

INDIVIDUAL ENTREPRENEUR - A SUBJECT OF AN ACTIVE RESEARCH IN TERMS OF AFFAIRS OF THE REPUBLIC OF MOLDOVA

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Abstract: *Individuals can engage in entrepreneurship through small businesses that are easy to manage and do not involve major investments. Subjects of entrepreneurial activity which are people, either individually or in various organizational and legal forms, who are engaged in entrepreneurial activity, i.e. have acquired, through registration or otherwise established by law, the status of entrepreneurs. The legislation grants natural persons the right to engage in entrepreneurship through the following legal forms of organization: a) individual entrepreneur; b) household; c) holder of a patent. In this Article, we will refer to the individual entrepreneur as well as the individual who can do business.*

The purpose of this research is to carry out a multifaceted analysis of the subject under investigation, i.e. the individual entrepreneur as well as the natural person entitled to start a business and to carry out the entrepreneurial activity in accordance with the legislation of the Republic of Moldova.

Research methods. The basic method used to find the sources needed for the study, as well as for the interpretation and systematization of the latest concepts and ideas was the bibliographic method. At the same time, analysis and synthesis, induction and deduction, generalization were used in the research, which created objective, true visions about the principles of legal responsibility and its functional structure. At the same time, analysis and synthesis, induction and deduction, generalization etc. used in the research created objective, true visions about the principles of legal responsibility and its functional structure.

Research results. Following the research of the proposed objectives we have managed to analyze the individual entrepreneur in several aspects: definition of the norm, formation and registration, scoring of distinctive features, advantages and disadvantages, as well as ways of shutdown.

Key words: *individual entrepreneur, individual enterprise, business law.*

JEL CLASSIFICATION: K2, 22

1. Introduction

Individuals can engage in entrepreneurship through small businesses that are easy to manage and do not involve major investments. Subjects of entrepreneurial activity which are people, either individually or in various organizational and legal forms, who are engaged in entrepreneurial activity, i.e. have acquired, through registration or otherwise established by law, the status of entrepreneurs.

The legislation grants natural persons the right to engage in entrepreneurship through the following legal forms of organization: a) individual entrepreneur; b) household; c) holder of a patent. In this article, we will refer to the individual entrepreneur as well as the individual who can do business.

The aim of this research is to carry out a multifaceted analysis of the subject under investigation, i.e. the individual entrepreneur as well as the natural person entitled to start a business and to carry out the entrepreneurial activity in accordance with the legislation of the Republic of Moldova.

The subjects of the entrepreneurial activity are entrepreneur, enterpriser, business agent, businessman, etc. In the legislation of the Republic of Moldova the term *entrepreneur* is used to designate all persons who are engaged in the activity of the entrepreneurship¹¹⁵.

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¹¹⁵ Roșca N., Baiș S., Dreptul afacerilor, Chișinău, 2014, p.102.

Within the meaning of Article 2 on entrepreneurship and business of RM, the entrepreneur may be:

- any citizen of the Republic of Moldova who is not restricted in rights, in the manner established by the actual law and other legislation;
- any foreign citizen or stateless person, in accordance with the legislation in force, a group of citizens or stateless persons (a group of partners) from which the collective entrepreneur is established;
- any legal or natural person in accordance with its main objective and legislation.

The State and local public administration authorities are special entrepreneurs. The duties of the entrepreneur to state-owned (municipal) enterprises perform the Chief Enterprise Manager on the basis of the contract concluded with him. Heads and specialists of public administration authorities, whose task is to decide upon the problems of doing business or controlling such activity, shall not be entitled to practice entrepreneurship.

According to the legislation in force (Civil Code of the RM), the natural person *is the individual who is regarded as the holder of rights and obligations*.

The individual shall have the right to practice as an entrepreneur, without setting up a legal person, from the time of registration of the State in the capacity of the:

- individual or other entrepreneur provided for by law,
- registering a farm household,
- acquiring a patent as an entrepreneur.

There is no other possibility for the natural person to pursue the individual activity of entrepreneurship, as provided for by the legislation in force.

