

**Law n° 2009-69 dated 12 August 2009, relating to the distribution trade (1).**

In the name of the People,

The Chamber of Deputies and the Chamber of Advisors having adopted,

The President of the Republic enacts the following law :

**CHAPTER ONE**

**General provisions**

Article one - The law herein sets the rules governing the practice of distribution trade according to which freedom is the principle and the authorization is the exception. It aims at modernizing and developing the commercial sector and guarantying the equilibrium between the different sector interveners.

Art. 2 - According to the law herein, any activity practiced as professional related to products purchasing in order to be resold wholesale or on retail is deemed distribution trade.

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(1) Preparatory works:

Discussion and adoption by the Chamber of Deputies during its session held on 21 July 2009.

Discussion and adoption by the Chamber of Advisors during its session held on 30 July 2009.

Any profit seeking activity usually practiced and related to products purchasing in order to be resold is subject to the provisions of the law herein.

Any trader buying products or goods in bulk from national producers or through import in order to resell them in bulk is deemed wholesale dealer.

Any trader selling products and goods bought from a wholesale dealer, a producer or through import is deemed retail dealer.

## CHAPTER II

### Practicing the activity of distribution trade

Art. 3 - Without prejudice to the provisions of article one of the law herein, practicing some commercial activities may be organized by specifications approved by order of the Minister in charge of trade and including notably the technical conditions to practice the activity.

Art. 4 - The dealer shall notify to the Ministry in charge of trade within one month that he starts the activity. He shall inform the Ministry within the same deadline of any change relating to the activity. The notification shall include the promoter's name, the kind of the activity, and the address of the premises, their area and the registry number in the register of trade.

For the activity of distribution trade through electronic means, the notification is made by lodging a copy of the accommodation contract within one month as of entering into the contract. Any modification of the website shall be notified within the same deadline.

Art. 5 - Without prejudice to the special legislation, the activity of the distribution trade is practiced wholesale or retail.

In case it is practiced wholesale and retail, the separation of the wholesale and retail premises is compulsory as well as keeping separate accounts.

Art. 6 - Every dealer shall put his sign on the front of all the establishments and on the website. The said sign shall notably indicate the trade name and the sector of activity.

These indications shall be put on all his accounting, trade and administrative documents. The natural persons whose annual turnover does not exceed a level set by decree are exempted from this duty.

Art. 7 - At the production level and as a producer, the producer may not deal wholesale or retail as indicated by the law herein.

The provisions of the article herein do not apply to the agricultural producers and to handicraftsmen to sell their own production.

However, the producer may directly sell to the consumer according to the terms and conditions set by decree.

In addition, the Minister in charge of trade may, for cyclic reasons related to public interest or on the occasion of commercial vents, give to the producers exceptions to sell directly their own production to the consumers.

Art. 8 - The dealer shall guarantee to the consumer the after-sale services and provide the spare parts necessary for the marketed products and goods, in accordance with the regulations in force.

Art. 9 - The itinerant retailing may be practiced after getting an itinerant retailer certificate. The terms and procedures of practicing this activity shall be set by joint order of the Minister of the Interior and Local Development and the Minister in charge of trade.

According to the law herein, any natural person not having permanent business premises and buying products as a professional in order to resell them in places intended for the purpose and using equipments that may be dismantled or carried is deemed itinerant retailer.

## CHAPTER III

### Shopping centres

Art. 10 - Any establishment of a shopping centre exceeding 300m<sup>2</sup> when it is built or after being extended or the area of which is intended for selling exceeds 1500m<sup>2</sup> is subject to a prior authorization delivered in accordance with article 11bis of the territorial development and urbanism code.

Any area or two-storied or more building, adjusted and composed of many independent premises intended at marketing several products and providing services is deemed shopping centre.

Art.11 - A national commission for commercial urbanism in charge of issuing an opinion on the authorizations requests provided for by article 10 of the law herein and by article 11 of the territorial development and urbanism code is established.

The composition and operating methods of the said commission are set by decree on a proposal from the Minister in charge of trade and the Minister in charge of territorial development and urbanism.

## CHAPTER IV

### Business relations

Art. 12 - The terms of payment appointed by the producers and the dealers shall not exceed the following terms:

-thirty days as of the lead time for food products,

-Ninety days as of the lead time for the household goods and electrical appliances,

-sixty days as of the lead time for the other products.

