tobacco products to the latter and only sell the volume of purchased tobacco products within the province where they are headquartered as prescribed in their tobacco product wholesale trade (or wholesale agency) licenses;

c/ Wholesale traders may only sell tobacco products to traders within their distribution systems that have tobacco product trading licenses. If, by the market demand, wholesale

traders need to expand or change their distribution systems, they shall send to the licensing state management agency in charge of industry and trade a list of additional traders as prescribed at Point d, Clause 2, Section B, Part VIII of this Circular;

d/ Wholesale traders (wholesale agents) and retail traders (retail agents) may only retail tobacco products to consumers at their business places for which tobacco product trading licenses have been granted; may not use their employees or other traders' employees to directly introduce or itinerantly sell tobacco products to consumers outside their licensed business places; and shall strictly observe legal provisions on advertisement and sales promotion and other relevant legal provisions on cigarette trade.

II. TRADING IN TOBACCO RAW MATERIALS

A. Conditions on the grant of a tobacco raw material trading eligibility certificate

1. Conditions on business entities

Being traders having business registration for tobacco raw material trading.

2. Conditions on material foundations, technical equipment and facilities and employees

a/ Having a raw material trading establishment with a sorting and packaging section and raw material warehouses suitable to their business scope, with a total area of at least 500 m²;

b/ Having separate warehouses for tobacco raw

materials. These warehouses must be furnished with a ventilation system and equipment and facilities for the preservation of tobacco raw materials, including: thermometers and hygrometers for checking air temperature and relative humidity in the warehouses; devices for worm, termite and borer extermination; and sufficient shelves for storing tobacco bales which are arranged at least 20 cm above the floor and at least 50 cm from the wall or column;

c/ Having signed contracts with employees who have professional qualifications or experience in investment management, technical assistance or raw material purchase.

3. Conditions on business processes suitable to business lines of tobacco raw material purchase and sale

a/ Places of tobacco raw material purchase must have signboards showing the trade name of the tobacco raw material traders;

b/ Standards used for grading tobacco raw materials must be publicly posted up at places of tobacco raw material purchase according to current regulations, with sample raw material tobacco leaves shown;

c/ Traders must have signed contracts on investment in tobacco growth with tobacco growers in conformity with their business scope.

4. Conditions on environmental protection and fire and explosion prevention and fighting

Having sufficient equipment and facilities for fire prevention and fighting, and assurance of safety and environmental sanitation in accordance

with law.

B. Competence, dossiers and order for the grant of tobacco raw material trading eligibility certificates

1. Competence for the grant of tobacco raw material trading eligibility certificates

Industry and Trade Services of provinces and centrally run cities (below referred to as provinces) have competence to grant tobacco raw material trading eligibility certificates.

2. A dossier of application for a tobacco raw material trading eligibility certificate comprises:

a/ An application for a tobacco raw material trading eligibility certificate, made according to a set form;

b/ A valid copy of the business registration certificate;

c/ Documents concerning business criteria and conditions specified in this Circular, including:

A list of warehouses, workshops, offices and other auxiliary works; their plan and area;

- A list of equipment and facilities: the ventilation system; fire prevention and fighting equipment, hygrometers and thermometers; devices for worm, termite and borer extermination, shelves for storing tobacco bales.

- Valid copies of contracts signed with employees engaged in investment management, technical assistance and raw material purchase.

- Valid copies of contracts on investment in tobacco growth, signed with tobacco growers.

- A valid copy of the certificate of assurance

of fire safety, granted by a competent police department.

3. Order of grant of tobacco raw material trading eligibility certificates

a/ Within 15 days after the receipt of a valid and complete dossier, the provincial-level Industry and Trade Service shall consider and grant a tobacco raw material trading eligibility certificate, made according to a set form. In case of refusal, it shall reply in writing, clearly stating the reason;

b/ For incomplete or invalid dossiers, the provincial-level Industry and Trade Service shall, within 7 days after the receipt of these dossiers, request in writing their supplementation.

4. Issuance and archive of tobacco raw material trading eligibility certificates

A tobacco raw material trading eligibility certificate shall be issued in four copies: Two copies shall be kept at the provincial-level Industry and Trade Service, one copy sent to the Ministry of Industry and Trade and another sent to the applicant.

III. PROCESSING OF TOBACCO RAW MATERIALS

A. Conditions on the grant of tobacco raw material processing eligibility certificates

1. Conditions on business entities

Tobacco raw material processing eligibility certificates shall be granted only to enterprises that are engaged in raw material processing and have machinery and equipment chains for stemming

tobacco leaves or processing tobacco leaves into tobacco shreds or flakes and other substitutes for the production of tobacco products and have a tobacco raw material trading eligibility certificate.

2. Conditions on material foundations, technical equipment and facilities and employees

a/ Having a raw material processing establishment with sorting, processing and packaging sections and raw material warehouses of a total area of at least 5,000 m² suitable to their business scope;

b/ Having separate warehouses for unprocessed and processed tobacco raw materials which are suitable to their business scope. These warehouses must be furnished with ventilation systems, thermometers and hygrometers for checking air temperature and relative humidity in the warehouses; devices for worm, termite and borer extermination; sufficient shelves for storing tobacco bales which are arranged at least 20 cm above the floor and at least 50 cm from the wall or column;

c/ Having signed contracts with employees who have professional qualifications or experience in investment management, technical assistance for tobacco growers or raw material purchase and processing;

d/ Having complete specialized machinery and equipment for stemming tobacco leaves or processing tobacco leaves into tobacco shreds or flakes and other substitutes for the production of tobacco products and have a tobacco raw material trading eligibility certificate.

