

## News

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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.**

#### Summary

The decree specifies, in accordance with the Prime ministerial instruction of 22 December 2008, the conditions for imports of goods purchased for resale by corporations whose members or shareholders are foreigners. In essence, it stipulates that:

- These measures apply to companies that import raw materials, products and goods **to be purchased for resale in the same condition as received**, and whose members or shareholders are foreigners. This theoretically also includes companies with mixed activities.
- **At least 30% of the share capital** in these companies must be held by individuals of Algerian nationality and/or legal entities, **all of whose partners or shareholders are of Algerian nationality**.
- For new registrations, the measure is applicable **immediately**.
- For existing companies, they have to comply **by 31 December 2009**. Modes of compliance have not been stipulated but articles of association in compliance must be submitted in accordance so that application to amend the register is valid.
- After this date, trade registers that are non-compliant shall no longer be used for imports.
- A **trade register and articles of association in compliance** shall henceforth be required for the domiciliation of import transactions.

#### Detailed Comments

A decree on the Algerian shareholding in import companies was recently issued. It was announced in a Prime ministerial instruction issued on 22 December 2008 concerning the "remedial and regulatory measures concerning foreign trade activity."

Details of the content are as follows:

## 1. Reference texts

Article 1 of Decree specifies that it is made under the provisions of Article 24 of Law No. 04-08 on the conditions governing commercial activities, and the amended Article 13<sup>1</sup> of Ordinance No. 05-05, of 25 July 2005 on the supplementary budget law for 2005.

Article 24 of Law No. 04-08 provides that *"the conditions and modalities in exercising any regulated activity or profession subject to registration procedures are based on rules set by the relevant governing laws or regulations."*

Article 13 of Ordinance No. 05-05 introduced the requirement of a share capital minimum of twenty (20) million dinars fully paid in for *"imports of raw materials, products and goods purchased for resale in their original condition (...) "*. The amendment by the 2008 Finance Act was not meant to supersede the article but to amend the first paragraph thereby removing the reference to minimum capital, and replacing it with the requirement that the activity carried out by a company be verified by a statutory auditor. In addition, the second (unmodified) paragraph of this article provides that *"other conditions related to the particular specifications of the premises on which the activity will be carried out may be provided by regulation."*

## 2. Purpose and companies concerned

The purpose of the decree, as defined in Article 1 of the Decree is to establish the operating conditions for imports of raw materials, products and goods purchased for resale in the same condition by corporations whose members or shareholders are foreigners.

The companies targeted are those that perform the activities listed above<sup>2</sup>. Furthermore, Article 3 of the decree specifies that *"the companies mentioned in Article 1 above are those defined in Article 13, amended, Ordinance No. 05-05 (...) "*.

The decree does not target companies engaged in mixed activities i.e. both producing the goods or services and importing goods for resale. This is the case for a number of companies, for example, to complement a range of products, when local production is not yet possible because the company has not yet implemented its entire production capacity. As the text does not refer to companies that perform only imports of goods for resale in their original state, but all import activities for resale undertaken by commercial firms whose partners or shareholders are foreign, it would seem that this provision is also applicable in the case of mixed activities.

## 3. Obligations of imports companies with foreign capital

Article 2 of the decree lays down the principle that these companies *"may not carry out activities related to imports of raw materials, products and goods purchased for resale in their original condition, unless at least 30% of their capital is held by individuals of Algerian nationality or legal entities, all of whose partners or shareholders are of Algerian nationality."*

The salient points of the article are as follows: first, the 30% share ownership is a minimum threshold. The article has not included ownership requirements of the 30% stake concerning several people.

In the case of individuals, the owner of the 30% stake must be of Algerian origin.

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<sup>1</sup> Amendment introduced by Article 61 of the 2008 Finance Act.

<sup>2</sup> Executive Decree No. 09-181, section 2.

In the case of legal entities, they must, themselves be wholly owned by people of Algerian nationality. This means that if the 30% stake is held by a company incorporated under Algerian law and whose place of effective management is located in Algeria but whose shareholders, even minority shareholders, are foreigners, the requirements of the decree shall be considered not to have been met.

The decree does not cover the case where the legal entity that owns the 30% stake in the imports company is itself owned by other persons. It appears, however, that the shareholders must ultimately be Algerian.

#### **4. Application of these provisions**

##### For new companies

Article 4 provides that with any application for commercial registration, imports companies must present articles of association in compliance with regulations, i.e. showing a 30% Algerian participation. This measure is applicable immediately for all new registrations starting from the date of publication in the Official Journal.

##### For existing companies

Article 5 provides that imports companies that are already registered must ensure compliance of their articles of association and trade register with regulations before 31 December 2009. The procedures for compliance are not provided, leaving the choice to enterprises. In all cases, articles of association in accordance with Article 2, i.e. showing a 30% minimum Algerian share ownership, must be submitted to the trade registry. Otherwise, the change request is considered null.

#### **5. Consequences of non-compliance with these provisions**

Beyond this period, trade registers that are not in compliance with regulations may not be used for imports activities<sup>3</sup>. Furthermore, to carry out banking domiciliation (debit operations?) procedures for imports, these companies must present articles of association and trade registers in compliance with the provisions of the decree<sup>4</sup>. Although this is not explicitly stated, we understand that this will apply to companies already registered with effect from 1 January 2010.

Finally, the Decree refers to Law No. 04-08 on the conditions governing the performance of commercial activities with regard to the recognition and the sanctions for non-compliance with the decree. This text provides for penalties for non registration of a trader with the trade registry, misrepresentation or falsification, failure to update the trade register or practicing an activity unrelated to the purpose stated in the register trade.

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<sup>3</sup>Executive Decree No. 09-181, Section 7.

<sup>4</sup> Executive Decree No. 09-181, Article 8.

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