

Lebanese University

Legal Informatics Center

Import and Sale Licensing System for E-cigarettes and Electronic Hookahs in Lebanon

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Index

Articles (1-15)

Pursuant to Decree Number. 11217 dated 15 February 2014 (government document); Decree Number 16 Laws and Regulations dated 30 January 1935; the Legislative Decree Number 151 dated 12 June 1959 (State Oversight Organization for Monopoly Management); The Proposal by *The Regie Libanaise des Tabacs et Tombacs (Regie)* as stated in its Decree Numbered 3067 dated 11 August 2015; after consulting the Director General of Finance as was forwarded in his Referral Number 12128 dated 31 August 2015; and after consulting the Government Commissioner as stated in their Decree Numbered 341 dated 11 August 2015; the following has been decided:

Articles

Article 1

Article 1: Definitions: To apply the provisions of this Resolution, unless indicates otherwise the terms and phrases listed below are defined as follows: The Minister: is The Minister of Finance. The Supervisory Authority: is the Ministry of Finance. The Administration: is *The Regie Libanaise des Tabacs et Tombacs (Regie)*. The Producer: a foreign company producing e-cigarettes and electronic hookahs. A New Item (or Derivative): is an item that has been on the market for less than one full year. An Old Item (or Derivative): is an item that has been on the market for more than one year.

(A Derivative) Item: is an item that bears the name of the original item but has different specifications. An Agent: is a person authorized by the producer to represent them in Lebanon and through whom they market their items. A Representative: is a person who represents the producer when the latter directly markets their items in Lebanon, that is, without requiring authorization from any agent. The term "e-cigarette" may be a tobacco-free item that releases a vapor containing nicotine. An e-cigarette may be a single use version or it may be a one that can be recharged with a single-use cartridge. The term e-cigarette can also refer to a "heated tobacco product" consisting of a processed tobacco product that emits an inhaled aerosol produced by heating tobacco without combustion. The term "electronic hookah" refers to a tobacco-free item that releases a vapor containing nicotine. An electronic hookah can be a single use version or one that can be recharged with a single-use cartridge.

Article 2

Article 2: Licensing requirements: 1. The product for which import licensing is being requested must consist of excellent quality e-cigarettes and electronic hookahs in terms of flavor, [quality of] manufacturing, form, and any other relevant specifications. The Administration has full discretion when determining the nature of these specifications. 2. The Producer or Agent must provide a laboratory analysis report issued by a certified laboratory located in the country of origin, or an analysis report issued by the manufacturer's laboratory. This laboratory, at its own risk, will be responsible for determining the percent of nicotine present in [the item] in accordance with the standards stipulated in the prevailing regulations. The analysis must be accompanied by a statement issued by the same laboratory, or by the manufacturer, attesting to the fact that the item does not contain any prohibited substances. 3. In the license application, The Producer, their Agent, or Representative must commit to an annual purchase of a certain volume of Lebanese tobacco leaves, beginning in the second year of the item's import. This purchase will be in accordance to the standards and prices designated by the Administration. The Administration will designate these utilizing a principled based approach while considering [market] prices. The Producer or Agent will commit to purchasing a volume of Lebanese tobacco leaf where the price of this volume will be equal to the maximum sale price of the manufactured items sold to the Administration in the same calendar year. Furthermore, the shares of the Lebanese tobacco leaves will be distributed to producers as a percentage of the total tobacco volume. The distribution percentage will be determined on the basis of the volume sold by the Administration, and calculated in accordance to the purchase price in the same calendar year.

Article 3

Article 3: Submitting a license application: A. The license application will be submitted by the Producer directly, by their Agent or Representative, where all parties will jointly assume the full responsibilities and obligations required by the Administration. The Agent must be a legal person registered in Lebanon in accordance with the applicable regulations. The application must be accompanied by two notarized copies of the company's commercial registration and its articles of incorporation.

B. The licensing application shall list all of the item or its derivative's technical specifications as an attachment. These specifications include the shape, length, taste, weight, packaging, container, and any other known specifications. In addition, the application should list the delivery rates allowing the Administration to research marketing feasibility and compare the item to similar items [on the market]. C. The Producer must submit samples of the items they intend to introduce [to the market] to the Administration, to enable the Administration to conduct an examination of these items. D. In order to make a determination concerning the application, the Administration will observe fulfillment of the licensing requirements. However, it will also take into consideration other factors, such as market demands, and the element of competition.

Article 4

Article 4: Granting the license: A license will be granted through decision from the Administration's Director General, after receiving approval from the Administration's Government Commission. The decision will include the item's specifications and any conditions associated with its importation.