Raw material processing chains must be

specialized and ensure industrial sanitation, labor safety and environmental sanitation standards;

e/ Having equipment and facilities for the measurement and checking of the quality of raw materials before and after they are processed;

f/ All machinery and equipment must be of lawful origin.

3. Conditions on quality, hygiene and safety of tobacco products

Enterprises must satisfy quality and hygiene requirements according to Vietnam standards and manufacturer standards, and the Ministry of Health's regulations on food quality, hygiene and safety.

4. Conditions on environmental protection and fire and explosion prevention and fighting

Enterprises must have sufficient devices and equipment for fire prevention and fighting and assurance of safety and environmental sanitation in accordance with law.

5. Conditions on business processes suitable to business lines

a/ Places of tobacco raw material purchase must have signboards showing the trade name of the enterprise trading in or processing tobacco raw materials;

b/ Standards used for grading tobacco raw materials must be publicly posted up at places of tobacco raw material purchase according to current regulations, with sample raw material tobacco leaves shown;

c/ Tobacco raw material processing traders

must sign contracts on investment in tobacco growth with tobacco growers and contracts on the purchase of tobacco raw materials from tobacco raw material traders in conformity with their business scope.

6. Conditions on locations of processing establishments

Processing establishments must be located in line with the strategy and master plan of the tobacco industry and the planning on development of tobacco material zones approved by competent authorities.

B. Competence, dossiers and order for the grant of tobacco raw material processing eligibility certificates

1. Competence for grant of tobacco raw material processing eligibility certificates

The Ministry of Industry and Trade has competence to grant tobacco raw material processing eligibility certificates.

2. A dossier of application for a tobacco raw material processing eligibility certificate comprises:

a/ An application for a tobacco raw material processing eligibility certificate (made according a set form);

b/ A valid copy of the business registration certificate;

c/ A valid copy of the tobacco raw material trading eligibility certificates;

d/ Documents concerning processing criteria and conditions, including:

- A list of workshops; sorting, processing and packaging sections; warehouses, offices and other auxiliary works, and their areas and plans;

- A list of complete specialized machinery and equipment for processing tobacco raw materials, devices for checking the quality of raw materials before and after they are processed, the ventilation system; fire prevention and fighting equipment; hygrometers and thermometers; devices for worm, termite and borer extermination; shelves for storing tobacco bales,

- Documents evidencing the lawful origin of machinery and equipment.

- Written notifications of quality and hygiene standards in conformity with Vietnam standards, manufacturer standards and the Ministry of Health's regulations on food quality, hygiene and safety;

- Valid copies of contracts signed with employees engaged in investment management, technical assistance and raw material purchase and processing;

- Valid copies of contracts on investment in tobacco growth, signed with tobacco growers and contracts on tobacco raw material sale and purchase, signed with tobacco raw material traders;

- A valid copy of the decision approving the environmental impact assessment report or the registration certificate of the environmental protection commitment, granted by a competent agency;

- A valid copy of the certificate of fire safety granted by a competent police department.

3. Order of grant of tobacco raw material processing eligibility certificates

a/ Within 30 days after the receipt of a complete and valid dossier, the Ministry of Industry and Trade shall consider and grant a tobacco raw material processing eligibility certificate, made according to a set form. In case of refusal, it shall reply in writing, clearly stating the reason;

b/ For incomplete or invalid dossiers, the Ministry of Industry and Trade shall, within 7 days after the receipt of the dossiers, request in writing their supplementation.

4. Issuance and archive of tobacco raw material processing eligibility certificates

A tobacco raw material processing eligibility certificate shall be issued in four copies. Two copies shall be kept at the Ministry of Industry and Trade, one sent to the applying enterprise and another sent to the Industry and Trade Service of the locality where the enterprise is headquartered.

IV. MANUFACTURE OF TOBACCO PRODUCTS

A. Conditions on the grant of tobacco product manufacturing licenses

1. Conditions on business entities

Being enterprises lawfully established and manufacturing tobacco products before the date of issuance of the Government's Resolution No. 12/2000/NQ-CP of August 14, 2000, on the national policy for prevention and combat of tobacco harms during 2000-2010.

2. Conditions on investment in and use of home-grown tobacco raw materials

a/ Enterprises shall invest in tobacco growing in the form of direct investment or investment through joint venture with tobacco raw material traders that make direct investment in tobacco growing in conformity with their business scope and the approved planning on development of tobacco material zones;

b/ Enterprises must use home-grown tobacco raw materials for the manufacture of tobacco products according to the Ministry of Industry and Trade's annual plans, except for tobacco products with foreign brands or for export. These plans shall be determined in line with the strategy and master plan of the Vietnam's tobacco industry and the approved planning on development of tobacco material zones.

