Considerations Regarding the Legal Regime of Authorized Natural Persons, the Sole Proprietorship and Family Businesses in Romania

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The present study will examine the legal regime of authorized natural persons, individual enterprises, and family businesses as regulated in Romania. Such an analysis aims at presenting a panoramic view of the legal framework in a representative country in Eastern Europe. Business activities can be carried out individually by individuals as well as large corporations, firms, and companies that have the status of legal persons. The business carried out by individuals, mainly in terms of the quality of an authorized natural person, is particularly important because it contributes to the development of the middle class within society and to giving professional and financial independence to different categories of professionals. The main aspects related to the qualification of specific notions in the field, the administrative steps for acquiring the status of an authorized natural person, individual enterprise and family enterprise, and their legal regime will be found in the article.

Keywords: authorized natural person, individual enterprise, family enterprise, legal regime

Introduction

The main legislation in this field in Romania is the Law No. 182/2016 approving the Government Emergency Ordinance No. 44/2008 on the carrying out of economic activities by the authorized natural persons, individual enterprises, and family enterprises.

Authorized natural persons are defined in the Romanian legislation as the economic enterprise, without legal personality, organized by an individual who mainly uses his or her work force.

Family enterprise is an economic enterprise, without legal personality, organized by family members.

Economic activity is defined as a profit-making activity consisting in the manufacture, administration, or alienation of assets or the provision of services.

Economic enterprise is an economic activity carried out in an organized, permanent, and systematic manner which combines financial resources, workforce, raw materials, logistic and information means, at entrepreneur’s risk, in the cases, and in the conditions provided under the law.

A patrimony by appropriation represents the financial assets and liabilities within entrepreneur’s patrimony representing all rights and obligations appropriated to the exercise of an economic activity by written declaration or the establishment agreement or an additional act thereto, as the case may be.

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Professional head office represents the main location/head office declared at the trade register for the registration and authorization of functioning of authorized natural persons, individual enterprises, and family enterprises representing their identification element in the legal relationships they have.

**Natural Person as a Professional: The Carrying out of Economic Activities by Natural Authorized Persons, Sole Proprietorships and Family Businesses**

The natural persons who wish to carry out economic activities in any of the forms presented above must cumulatively meet the following conditions (Stoica, 2015):

1. To have full capacity of exercise, except the members of a family business who do not have the quality of a representative who must be at least 16 years of age;
2. Not to have committed deeds punished under fiscal, accounting, or customs laws and the ones relating to the financial-fiscal discipline;
3. To have a declared professional office. Applicants need not have the quality of owner of their office, but they only need to possess a right of use over the office, for instance, following a lease contract;
4. To declare by taking their own responsibility that they meet the operating conditions provided in the legislation specific to the sanitary, sanitary-veterinary, environment protection, and work safety fields.

**Registration to the Trade Registry**

To carry out an economic activity, applicants shall meet certain forms of registration and authorization to the relevant institution, namely, the trade registry attached to the law court in the county where the applicant has his/her office.

The registration of a natural authorized person (NAP), sole proprietorship, or family business to the trade registry is made on the basis of a motivated resolution of the manager of the trade registry office attached to the court or of one of the persons designated by decision of the general manager of the National Trade Registry Office (Tuleașcă, 2016).

If the applicant(s) meet(s) the legal requirements, the manager of the trade registry office attached to the court or the designated person orders the registration in the trade registry and the authorization of operation for the NAP, sole proprietorship, or family business.

Through the same resolution they shall also order the registration in the trade registry of the standard declaration on honour given according to the provisions of the law.

In case the application is accepted, the trade registry office attached to the law court shall, within three days, issue the registration certificate which contains the sole registration code, the conformation of company details issued on the basis of the declaration on honour, as well as other documents provided under the law, as the case may be.

If the documents submitted to support the application are incomplete, the manager of the trade registry office attached to the law court or the designated person shall, by a motivated resolution, grant a period of 15 days at most for the completion thereof.

This period shall be communicated on the spot to the applicant, if they are preset, and by posting on the site of the National Trade Registry Office, while the resolution shall be posted at the headquarters of the trade registry office attached to the court and on the site of the National Trade Registry Office.

In any case they shall specify the documents that are going to be submitted until the mentioned
deadline. On applicant’s motivated request, the 15-day period may be extended once by maximum 15 days. The
15-day period shall be calculated without taking into account the day when it started and the day when it expired.

If the legal conditions are not met, the manager of the trade registry office attached to the law court or the
designated person shall, by a motivated resolution, reject the application for registration in the trade registry
and the authorization of operation for the requesting NAP, sole proprietorship, or family business and the
registration of the standard declaration on honour given under the law.

The resolutions of the manager of the trade registry office attached to the law court or the designated
person relating to registration and any other registrations at the trade registry shall be implemented immediately
since the registrations ordered by them will be made on their basis without any other formality.

A complaint may be filed against the resolution of the manager of the trade registry office attached to the
law court or the designated person within 15 days since delivery or communication, as the case may be. The
complaint may be filed at the court in whose jurisdiction applicant’s office is and it shall be judged under the
common law conditions.

The implementation of the resolutions of the manager of the trade registry office attached to the law court
or the designated person relating to registration and any other registrations at the trade registry, according to
this emergency ordinance, shall not be suspended during the trial.