Article 5

Article 5: Required fees: fees for the first item will be fifteen thousand US dollars or an equivalent sum in Lebanese currency. Each Derivative will cost an additional five thousand US dollars or an equivalent sum in Lebanese currency. The Producer may replace one item or derivative with another item or derivative, without incurring any additional fees, once the Producer permanently ceases the importation of the replaced original item or its derivative. All paid entry fees are non-refundable under any circumstances

Article 6

Article 6: Procurement method: Items may be procured and imported by means of CIF or FOB as determined by the Administration. The honor system may be utilized for procurement, allowing the cost of the merchandise to be paid for after sale of the merchandise in Lebanese markets. If a company requires a bank guarantee as a method of payment, it must assume all costs and expenses stemming from for such a guarantee. Furthermore, the payment grace period may not be less than 90 days after the date that the lading bill was issued.

Article 7

Article 7: Required guarantees: The Producer, their Agent, or Representative must submit letters of guarantee to the Administration as follows: 1. For Old Items and their Derivatives: The Producer, Agent, or Representative must submit a guarantee letter to the Administration for each item and its derivatives.

This letter must reflect the Administration's sales profits that were incurred from the annual sale of 100 liters of liquid nicotine, 300 kilograms of a heated tobacco product, or a million heated tobacco sticks. This letter will be amended according to any adjustments affecting to the Administration's profits. In the event that sales of an item and its derivatives decline to a level below the minimum limit listed above, the Administration will deduct the incurred loss from the letter of guarantee. At this point, the importation of the item and/or its derivative will be tentatively halted. If, however, the Producer wishes to continue to marketing aforementioned item, they must submit an additional guarantee to cover the costs of the customs fees and value added tax (VAT). Furthermore, the provisions require that the port fees be deducted [from the guarantee] for each shipment of any merchandise not discharged after a period of six months from its arrival date. 2. New Items: for items imported utilizing the honor system: the Producer, their Agent, or Representative must submit a letter of guarantee to the Administration covering customs fees, value added tax (VAT), port fees and any other associated expenses. These fees will apply to each shipment sent to the Administration. As far as items imported utilizing a bank guarantee or bank credit: the Producer, their Agent, or Representative must submit a letter of guarantee to the Administration that includes, in addition to the fees mentioned above, the value of the merchandise. For items imported utilizing the honor system, the Administration maintains the right to collect customs and port fees, and value added taxes (VAT) from the value of the letter of guarantee on any stock remaining in its warehouses. This will be applicable after six months from the order's date of arrival to the warehouse. As far as items imported utilizing a bank guarantee or a bank credit, the value of the merchandise will be collected in addition to the aforementioned fees. 3. It is possible, at the Producer's request, to merge two guarantees into a single one, with the proviso that the value of the single guarantee is equal to the total value of the two [merged] guarantees. One year after New Item is offered on the market, it will be considered an Old Item, and the terms observed for Old Items shall apply.

Article 8

Article 8: Importation of items designated for special occasions, holidays, etc.: each Producer may, on an annual bases utilize the amount of 2% (a maximum of two percent) of the company's overall annual sales, to import items designated for holidays, special occasions, etc. after obtaining approval from the Administration. The Administration must request the volume of these items as an importation condition. Also, these items must fulfill all regulatory terms regarding the declaration of the country of origin, any health warnings. These items will be subject to various fees and taxes. The Administration will distribute 50% (fifty percent) of the total volume to the sales directors. It will allocate the remaining volume, amounting to fifty percent (50%), to the Producer, their Representative, or Agent.

Article 9

Article 9: Requesting a purchase price amendment: the Producer may not increase an item's price without obtaining the Administration and the Supervisory Authority's approval. The Administration will determine the new sale price and announce it to the public, after conducting research and granting approval of the price change. This price change will apply to any volume of the item stored in both warehouses and at the port. This price change will also apply to any items enroute, even when shipped at the original price. This may occur, provided that the volume from which the Administration benefits, due to the price difference, in the event of a price increase, will be equal to the item's sales volume for a six-month period. This volume will be calculated on the basis of the overall monthly rate of the Administration's sale of the Producer's items within a 12-month period prior to the price increase date. If the Producer intends to decrease their prices, the reduced prices shall apply to the volume [of the item] referred to in the previous paragraph, and the Producer shall pay the Administration the difference between the old sale price and the [new] lower sale price for the aforementioned volume. Furthermore, the producer will continue to be responsible for any required fees.