3. Conditions on machinery and equipment

a/ Enterprises manufacturing tobacco products must have specialized machinery and equipment for the principal stages of tobacco shred processing, cigarette rolling and packaging;

b/ Tobacco shred processing must be completely performed by equipment, including steamer, moisturizer, raw material feeder, leaf storing and fermentation silo, shredder, shred heat-dryer, softener, flavor sprayer, blender and weight scales;

The shred processing chain must be specialized and installed at a place where industrial sanitation, labor safety and environmental sanitation standards are satisfied;

c/ Enterprises that have no shred processing

chains shall enter into shred processing contracts. Shred processing units must satisfy the conditions prescribed at Point b of this Clause;

d/ At the stages of rolling and packaging cigarettes into packs or cartons, enterprises shall use automatic rolling and packaging machines, except for tobacco products produced by traditional manual methods;

e/ Enterprises must have minimum devices for the measurement and checking of quality standards, such as cigarette weight, circumference and decompression. Enterprises may themselves check or hire checking service providers to check other physical and chemical standards and tobacco hygiene standards. Checking results must be systematically preserved for long-term monitoring;

f/ All machinery and equipment used for the manufacture of tobacco products must be of lawful origin.

4. Condition on quality, hygiene and safety of tobacco products

Enterprises must satisfy quality and hygiene requirements according to Vietnam standards, manufacturer standards and the Ministry of Health's regulations on hygiene and safety of tobacco products.

5. Condition on ownership of trademarks

Enterprises must own or be licensed to lawfully use trademarks registered and protected in Vietnam.

6. Condition on environment and fire and explosion prevention and fighting

Enterprises must have sufficient devices and equipment for fire prevention and fighting and assurance of safety and environmental sanitation in accordance with law.

B. Competence, dossiers and order for the grant of tobacco product manufacturing licenses

1. Competence for tobacco product manufacturing licenses

The Ministry of Industry and Trade has competence to grant tobacco product manufacturing licenses.

2. A dossier of application for a tobacco product manufacturing license comprises:

a/ An application for a tobacco product manufacturing license, made according to a set form;

b/ A valid copy of the business registration certificate;

c/ Documents concerning business criteria and conditions specified in this Circular, including:

- A report on the enterprise's business performance over the last three years, clearly stating the production output target (converted output) for each group of tobacco products.

- A list of machinery and equipment, stating the cigarette production capacity and each stage's capacity calculated in packs of 20 cigarettes and three workshifts per day over the last three years. Documents evidencing the lawful origin of machinery and equipment;

- Tobacco shred processing contracts and

quality checking service contracts (if any).

- A list of warehouses, workshops, offices and other auxiliary works and their areas and plans.

- A valid copy of the quality registration certificate or the quality standard conformity notification.

- Valid copies of papers certifying the lawful ownership or use right to trademarks of tobacco products.

- A valid copy of the decision approving the *environmental impact assessment report* or the certificate of registration of the environmental protection commitment granted by a competent agency.

- A valid copy of the certificate of fire safety granted by a competent police department.

3. Procedures for the grant of tobacco product manufacturing licenses

a/ Within 30 days after the receipt of a complete and valid dossier, the Ministry of Industry and Trade shall consider and grant a tobacco product manufacturing license, made according to a set form. In case of refusal, it shall reply in writing, clearly stating the reasons.

b/ For incomplete or invalid dossiers, the Ministry of Industry and Trade shall, within 7 days after the receipt of these dossiers, request in writing their supplementation.

4. Issuance and archival of tobacco product manufacturing licenses

A tobacco product manufacturing license shall be issued in four copies: Two copies shall be kept at the Ministry of Industry and Trade, one copy

sent to the applying enterprise, and another sent to the Industry and Trade Service of the locality where the enterprise is located.

V. INVESTMENT IN THE MANUFACTURE OF TOBACCO PRODUCTS

A. Capacity of tobacco product manufacture

1. Total production capacity means the production capacity of a complete chain for tobacco product manufacture (principal machinery and equipment for cigarette rolling and packaging) calculated for three workshifts per day at the time of issuance of the Government's Resolution No. 12/2000/NQ-CP of August 14, 2000, on the national policy on prevention and combat of tobacco harms during 2000-2010.

2. The Ministry of Industry and Trade shall announce the total production capacity of each enterprise, which shall serve as a basis for investment in the manufacture of tobacco products and import of specialized tobacco machinery and equipment.

Enterprises may only make investment to increase their production capacity if they produce cigarettes for export and shall produce cigarettes for domestic consumption within their determined and announced total production capacity;

Annually, enterprises shall send reports on investment in cigarette production capacity to the Ministry of Industry and Trade.

B. Investment in the manufacture of tobacco products for export, export processing, intensive investment, renewal of equipment and technologies, and relocation of production places under planning

1. Investors shall send their investment reports and written requests to the Ministry of Industry and Trade for investment approval. Within 15 days after the receipt of enterprises' written requests, the Ministry of Industry and Trade shall reply in writing. In case of refusal, it shall clearly state the reason.

2. A written request must state the name and location of the project, relevant principal technical parameters, production scale and output and plan on disposal of to-be-replaced machinery and equipment (in case of replacement investment).

3. After obtaining the written approval of the Ministry of Industry and Trade, enterprises shall make investment according to the order and procedures for investment and capital construction specified by law.