Any contrary clause is deemed void.

Art. 13 - The services provided within the scope of commercial cooperation relations shall be subject to invoicing separated from the invoice of buying the product, and shall include the kind of the service provided, the deductions granted and the cost of each product.

The following commercial services provided by the dealer to the supplier are deemed relations of commercial cooperation:

- the advertisements in the selling premises or outside,
- the presentation of the product in island,
- the sales and the promotional operations in the premises.

#### CHAPTER V

##### Franchise contracts

Art. 14 - The franchise contract is a contract through which the trademark owner grants the right of its use to a natural person or to a legal entity called franchisee, in order to distribute the products or provide services with fees.

The right of using the franchise includes the transfer of the acquired knowledge, the expertise and use of the intellectual property rights.

All the independent trades under the same trademark and according to the standard trade methods as the premises adjustment, the management methods, the display, the marketing and the sources of supply are deemed franchise system.

Art.15 - The franchise contract shall be in writing.

The franchisor shall communicate the draft and a document indicating the information relating to the franchisor and his activity within twenty days minimum before signing the contract.

The compulsory minimum terms of the contract and the minimum information that shall be included in the aforesaid document shall be set by decree.

Any contract contrary against the provisions of the article herein is void.

Art. 16 - The franchisor shall:

- be holder of the trademark,
- provide to the franchisee during the contractual relation the commercial and technical assistance and all the sincere information on the franchise system.

Art. 17 - The franchisee shall provide to the franchisor the information relating to the sale and the financial status and authorize the franchisor or his representatives to be in his premises during the usual opening or working hours.

#### CHAPTER VI

##### Purchasing groups

Art. 18 - Without prejudice to the legislation and regulations in force, any natural person or legal entity may establish a purchasing group to buy products at preferential prices and conditions for the benefit of retail or wholesale dealers who are members. It supplies the products according to their orders.

The dealer may form a purchasing group in order to buy products on his own behalf.

Art. 19 - The adherence to the purchasing groups shall be made by a written contract setting the duties of the parties and the rate of the allowance resulting to the group.

#### CHAPTER 7

##### The national council of trade

Art. 20 - A national council of trade is established. It is in charge of:

- periodically examining the position of the sector of distribution trade and issuing opinions on all the relevant matters and submitting proposals relating to the sector improvement and development,
- issuing opinions on the program of national and regional commercial events.

The compositions and the operating methods of the council are set by decree.

#### CHAPTER 8

##### Infringements and sanctions

Art. 22 - The infringements to the provisions of the law herein and its implementing texts are observed by the following officials:

- the officials of economic control appointed in accordance with the special state governing the staff of economic control, sworn and qualified for the purpose,
- the officers of the criminal investigation department mentioned in numbers 3 and 4 of article 10 of the criminal procedure code,
- the sworn official entitled by the Minister in charge of trade and belonging at least to category "A".

Art. 23 - without prejudice to the procedures specific to the officers of the criminal investigation department mentioned in article 22 aforesaid, the infringements to the provisions of the law herein and its implementing texts are observed by a report drawn up by two commissioned and sworn officials having participated personally and directly to the observation of facts making the offence.

The report shall include the seal of the department or of the administration in which practice the officers reporting the offence, their names and signatures, and the offender's declarations as well.

The offender or his representative shall sign the report if he is present when it is drawn up. In case the offender or his representative is absent when drawing the report or refuses to sign it, that shall be mentioned in the report.

The report shall also mention the date, place and kind of the observations or of the control made and indicate that the offender was informed, except he is caught in the act, of the date and place of drawing up the report and that he was conveyed by a registered letter with acknowledgement of receipt or by any means leaving written traces.

Art. 24 - All the reports, drawn up and signed by the officials mentioned in article 22 of the law herein are submitted to the Minister in charge of trade who shall submit it to the territorially competent public prosecutor.