In order for the individual to be able to practice as an entrepreneur, he must have full exercise capacity and be subject to state registration. Without such registration, the conduct of business is prohibited and sanctioned under the rules of non-criminal and criminal law¹¹⁶.

As regards the designation of an individual enterprise or individual entrepreneur, we would note that during the 90s the individual entrepreneur had another name – an individual enterprise being governed by the Law on Entrepreneurship and enterprises No. 845/1992.

For the purposes of this Act, the pursuit by a natural person of profit-making activities in the form of an individual enterprise shall be considered as an individual employment activity with an entrepreneurial character.

Later, in connection with the adoption of the Law on State registration of legal persons and individual entrepreneurs No. 220/2007, it was considered necessary to bring more light to the understanding of this concept. Consequently, an important amendment was made in Law No. 845/1992 which establishes that the individual enterprise is equivalent to the individual entrepreneur (Article 14(1)). As mentioned, the first regulations on the individual enterprise were introduced by Law No. 845/1992 in force until now. Despite the fact that the provisions of the law in question have been outdated for some time, the legislator did not find it appropriate to repeal it, but rather, over the years it has made numerous changes to keep it in force.

The current definition of the individual entrepreneur is regulated in the Act on State registration of legal persons and individual entrepreneurs No. 220/2007. According to the law, an *individual entrepreneur is a natural person with full exercise capacity who carries on the activity of an entrepreneur in his own name and at his own risk, without setting up a legal person, and is registered in the manner prescribed by law (Article 2)*¹¹⁷.

The legal definition of the individual enterprise is contained in the Entrepreneurship and Enterprise Act No. 845/1992, in the following formula: the *individual enterprise is the enterprise*

¹¹⁶ Mihalache I. Dreptul afacerilor. Curs universitar. Chişinău: Print Caro, 2015, p.89.

¹¹⁷ Law of the Republic of Moldova on the State registration of legal persons and individual entrepreneurs No. 220-XVI of 19.10.2007. In: Official Gazette of the Republic of Moldova No. 184-187/711 of 30.11.2007.

that belongs to the citizen, with the right of private ownership, or to members of his family, with the right of common ownership (Article 14)¹¹⁸.

It follows from the provisions of Article 13(2) and Article 14 of the Entrepreneurship and Enterprise Act No. 845/1992 that the individual enterprise is an activity, methodically organized, of an individual involving professional repetition of the acts according to a systematic organization based on certain material means.

The individual enterprise is the organizational and legal form through which the natural person can carry out his activity who has the status of an individual entrepreneur, the natural person with full exercise capacity of a citizen of the Republic of Moldova or a foreign citizen or stateless person residing in the Republic of Moldova, who are self-employed, own-account, carries the business herself or himself, generates decisions independently, provides the enterprise with the necessities and bear responsibility for its results.

The individual entrepreneur is in civil legal relationships as a natural person, but the rules governing the activity of legal persons for profit apply to the business unless otherwise provided by law. The individual entrepreneur is entitled to engage in any activity not prohibited by law¹¹⁹.

The procedure for registration of IE is provided in Article 28-31 of the Act on the State registration of legal persons and individual entrepreneurs No. 220 to XVI of 19.10.2007.

State registration of individual entrepreneurs shall take place on a working day within 24 hours, which shall be calculated from the working day following that on which the documents required for registration were submitted.

For the State registration of the individual entrepreneur, the following documents shall be submitted to the territorial structure of the State registration body in whose service area the founder is resided (PSA- Public Services Agency):

- an application for registration in accordance with the model approved by the state registration body;
- the identity card of the founder;
- a document confirming payment of the registration fee.

The identity and exercise capacity of the natural person shall be verified during the state registration.

The decision on setting up the individual enterprise must include the identification of the founder: name, surname, date, and place of birth, nationality, residence, identity document number; the business name of the enterprise.

In accordance with the provisions of Article 14(5) of Law No. 845/1992, the business name of the individual enterprise must include "individual enterprise" or the abbreviation "IE" and the name of the founder.

State registration of the individual entrepreneur shall not be allowed in the following cases:

- the individual is already registered as an individual entrepreneur;
- the person concerned is deprived by decision of the court on the right to practice as an entrepreneur;
- in the name of the person were previously registered undertakings which are not in operation and which have not been liquidated in the manner prescribed by law or which have debts to the state budget.