4. Enterprises shall report to the Ministry of Industry and Trade on the disposal of specialized tobacco machinery and equipment which are replaced in the course of investment.

C. Foreign investment in the manufacture of tobacco products

Foreign investment in the manufacture of tobacco products may be licensed only in the form of joint venture or cooperation with domestic enterprises possessing tobacco product

manufacturing licenses within the licensed production capacity and with the State holding a dominant share in enterprises' charter capital.

1. Foreign investment in the form of setting up a joint venture for the manufacture of tobacco products

a/ Joint-venture parties shall send a dossier of the project on the establishment of the joint venture and the joint-venture contract, enclosed with a written request to the Ministry of Industry and Trade;

Within 30 days after receiving a complete dossier and the written request of enterprise, the Ministry of Industry and Trade shall submit them to the Prime Minister for consideration and decision. In case of refusal, it shall reply in writing, clearly stating the reason.

b/ A written request must state the name and location of the project, relevant principal technical parameters, operation scope and objectives, production scale and output of each kind of tobacco products, plans on investment in machinery and equipment and disposal of to-be replaced machinery and equipment;

c/ Only after obtaining written approval of the Prime Minister, can joint-venture parties make registration for joint venture establishment according to current provisions of law on investment.

2. Foreign investment in the form of processing, production cooperation or industrial property licensing contracts

a/ Involved parties shall send the whole dossier

of the processing, production cooperation or industrial property licensing contract enclosed with a written request to the Ministry of Industry and Trade.

Within 30 days after the receipt of a complete dossier and the written request of the enterprise, the Ministry of Industry and Trade shall submit them to the Prime Minister for consideration and decision. In case of refusal, it shall reply enterprises in writing, clearly stating the reason;

b/ A written request must state principal contents of the processing, production cooperation or industrial property licensing contract; production scale and output of each kind of tobacco product, and plans on investment in machinery and equipment and disposal of to-be replaced machinery and equipment (if any);

c/ Only after obtaining written approval of the Prime Minister, can involved parties perform the processing, production cooperation or industrial property licensing contract;

d/ Enterprises currently manufacturing tobacco products under processing, production cooperation or industrial property licensing contracts with foreign parties shall send all dossiers and written requests as specified at Points a and b of this Clause to the Ministry of Industry and Trade for consideration and determination of the production scale and output of each kind of tobacco product.

3. When making intensive investment, enterprises shall report to the Ministry of Industry and Trade on results of disposal of specialized tobacco machinery and equipment which are no longer used or are liquidated, and take full

responsibility for the disposal.

D. Tobacco product output

1. Enterprises may not manufacture tobacco products in excess of the production capacity stated in their tobacco product manufacturing licenses.

2. Enterprises manufacturing tobacco products of foreign brands may not manufacture them in excess of the permitted output. For foreign tobacco brands for which the permitted product output is not yet determined, enterprises shall send all dossiers as specified in Section C of Part V above to the Ministry of Industry and Trade for consideration and determination of the production scale and output.

3. Annually, enterprises shall send statistical reports on the output of each kind of tobacco product to the Ministry of Industry and Trade.

VI. IMPORT OF SPECIALIZED TOBACCO MACHINERY AND EQUIPMENT, TOBACCO RAW MATERIALS AND CIGARETTE PAPER

1. Imported specialized tobacco machinery and equipment and spare parts, tobacco raw materials and cigarette paper are subject to the line management of the Ministry of Industry and Trade.

Enterprises possessing tobacco product manufacturing licenses may import above goods.

Enterprises possessing tobacco raw material processing eligibility certificates may import

specialized tobacco machinery and equipment of kinds suitable to the stages of tobacco raw material processing, and import tobacco raw materials.

Tobacco groups and corporations shall receive and distribute import quotas to their member units which possess tobacco product manufacturing licenses.

2. Enterprises eligible to import specialized tobacco machinery and equipment and their spare parts, tobacco raw materials and cigarette paper may directly or entrust import and export business units to import these goods.

3. Import of specialized tobacco machinery and equipment and their spare parts

a/ Imported specialized tobacco machinery and equipment must be suitable to the production capacity of tobacco product-manufacturing enterprises;

b/ The investor shall send the project dossier already approved by a competent authority, a copy of the Ministry of Industry and Trade's written approval and a written request for import of machinery and equipment to the Ministry of Industry and Trade;

c/ Within 7 days after the receipt of a complete dossier of the enterprise, the Ministry of Industry and Trade shall base itself on the approved investment project to approve or disapprove in writing the enterprise's import of machinery and equipment.

4. Import of tobacco raw materials and cigarette paper for the manufacture of tobacco

products for domestic consumption

a/ By November 10 every year, tobacco product-manufacturing enterprises and tobacco raw material-processing enterprises shall send reports on their needs for import of tobacco raw materials and cigarette paper of the following year to the Ministry of Industry and Trade;

b/ For raw material tobacco imported within their import quotas, enterprises shall send applications for registration for quota-based import to the Ministry of Industry and Trade;

c/ By December 15 every year, based on the production output and reports of tobacco product-manufacturing enterprises and tobacco raw material-processing enterprises and the domestic supply of raw materials, the Ministry of Industry and Trade shall issue written notices on import quotas to concerned enterprises and agencies;

d/ Imported tobacco raw materials and cigarette paper may only be used for the manufacture of tobacco products under enterprises' production plans and must not be marketed.