The petitions addressed to the law courts in this matter shall be exempted from the stamp fee.

The family business shall be set up by an agreement concluded by the family members in written form as a
condition of validity.

The agreement shall stipulate, under the nullity sanction, the identification data of the family members and
of the representative designated among them, the conditions of participation, the percentage share of each
member to benefits and losses, the relations between the members of the family business, the withdrawal
conditions, and the date of drawing up the agreement.

The representative designated in the agreement shall manage the interests of the family business by virtue
of a special power of attorney, in written form, under private signature.

The special power of attorney shall be signed by all family business members who have full capacity of
exercise and by the legal representatives of those having a limited capacity of exercise.

The Legal Regime of the Natural Authorized Person, the Sole
Proprietorship and Family Business

As for the legal regime of NAP, we underline the following aspects:

(1) They may have at most five classes of activities provided in the NACE (Nomenclature of Economic
Activities) code in their object of activity (Militaru, 2013);

(2) To carry out the activity/activities for which they were authorized, the NAP may establish contract
relations under the law with any other natural or legal persons, other NAPs, sole proprietorships, or family
businesses in order to perform an economic activity without changing the legal regime acquired under the law
(Paun, 2015);

(3) They may hire at most three persons by employment contract;

(4) They may also have the quality of an employee for a third party operating in the same field or in other
field of activity;
(5) They are insured in the public system of pensions and other social security rights and they have the right to be insured in the health insurance system and unemployment insurance system, under the legal conditions;

(6) They must keep a single-entry bookkeeping;

(7) They may ask for the change of the legal regime and the authorization as an entrepreneur who holds a sole proprietorship;

(8) The main disadvantage of a NAP refers to liability, thus the self-employed persons shall first answer with their patrimony by appropriation, and with their entire fortune as a supplement;

(9) In case of insolvency, the NAP shall be subjected to the simplified procedure provided in the Law No. 85/2014 on the procedures of insolvency prevention and insolvency, as subsequently amended and supplemented;

(10) NAP may be dissolved by bankruptcy, their will, or death.

As for the sole proprietorship (SP):

(1) They may have at most 10 classes of activities provided in the NACE code in their object of activity;

(2) They may establish contract relations under the law with any other natural or legal persons, other sole proprietorships, NAPs, or family businesses in order to perform an economic activity without changing the legal regime acquired under the law;

(3) They may hire at most eight persons by employment contract;

(4) Their liability is similar to that of NAP: their patrimony by appropriation, and if this is not enough with their entire fortune;

(5) The manner of dissolution of the SP is similar to those of NAP.

As for the family business:

(1) By the agreement for the establishment of the family business, each member thereof may stipulate the creation of a patrimony by appropriation within their patrimony, in order to carry out the economic activity of the family business. By an additional act they shall establish the participation shares of the members in the creation of the patrimony by appropriation;

(2) The members of the family business shall answer jointly and severally with their patrimony by appropriation and with their entire fortune as a supplement for the debts contracted by the representative in the operation of the business;

(3) The documents by which assets are purchased for the activity of the family business shall be concluded by the representative without the prior approval of the members, if the value of the asset making the object of the document does not exceed 50% of the value of the assets that were dedicated to the carrying out of the economic activity and of the sums of money available to the family business on the date of the document. The assets purchased shall be the co-property of members, according to the participation shares to benefits, and being included in the patrimony by appropriation, if this has been created;

(4) The family business may stop its activity and be deregistered from the trade registry if: (a) more than half of the members thereof have died; (b) more than half of the members thereof ask for the dissolution thereof or withdraw from the business; and (c) in case of bankruptcy.

**First-Time NAP—A New Provision of the Law to Support Young Entrepreneurs**

The Romanian legislation encourages young students to start a business.
The students who wish to start their own business shall be exempted from the payment of fees for the registration and authorization of a natural authorized person (NAP) or a sole proprietorship through the trade registry offices attached to courts as well as from the payment of tariffs for the assistance services provided by these offices.

To enjoy these facilities, students must meet the following conditions:

1. To attend the courses of a higher education institution accredited in Romania;
2. To be in their 2nd year of study and to have integrally passed, on the date of application, all the requirements of the curriculum provided by the institution senate;
3. Not to have turned 30 years of age.

The higher education institution shall issue a supporting document for the trade registry by which they certify applicant’s meeting the conditions.

Conclusion (Pătru, 2017)

In the present study, we highlighted a panoramic view of the Romanian legislation regulating authorized natural persons, the sole proprietorship, and family businesses.

The limitation of the number of activity classes provided in the NACE code is only five classes (while for individual enterprises the limit is 10 classes) and the reduction of the number of employees is maximum three (while an individual enterprise may have eight employees).

In this context, the evolution of businesses run by authorized natural persons within the business environment should be monitored.

We may also infer that the small businesses which do not rely on employees or do not carry out activities in more NACE classes will not be affected in the performance of their activity.

For the authorized natural persons who carried out relatively big businesses in relation to this form of organization, the current legislative framework seems to be discouraging, thus one possibility might be their reorientation towards an individual enterprise or even a LLC with everything the running of a business in this form may suppose (higher establishment costs, more formalities upon establishment, double-entry bookkeeping etc.).

References