Under the State registration procedure, the State registration body shall carry out the process of fiscal, statistical, medical and social registration of the individual entrepreneur by transmitting to the concerned authorities the data in electronic form relating to his registration provided for in

¹¹⁸ Law of the Republic of Moldova on Entrepreneurship and Enterprise No. 845-XII of 03.01.1992. In: Official Gazette of the Republic of Moldova no. 2/33 of 28.02.1994.

¹¹⁹ Law of the Republic of Moldova on the State registration of legal persons and individual entrepreneurs No. 220-XVI of 19.10.2007. In: Official Gazette of the Republic of Moldova No. 184-187/711 of 30.11.2007.

Article 33(2) Law No. 220 to XVI of 19.10.2007 with the release of that notification to the individual entrepreneur.

The form of organization of the business of the individual enterprise may be used by the :

- local traders selling goods and retail products;
- owners of small restaurants, cafes, meat shops, cigarettes, soft drinks and alcoholic beverages;
- by individual service providers: barbers, footwear repairers, tele- and radio-communications, watches and cars;
- by small local producers (craftsmen) of ceramic articles, barrels, lottery furniture, etc.

We would like to mention that IE can use employee work. By producing and marketing goods, and providing services, employees become representatives of the founder, create rights and obligations, and if they violate the consumer's rights, the liability is provided by the founder to the customer.

The individual undertaking is obliged to pay all taxes and charges provided for by the legislation. An important feature of IE is that the assets of the individual enterprise are inseparable from the personal assets of the entrepreneur, who is obliged to keep accounts of the income derived from this activity, as well as accounts of the expenses incurred. The records will be kept only for goods and occurrences destined for economic activity, but not for personal use.

Cessation of individual entrepreneurship. The activity of the individual entrepreneur shall cease:

- (a) at the request of the individual entrepreneur in case of a lack of debt to the national public budget according to the data submitted by the State Tax Service;
- (b) by decision of the court;
- (c) in the event of death confirmed by a judgment or a certificate of death issued by the competent civil status body;
- d) on other grounds laid down by the legislation.

The activity of the individual entrepreneur is considered to be terminated when he is removed from the State Register. The removal from the State Register of the individual entrepreneur on his own initiative is made on the basis of the request for cancellation drawn up in accordance with the model approved by the state registration body.

The Registrar shall take a decision to remove it within three working days of the date of submission of the above-mentioned documents. The procedure for de-registration provided for in Article 26 Law No. 220 to XVI of 19.10.2007 shall also apply to individual entrepreneurs who have applied for de-registration in accordance with the model approved by the State registration body and meet the criteria specified in the notion of inactive individual entrepreneur, except that they have submitted the tax records provided for by legislation, the data of which show that they have not been engaged in business activity.

The State Tax Service will submit quarterly to the State registration body the information about the inactive individual entrepreneurs to decide on their removal from the state Register.

As a result, we can conclude that the individual entrepreneur as a way of doing business has both advantages and disadvantages, among which we note:

- as an advantage, we can point to the fact that it is the entrepreneur who comes with the idea of a business, requires a simple way of formation and registration, takes independent decisions on how to work with and who works with, does not require large financial investments, etc.
- as a disadvantage, we outline that the natural person has less financial resources and hence the low value of the business results, the assets of the individual entrepreneur are inseparable from the assets of the entrepreneur, which implies an asset liability with his entire wealth for the obligations assumed.

References:

1. Roșca N., Baieș S., Dreptul afacerilor, Chișinău, 2014, 458 p.
2. Mihalache I. Dreptul afacerilor. Curs universitar. Chișinău: Print Caro, 2015, 284 p.
3. Law of the Republic of Moldova on the State registration of legal persons and individual entrepreneurs No. 220-XVI of 19.10.2007. In: Official Gazette of the Republic of Moldova No. 184-187/711 of 30.11.2007.
4. Law of the Republic of Moldova on Entrepreneurship and Enterprise No. 845-XII of 03.01.1992. In: Official Gazette of the Republic of Moldova no. 2/33 of 28.02.