5. Import of tobacco raw materials and cigarette paper for export production

Enterprises shall send export production contracts and written requests for permission to import tobacco raw materials and cigarette paper to the Ministry of Industry and Trade. Based on these requests, enterprises' production capacity and relevant dossiers, the Ministry of Industry and Trade shall, within 7 days after the receipt of complete dossiers and written requests of

enterprises, notify in writing import plans to concerned enterprises and agencies.

6. Contracts on export processing of tobacco raw materials for foreign traders

Only enterprises having tobacco product manufacturing licenses or tobacco raw material processing eligibility certificates may perform contracts for export processing of tobacco raw materials.

Enterprises shall send export processing contracts and written requests to the Ministry of Industry and Trade. Based on these requests, enterprises' production capacity and relevant dossiers, the Ministry of Industry and Trade shall, within 7 days after the receipt of complete dossiers and written requests of enterprises, approve or disapprove in writing the enterprises' performance of those contracts.

VII. MANAGEMENT OF USE OF SPECIALIZED TOBACCO MACHINERY AND EQUIPMENT

I. Use of specialized tobacco machinery and equipment

a/ Enterprises possessing tobacco product manufacturing licenses may use specialized tobacco machinery and equipment for processing tobacco raw materials and manufacturing tobacco products;

b/ Enterprises possessing tobacco raw material processing eligibility certificates may use specialized tobacco machinery and equipment suitable to the stages of processing tobacco raw

materials;

c/ Organizations and individuals possessing no tobacco product manufacturing licenses or tobacco raw material processing eligibility certificates may not use specialized tobacco machinery and equipment in any form.

2. Specialized tobacco machinery and equipment of unlawful origin shall be confiscated and disposed of according to law.

a/ Specialized tobacco machinery and equipment are regarded as unlawful in the following cases:

- They were imported before the date of issuance of the Prime Minister's Directive No. 13/1999/CT-TTg of May 12, 1999, without valid import papers.

- They were imported after the effective date of the Prime Minister's Directive No. 13/1999/CT-TTg of May 12, 1999, without valid import papers and written approval of the Ministry of Industry and Trade (or the former Ministry of Industry).

b/ Confiscated specialized tobacco machinery and equipment shall be disposed of under current regulations and may be resold only to enterprises with tobacco product manufacturing licenses.

3. The sale, export, re-export and liquidation of specialized tobacco machinery and equipment of tobacco product-manufacturing enterprises comply with relevant provisions of law and the following provisions:

a/ Enterprises may only sell machinery and equipment which remain usable to enterprises

with tobacco product manufacturing licenses, or export or re-export them;

b/ Machinery and equipment which are no longer usable or are liquidated must be destroyed under the supervision of a liquidation council set up by the Ministry of Industry and Trade;

c/ Enterprises shall compile liquidation dossiers for machinery and equipment that need to be liquidated, work out liquidation plans and send them together with written requests for liquidation to the Ministry of Industry and Trade. *Within 15 days after the receipt of the enterprises' written requests*, the Ministry of Industry and Trade shall make a decision to set up a liquidation council in charge of supervising the destruction of machinery and equipment;

d/ Enterprises shall report on results of machinery and equipment sale and liquidation to the Ministry of Industry and Trade.

4. The Ministry of Industry and Trade shall assume the prime responsibility for, and coordinate with the Ministry of Public Security and the Ministry of Finance in, conducting inspection, detection and disposal of unlawful machinery and equipment for the manufacture of tobacco products.

VIII. TRADING IN TOBACCO PRODUCTS

A. Conditions on the grant of tobacco product wholesale trade (wholesale agency) licenses

1. Conditions on business entities

Being enterprises established under law and possessing business registration for sale and purchase of tobacco products.

2. Conditions on business locations

Having a fixed business place with a clear address conformable with the tobacco product *trading network planning approved by competent authorities*.

3. Conditions on material foundations and financial capacity

a/ Having warehouses (or storing places) suitable to their business scope and satisfying requirements for the preservation of tobacco products during the storage period;

b/ Having means of transport suitable to their business scope and satisfying requirements for the preservation of tobacco products during transportation;

c/ Being financially capable to assure the normal operation of their distribution system.

4. Conditions on organization of the distribution system

Being selected by tobacco product-manufacturing enterprises, commercial enterprises of tobacco product-manufacturing groups or corporations, tobacco product-importing enterprises or Vietnam-based representatives of foreign investors (below referred to as tobacco product-supplying enterprises) or other wholesale traders to act as a wholesale trader (wholesale agent), and having organized a stable system for distribution of tobacco products in their locality.

B. Competence, dossier and order for the grant of tobacco product wholesale trade (or wholesale agency) licenses

1. Competence to grant tobacco product wholesale trade (wholesale agency) licenses

a/ For wholesale traders (wholesale agents) conducting business in two or more provinces: Licenses shall be granted by the Ministry of Industry and Trade;

b/ For wholesale traders (wholesale agents) conducting business in one province: Licenses shall be granted by the Industry and Trade Service of the locality where the applying trader is headquartered.

