

Actualités

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KPMG Algérie

IMPORTS AND ALGERIAN SHAREHOLDERS

Executive Decree No. 09-181 of 12 May 2009 laying down the conditions for imports of raw materials, products and goods purchased for resale in the same condition as received by corporations whose members or shareholders are foreigners

The above-referenced decree, published in the Official Journal No. 51, dated September 6, 2009 and adopted under the provisions of the 2009 Finance Act, amends the decree of May 12, 2009 on conditions for conducting activities of imports of raw materials, products and goods purchased for resale by corporations whose members or shareholders are foreigners.

Today, 4 October, 2009, corporate requirements were clearly outlined. Indeed, a note of the Algerian Trade Registry (CNRC), dated 30 September, 2009 (No. 4305/2009) was sent to local branches of the CNRC, CNRC representatives from ANDI and management heads of local structures.

The modifications of the decree are as follows:

1. Article 2 of Executive Decree 09 - 181, dated May 12, 2009 has been modified. The new Article 2 stipulates that companies engaged in commercial activities of importing raw materials, products and goods for resale by corporations incorporated under Algerian law and whose members or shareholders are foreigners may perform these activities only if at least 30% of their capital is held by individuals of Algerian nationality or resident legal entities fully owned by resident shareholders of Algerian nationality. The article introduces the concept of residence in the provisions as a qualifying criterion for partners eligible to establish these corporations: resident individuals of Algerian nationality and legal entities fully owned by shareholders who are resident of Algerian nationality.

2. Articles 5, 6, and 7 of Executive Decree n° 09 – 181, which were repealed.

The former Article 5 provided that commercial companies engaged in such activities already included in the trade register, were required to proceed before December 31, 2009 to change their status and their trade register in order to adhere to the provisions of the decree.

The former Article 6 provided that the request to amend the trade register of such companies could only be handled by the relevant services of the National Trade Registry, upon presentation of statutes in accordance with the provisions of Article 2 of the former Executive Decree.

Article 7 provided that following the deadline of December 31, 2009, the trade register held by these companies and considered non-compliant with the provisions of this decree, would not apply to importing of raw materials, products and goods purchased for resale.

The afore-mentioned note states that "shall be accepted henceforth applications to apply modifications to trade registers (primary and secondary) of companies that operate in imports of raw materials, products and goods purchased for resale, and whose partners or shareholders are foreigners." It expressly stipulates that these provisions apply only to companies registered in the Trade Register before the enactment of Additional Finance Act for 2009.

Companies already registered before the Additional Finance Act for 2009 may henceforth proceed to changes in the trade register even if they do not fulfil the 30% resident shareholder ownership condition.

Companies created after the Additional Finance Act for 2009, however, must fulfil the 30% resident shareholder ownership condition.

Appendix:

**Executive Decree No. 09-181 of 12 May 2009 fixing the conditions for importing raw materials, products and goods purchased for resale by corporations whose members or shareholders are foreigners amended by Executive Decree No. 09-296 of September 6, 2009
(consolidated version by KPMG Algeria)**

The Prime Minister

On the report of the Minister of Commerce,

Given the Constitution, particularly Articles 85-3 ° and 125 (paragraph 2);

Considering Ordinance No. 75-59 of September 26, 1975, as amended and supplemented on the Commercial Code;

Considering Ordinance No. 01-03 of Aouel Jumada Ethania 1422 corresponding to August 20, 2001, as amended and supplemented on the development of investment, in particular Article 4a;

Considering Ordinance No. 03-04 of 19 Jumada El Oula 1424 corresponding to July 19, 2003 on the general rules applicable to importing and exporting goods;

Considering Law No. 04-02 dated 5 Jumada El Oula 1425 corresponding to 23 June 2004 laying down general rules applicable to commercial practices;

Considering Law No. 04-08 of 27 Jumada Ethania 1425 corresponding to August 14, 2004 on conditions for conducting business, including Article 24;

Considering Ordinance No. 05-05 of 18 Jumada Ethania 1426 corresponding to July 25, 2005 on the supplement to the 2005 Finance Act including Article 13;

Considering Ordinance No. 09-01 of 29 Rajab 1430 corresponding to July 22, 2009 on the supplement to the 2009 Finance Act, including Article 58;

Considering Law No. 07-12 of 21 Dhu El Hidja 1428 corresponding to December 30, 2007 on the 2008 Finance Act, including Article 61;

Considering Law No. 08-11 of 21 Jumada Ethania 1429 corresponding to June 25, 2008 on the conditions of entry, stay and movement of foreigners in Algeria;

Given presidential decree n ° 09-128 of 2 Jumada El Oula 1430 corresponding to April 27, 2009 on the reappointment of the Prime Minister;

Given presidential decree n ° 09-129 of 2 Jumada El Oula 1430 corresponding to April 27, 2009 on the reappointment of members of Government;

Given Executive Decree No. 97-41 of 9 Ramadhan 1417 corresponding to January 18, 1997, as amended and supplemented, on the conditions of registration with the Trade Registry;

Given Executive Decree No. 09-181 of 17 Jumada El Oula 1430 corresponding to May 12, 2009 fixing the conditions for importing raw materials, products and goods purchased for resale by corporations whose partners or shareholders are foreigners;

After approval of the President of the Republic;

Decrees:

CHAPTER I

GENERAL PROVISIONS

Article 1st - Pursuant to Article 24 of Law No. 04-08 of 27 Jumada Ethania 1425 corresponding to August 14, 2004 and Article 13, amended, Ordinance No. 05-05 of 18 Jumada Ethania 1426 corresponding to July 25, 2005, mentioned above, this Order is to establish conditions for conducting activities to import raw materials, products and goods purchased for resale by corporations incorporated under Algerian law whose partners or shareholders are foreigners.

Art. 2. - Commercial companies listed in Article 1 above, whose partners or shareholders are foreigners, may only engage in the business of importing raw materials, products and goods purchased for resale, if at least 30% of their capital is held by resident individuals of Algerian nationality or legal entities whose total assets are held by resident shareholders or partners of Algerian nationality.

Art. 3. - Companies mentioned in section 1 above are those defined by Article 13, as amended, Ordinance No. 05-05 of 18 Jumada Ethania 1426 corresponding to July 25, 2005, above.

CHAPTER II

CONDITIONS FOR REGISTRATION WITH THE TRADE REGISTRY

Art. 4. - Besides the documentation required in accordance with regulations in force and registration in the trade register, companies referred to in Article 1 above are also required to submit articles of incorporation in compliance with section 2 above.

These provisions are applicable upon the publication of this decree in the Official Journal.

CHAPTER III

S.5. - Repealed

Art. 6. - Repealed

CHAPTER IV

FINAL PROVISIONS

Art. 7. - Repealed

Art. 8. - Commercial companies referred to in Article 1 above, can not make any direct debit to their import operations as if they have copies of their status and their extract from the Commercial Register in accordance with the provisions of this decree.

Art. 9. - Any violation of the provisions of this Order will be found and punished in accordance with laws and regulations and in particular, the provisions of Law No. 04-02 dated 5 Jumada El Oula 1425 corresponding to June 23, 2004 and the Law No. 04-08 of 27 Jumada Ethania 1425 corresponding to August 14, 2004, afore-mentioned.

Art. 10. - The modalities for implementing the provisions of this decree may be, as appropriate, specified by order of the Minister of Commerce.

This decree will be published in the Official Gazette of the People's Democratic Republic of Algeria.

Algiers, 12 Ramadhan corresponding to September 2, 2009.

Ahmed Ouyahia

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