Art. 25 - The officials in charge of observing the infringements to the provisions of the law herein are authorized, when achieving their duties, to:

- get, during the opening or working hours, in the professional premises. They may also achieve their tasks during the carriage of goods,

-make all the necessary observations and submit, upon first request and without moving, the documents, papers or books necessary for their research and observations and take certified true copies,

-seize the necessary documents mentioned in the previous paragraph or certified true copies of these documents, necessary to prove the offence or to search for the offender's accomplices, an official receipt shall be delivered for this purpose,

-make, in compliance with the legal conditions, inspections and seize documents in the residential premises, after having a prior authorization from the public prosecutor. The inspections of the residential premises and the seizure of the documents shall be made in accordance with the provisions of the criminal procedure code,

-consult and get, without breaching the professional secrecy, all the documents and information in the public administrations and enterprises and local collectivities upon a written request from the Minister in charge of trade, and this without prejudice to the secrets and information protected by the special laws.

Art. 26 – The police officers are bound, if necessary, to lend help to the officers mentioned in article 22 of the law herein in order to ensure the proper accomplishment of their missions.

Art. 27 – The officers mentioned in article 22 of the law herein, and after having disclaimed their quality, may proceed to the real-estate seizure of the products subject of infringement to the provisions of the law herein.

For this purpose, a seizure report shall be drawn-up comprising, compulsory, the following indications:

- The date, hour, day, month and year,
- The names and the quality of the officers,
- The observation place,
- The identity and the quality of the goods' holder, if necessary, the identity and the quality of the present person during the observation,
- The legal basis,
- The identification of the seized product: its name, its quality, its trademark, its packaging and if necessary, its weight, the number of lot and the date of manufacturing and validity of the product,
- The identity and the quality of the person to whom are deposited the seized products,
- The signature of the officers and the present person during the observation and, if necessary, the person to whom are deposited the seized products. In case of refusal to sign, it shall be mentioned in the report.

The report may comprise any other indication that the officers reporting an offence consider useful at the end of the enquiry.

The seized products left at the warehouse of their holder or, if necessary, in any other place chosen by the officers reporting an offence insofar as the latter meets the conditions required for the preservation of the product.

For this purpose, the agents reporting an offence are bound to deliver to the offender a receipt specifying the quality and the kind of the seized products.

Art. 28 – Is sentenced to imprisonment of 16 days to three months and liable to a fine from 500 to 5000 dinars or either sentence, anyone who tries to prevent the officers authorized to report the offences mentioned in the law herein to accomplish their tasks.

Art. 29 – The opening of a shopping centre without obtaining the authorization provided for by article 10 of the law herein, is subject to a fine from 5000 to 50 000 dinars.

Art. 30 – The non-compliance with the terms of payment, as provided for by article 12 as well as the non separated invoicing of the commercial cooperation departments provided for by article 13, are subject to a fine from 2000 to 20 000 dinars.

Art. 31 – Without prejudice to the provisions of paragraphs 2, 3 and 4 of article 7 of the law herein, is liable to a fine from 1000 to 10 000 dinars, every producer who, on the level of his enterprise of production and within this quality, practices the trading activity of marketing in bulk or in retail.

Art.32 –Anyone practicing the itinerant retailing without having obtained the card of itinerant retailer provided for by article 9 of the law herein is liable to a fine from 500 to 3000 dinars and with the seizure of the product.

Art. 33 –Every offender to the provisions of paragraph 2 of article 5 and articles 6 and 8 of the law herein is liable to a fine from 300 to 3000 dinars.

Art. 34 – Every offender to the provisions of article 4 of the law herein is liable to a fine from 100 to 1000 dinars,

Art. 35 – The public prosecutor, before starting the public prosecution, or the court before which the case is brought, may authorize the offender to ask for settlement with the Ministry in charge of trade and this as long as a final judgment has been delivered.

During the period of fulfillment of the settlement procedures and the period fixed for its achievement, the terms of limitation of the public prosecution will be suspended. The fulfillment of the settlement involves the extinction of the public prosecution and the cessation of the proceedings or the judgment or the carrying out of the sentence.

The settlement does not exempt the offender neither from the duties provided for by the law, nor from his personal liability concerning a caused damage or which will be caused to the others resulting from the committed offence.

#### Chapter 9

#### Miscellaneous provisions

Art. 36 – Every person who practices the trading activity of marketing at the publication of the law herein is bound to comply with its provisions, and this, within a deadline of six months as of the date of its publication in the Official Gazette of the Republic of Tunisia.

Art. 37 –The provisions of law n° 91-44 dated 1 July 1991 all amending and completing texts shall be repealed.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the State.

Tunis, 12 August 2009.

**Zine El Abidine Ben Ali**