2. A dossier of application for a tobacco product wholesale trade (wholesale agency) license comprises:

a/ An application for a tobacco product wholesale trade (wholesale agency) license, made according to a set form;

b/ Valid copies of the business registration certificate and tax identification number certificate;

c/ The letter of introduction of a tobacco product-supplying enterprise or another wholesale trader, clearly stating the expected business location;

d/ A business plan, covering:

- A report on business operation results over the last three year, enclosed with valid copies of sale and purchase contracts (or sale and purchase agency contracts) with sale enterprises (for operating enterprises), clearly stating general data

on all kinds of tobacco products, purchase prices, sale prices and sale and purchase value (total value and value calculated for each tobacco product-supplying enterprise and business location), paid tax amounts and profit;

- The expected business performance of the year following the year when the trader applies for a permit for wholesale trade (wholesale agency) of tobacco products, clearly stating names and addresses of enterprises that will sell goods to the enterprise, kinds of tobacco products, purchase prices, sale prices, and sale and purchase value (total value and value calculated according to each goods-selling enterprise and business location), payable tax amounts and profits;

- Forms of organization of goods sale and methods of managing the distribution system;

- A list of material and technical foundations (warehouses, vehicles) and employees involved in tobacco product trading;

- A list of traders which belong or will belong to its distribution system, with their names and addresses, addresses of tobacco product wholesale and retail shops (if any), tax identification numbers, valid copies of tobacco product trading licenses (for operating traders) and (expected) business locations.

e/ Documents evidencing the enterprise's capacity, including:

- Dossier of warehouses (or storing places), including: warehouse use rights (owned or co-owned by the trader or rented for a minimum period of one year), location and storing capacity of warehouses and other technical specifications

for maintaining the quality of tobacco products during storage;

- Dossiers of means of transport, including: rights to use means of transport (owned or co-owned by the trader or rented for a minimum period of one year), transportation capacity and technical specifications for maintaining the quality of tobacco products during transportation;

- Dossier of financial capacity: written certification of own capital or guarantee of goods-selling enterprises or banks where the trader opens accounts for financial sources to assure the distribution system's normal operation.

3. Order of grant of tobacco product wholesale trade (wholesale agency) licenses

a/ Wholesale traders (wholesale agents) conducting business in two or more provinces shall send dossiers to the Ministry of Industry and Trade;

b/ Wholesale traders (wholesale agents) conducting business in one province shall send dossiers to the Industry and Trade Services of the localities where they are headquartered;

c/ Within 15 days after the receipt of a valid dossier, the licensing agency shall consider and grant tobacco product trading license, made according to a set form, to wholesale traders (wholesale agents). In case of refusal to grant a license, the licensing agency shall reply in writing, clearly stating the reason;

d/ For incomplete or invalid dossiers, the licensing agency shall, within 7 days after the receipt of the dossiers, request in writing their supplementation.

4. Issuance and archive of tobacco product wholesale trade (wholesale agency) licenses

a/ For licenses granted by the Ministry of Industry and Trade: each license shall be issued in a sufficient number of copies: three copies shall be kept at the Ministry and each of the remainder shall be sent to the Market Management Department, provincial-level Industry and Trade Services listed in the license and the Industry and Trade Service of the locality where the trader is headquartered, and the applying trader;

b/ For licenses granted by provincial-level Industry and Trade Services: each license shall be issued in five copies: two copies shall be kept at the licensing Industry and Trade Service, one copy sent to the Market Management Sub-Department under the licensing Industry and Trade Service, one copy to the Ministry of Industry and Trade, and another to the applicant.

C. Conditions on the grant of tobacco product retail trade (or retail agency) licenses

1. Conditions on business entities

Being enterprises possessing business registration for sale and purchase of tobacco products.

2. Conditions on business locations

Having a fixed business place with a clear address conformable with the tobacco product trading network planning approved by a competent authority.

3. Conditions on material foundations

Having a separate place for sale of tobacco

products.

4. *Conditions on organization of the distribution system*

Belonging to the distribution system of a tobacco product wholesale trader.

D. Competence, dossiers and order for the grant of tobacco product retail trade (retail agency) licenses

1. *Competence to consider and grant tobacco product retail trade (retail agency) licenses*

Licenses shall be granted by Industry and Trade Bureaus of districts where the traders apply for the opening of tobacco product retail shops.

2. *A dossier of application for a tobacco product retail trade (retail agency) license*

a/ An application for a tobacco product retail trade (retail agency) license, made according to a set form;

b/ A valid copy of the business registration certificate;

c/ A letter of introduction of a tobacco product wholesale trader, clearly stating all business places;

d/ Documents evidencing the lawfulness of the trader's tobacco product retail places;

3. *Order of grant of tobacco product retail trade (retail agency) licenses*

a/ Traders shall send dossiers to the Industry and Trade Bureaus of districts where they apply for the opening of business places;

b/ Within 15 days after the receipt of a valid

and complete dossier, the Industry and Trade Bureau shall consider and grant a tobacco product retail trade (or retail agency) license, made according to a set form. In case of refusal, it shall reply in writing, clearly stating the reason;

c/ For incomplete or invalid dossiers, the district-level Industry and Trade Bureau shall, within 7 days after the receipt of the dossier, request in writing their supplementation.