Article 10

Article 10: Distribution: distribution of e-cigarettes and electronic hookahs in Lebanese markets is limited to sales directors. However, the Producer, their Agent, or Representative are permitted to engage in the following: make marketing offers through sales directors, provided that the sale price of the imported items offered does not fall below the minimum sale price specified by the Supervisory Authority; withdraw a certain volume of the item as needed from the stock after the prices fall below the minimum mentioned as stated above in Article 7; distribute such items to the markets, however, the Administration maintains discretionary authority to determine the volume of these items; to withdraw a certain volume of the item as needed, during the first year the item is offered [on the market], and to distribute this volume to the market. The Administration also maintains discretionary authority to determine this volume; to purchase specific amounts of the item from sales directors and to distribute these at points of sale, where the item is not available, provided that the item is sold at a price that is no less than the delivery price set by sales directors, plus the official commission. Last, The Administration may prevent the Producer, their Agent, or Representative from benefiting from the arrangements mentioned in this article if the conditions granting distribution permissions are violated.

Article 11

Article 11: Orders: The order volume, and arrival date will be determined by an agreement between the Administration on one hand and the Producer, their Agent, or Representative on the other. This agreement will be established based on the expected sales volume. Furthermore, if the Producer ships their items in a manner that violates the established shipment schedule, they shall assume responsibility for any losses resulting from this violation. These expenses could include port fees or interest incurred on funds frozen due to the excessive inventory.

Article 12

Article 12: Receiving a Lebanese tobacco share: 1. The Producer, their Agent, or Representative must: send their experts to examine the allocated volume of tobacco as soon as the arrival and price notifications are received. Also, they must, within three months from the date of receiving the screening completion notification of the volumes mentioned above, devise a shipping plan for the [tobacco] bales and other items. These must have an affixed tracking and

attribute identifying bar code. The items mentioned in the two paragraphs above must be shipped within a maximum of one month after the date the notification of completing the planning actions was received. Furthermore, at the end of the grace period specified above, a sum equal to 1% (one percent) of the price of the merchandise must be deposited. This deposit will act as a storage allowance in the case that the producer is unable to fulfill their obligations. The deposit will be incurred for each month (or partial month) of delay, regardless if the delay was the result of the attribute transmitting bar code or merchandise shipping. The deposit will be required unless the delay is due to an action by the Administration. 2. In the case where a Producer refuses to accept the volume of tobacco assigned to them, the Administration may revoke all granted licenses. 3. Any Producer, their Agent, or Representative whose sales fall below 1% (one percent) of the value of the Administration's sales, must pay the Administration a certain percentage of the value of the Lebanese tobacco share they were required to purchase, in accordance with the criteria established in Article 2 of this Resolution. This percentage shall be determined by the Supervisory Authority based on the recommendation of the Administration at the beginning of each season.

Article 13

Article 13: Revoking a license: In addition to the revocation clauses mentioned in Article 12, Paragraph 2 above, the Administration may revoke a license in the following cases: 1. If the Producer, their Agent, or Representative directly produces or sells an item carrying a Lebanese health warning in any country other than Lebanon. 2. If it is proven that the Producer, their Agent, or Representative, engaged in acts of smuggling or fraud, either directly or through third parties. In the two cases mentioned above, the merchandise present in the Administration's warehouses will be confiscated, along with all financial guarantees, in addition to revoking the license. Furthermore, the Administration will prohibit the Producer from importing any items into Lebanese markets. These actions will be taken without prejudice, allowing the Administration to initiate legal proceedings in order to retain its rights. 3. The license will be revoked if a decision was made to import a licensed item, without fulfilling the necessary requirements allowing the import within the maximum period of one year. This period begins on the date of the license was issued, unless substantial grounds for failing to fulfil these requirements exist. Determining the validity of the grounds for delinquency will be decided at the Administration's discretion.

Article 14

Article 14: Miscellaneous provisions: 1. Applying the provisions of this Resolution will be based on sales statistics issued by the Administration. 2. If the merchandise is damaged for any reason (e.g. a manufacturing error or a discharge failure) the Producer, their Agent, or Representative will be responsible for all costs, expenses, port and customs dues, damage expenses, etc. 3. The sale prices of electronic cigarettes and hookahs will be determined according to a formula established by the Minister of Finance. This formula will be proposed by the Administration. The Minister will then consult the Government Commissioner and the Director General of Finance. 4. The Administration shall be responsible for customs, domestic consumption fees, value added tax (VAT), port fees, and warehouse shipping costs. Every package must include, in accordance to the applicable provisions, the name of the country of origin and approved health warning. 5. The Producer or their Agent should be cautioned against entering into any agreement to sell any remaining items, to any entity regardless of affiliation.

Furthermore, they should be cautioned against offering or selling any items belonging to other producers. 6. [The permission to import] any out-of-stock item or derivative, for which no order has been placed within a one-year period will be voided. (That is, one year after the date of withdrawal of the stock).

Article 15

Article 15: The Resolution shall be published in the Official Gazette and reported where necessary, and it shall take effect immediately upon its issue.

Beirut, 2 October 2015

Minister of Finance

Ali Hasan Khalil