4. *Issuance and archive of tobacco product retail trade (retail agency) licenses*

A tobacco product retail trade (retail agency) license shall be issued in five copies: two copies shall be kept at the district-level Industry and Trade Bureau, one copy shall be sent to the superior provincial-level Industry and Trade Service, one copy to the Market Management Sub-Department under the superior provincial-level Industry and Trade Service, and another copy to the applicant.

IX. REPORTING

1. *State management agencies in charge of industry and trade of various levels shall send biannual and annual reports within 20 days after the end of the reporting period on business results of traders under their licensing competence to their superior-level state management agencies in charge of industry and trade.*

2. *Tobacco product-supplying enterprises shall send quarterly reports to the Ministry of Industry and Trade on the import and use of specialized tobacco machinery and equipment, tobacco raw*

materials and cigarette paper imported in the period;

b/ Biannual and annual report within 10 days after the end of the reporting period on their business performance to the Ministry of Industry and Trade ;

c/ In the course of operation, if terminating sale and purchase contracts (or sale and purchase agency contracts) or adjust (expand or narrow) business scope of a trader in their distribution system, they shall report thereon to the Ministry of Industry and Trade and the Industry and Trade Service of the locality where the trader is headquartered in order to carry out procedures for withdrawing or adjusting the trader's tobacco product trading license and for adjusting or granting a new license to another trader, when necessary. Reports must be sent promptly right after tobacco product-supplying enterprises terminate or adjust contracts with wholesale traders.

3. Tobacco product wholesale traders shall send biannual and annual reports within 10 days after the end of the reporting period on their business results to the Ministry of Industry and Trade and the Industry and Trade Services of localities where they conduct business as prescribed in their tobacco product trading licenses (for traders that directly purchase tobacco products from tobacco product-supplying enterprises and sell these products in two or more provinces) or the Industry and Trade Services of the localities where they are headquartered as prescribed in their tobacco product trading licenses (for traders that sell tobacco products in one province) .

4. Tobacco product retail traders shall send biannual and annual reports within 10 days after the end of the reporting period on their business results to the licensing district-level Industry and Trade Bureaus .

X. VALIDITY TERMS; MODIFICATION, RENEWAL OR WITHDRAWAL OF ELIGIBILITY CERTIFICATES AND TOBACCO PRODUCT MANUFACTURING AND TRADING LICENSES AND LICENSING FEES

1. Validity terms

Tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses and tobacco product trading licenses are valid for five (05) years from the date of grant.

2. Modification of tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses and tobacco product trading licenses

a/ If there are any changes in the contents of their tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses or tobacco product trading licenses, organizations and individuals shall compile and send dossiers to the licensing state management agency in charge of industry and trade.

b/ Such a dossier comprises:

- An application for modification;
- The original (or a valid copy) of the granted certificate or license;
- Documents justifying the need for the modification.

c/ Competence for and order of modification comply with the guidance in this Circular.

3. Renewal

a/ If tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses or tobacco product trading licenses are lost, torn, burnt or otherwise destroyed or 30 days before the expiration of the certificates or licenses, the concerned organizations or individuals shall compile and send dossiers to the licensing state management agency in charge of industry and trade;

b/ A dossier of application for renewal of a tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing license or tobacco product trading license which is lost, torn, burnt or otherwise destroyed comprises:

- An application for renewal;
- The original or a copy of the granted certificate or license, if any.

c/ Dossier of application for renewal of an expired tobacco raw material trading eligibility certificate, tobacco raw material processing eligibility certificate, tobacco product

manufacturing license or tobacco product trading license.

Licensed organizations or individuals shall compile dossiers as guided in this Circular for cases of first-time grant;

d/ Competence for and order of renewal comply with the guidance in this Circular.

4. Withdrawal of tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses and tobacco product trading licenses

Organizations and individuals shall have their tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses or tobacco product trading licenses withdrawn if they violate regulations on production and business conditions prescribed by law.

5. Licensing fees

Production and business organizations and individuals that are granted tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses or tobacco product trading licenses shall pay fees according to the Ministry of Finance's regulations.

IX. IMPLEMENTATION PROVISIONS

1. Organization of implementation

The Light Industry Department; the Domestic Market Department and the Market Management

Department shall, within the ambit of their functions and tasks, assume the prime responsibility for, and coordinate with units under the Ministry of Industry and Trade in:

- Organizing the receipt of dossiers, examining, appraising and submitting to the Ministry's leadership for approval policies on investment in tobacco production and grant of tobacco raw material processing eligibility certificates and tobacco product manufacturing and trading licenses under its competence as prescribed in this Circular;

- Organizing, guiding and examining organizations and individuals in the implementation of the provisions of the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trade, this Circular and relevant provisions of law on tobacco production and trade.

b/ Provincial-level Industry and Trade Services shall, within the scope of their functions and tasks, assume the prime responsibility for, and coordinate with relevant agencies in their localities in:

- Organizing the receipt, examination and appraisal of dossiers and grant of tobacco raw material trading eligibility certificates and tobacco product wholesale trade (wholesale agency) licenses under their competence as prescribed in this Circular.

- Organizing, guiding and inspecting district-level Industry and Trade Bureaus in the grant of tobacco product retail trade (retail agency) licenses as prescribed in this Circular,

- Organizing, guiding and inspecting local organizations and individuals in the implementation of the provisions of the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trade, this Circular and relevant legal provisions on tobacco production and trade

2. Handling of violations

Organizations and individuals that commit acts of violation of this Circular and relevant provisions of law shall, depending on the severity of their violations, be disciplined, administratively sanctioned or examined for penal liability. If causing damage, they shall pay compensations therefor according to law.

Cadres and civil servants who abuse their positions and powers to act in contravention of this Circular shall, depending on the severity of their violations, be administratively sanctioned or examined for penal liability in accordance with law.

3. Implementation effect

This Circular takes effect 15 days after its publication in "CONG BAO." To annul the Trade Ministry's Circular No. 30/1999/TT-BTM of September 9, 1999, guiding the trading in home-made cigarettes and the Industry and Trade Ministry's Circular No. 001/2007/TT-BTC of August 29, 2007, guiding the implementation of a number of articles of the Government's Decree No. 119/2007/ND-CP of July 18, 2007, on tobacco production and trade.

4. Transitional provisions

Within 90 days after the effective date of this Circular, if organizations and individuals currently manufacturing or trading in tobacco products with or without tobacco raw material trading eligibility certificates, tobacco raw material processing eligibility certificates, tobacco product manufacturing licenses or tobacco product trading licenses under previous legal provisions satisfy all the conditions specified in this Circular and wish to continue their production and business, they shall submit dossiers of application for a tobacco raw material trading eligibility certificate, tobacco raw material processing eligibility certificate, tobacco product manufacturing license or tobacco product trading license. Organizations and individuals may continue their operation pending the state management agencies in charge of industry and trade grant or refuse to grant such a certificate or license.

b/ The tobacco product trading network plannings shall be applied no later than January 1, 2010.

5. The Ministry of Industry and Trade shall elaborate and approve the planning on the tobacco product wholesale trading network nationwide and guide and authorize provincial-level People's Committee presidents to elaborate and approve plannings on tobacco product wholesale and retail networks in their respective localities.

6. Provincial-level People's Committees shall direct provincial-level Industry and Trade Services in organizing the implementation of this Circular, work out plans on elaboration and finalization of plannings on tobacco product wholesale and retail

networks in their respective localities before July 7, 2009, in order to guide traders to implement them; organize the grant of tobacco raw material trading eligibility certificates and tobacco product trading licenses and inspect and handle violations of law in tobacco product trading; report the results of implementation and difficulties and problems to the Ministry of Industry and Trade for supplementation and adjustment.

For the Minister of Industry and Trade

Vice Minister

BUI XUAN KHU

Appendix

(To the Industry and Trade Ministry's Circular No. 14/2008/TT-BCT of November 25, 2008)

LIST OF SPECIALIZED TOBACCO MACHINERY AND EQUIPMENT

I. CHAIN FOR PROCESSING TOBACCO RAW MATERIALS

A. Stage of processing tobacco leaves

1. Leaf tip cutter
2. Moisturizing cylinder
3. Leaf fermentation chamber (storing and

fermentation silo)

4. Leaf heat-dryer (heat-drying, cooling, softening)

5. Leaf load sorter and compressing system

B. Stage of processing tobacco stems

1. Cylinder for moisturizing stems for the first time

2. Cylinder for moisturizing stems for the second time

3. Stem-leaf separating system

4. Stem heat-dryer (heat drying, cooling, softening)

5. Stem sorter and cleaner

6. Stem bale weighing and pressing system

II. CHAIN FOR PROCESSING TOBACCO SHREDS

A. Leaf stage

1. Vacuum steaming equipment

2. Leaf tip cutter

3. Leaf moisturizing cylinder

4. Raw material feeding cylinder

5. Leaf fermentation chamber (storing and fermentation silo)

6. Metal detector

7. Leaf shredder

8. Shred expansion equipment

9. Leaf heat-dryer (heat-drying, cooling,

softening)

10. System of scales

B. Stemming stage

1. Stemming machine

2. Cylinder for moisturizing stems for the first time

3. Stem fermentation chamber (stem storing and fermentation silo)

4. Cylinder for moisturizing stems for the second time

5. Stem mill

6. Stem shredder

7. Stem expansion equipment

8. Stem heat dryer

9. Stem separator

10. Stem fermentation chamber (stem shred fermentation silo)

11. System of scales

C. Shred blending stage

1. Flavor sprayer

2. Shred fermentation chamber (shred fermentation silo)

3. Shred conveying system (aerodynamic or mechanical)

III. CHAINS FOR PROCESSING TOBACCO FLAKES AND OTHER SUBSTITUTES FOR MANUFACTURE OF TOBACCO PRODUCTS

IV. MACHINERY AND EQUIPMENT FOR CIGARETTE MANUFACTURE

A. Stage of rolling cigarettes and fitting filter tips

1. Cigarette rolling machine
2. Filter tip fitting machine
3. Tray feeding machine

B. Packaging stage

1. Pack packaging machine
2. Pack cellophane wrapping machine
3. Carton packaging machine
4. Carton cellophane wrapping machine
5. Carton boxing machine.