

ANALYSIS OF LEGAL FRAMEWORK FOR REGULATION OF FAMILY BUSINESS IN ROMANIA

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Novelty of this research paper is determined by the imperative economic and social need to create the necessary legal and favorable framework for initiation and developing family business as a form of business success that would be accessible to socially vulnerable families. The aim of the research paper is to investigate the main legal rules of the legal framework of family business in Romania and to familiarize it with similar families from the Republic of Moldova; this would take into account acceptable rules for the Republic of Moldova and will help to create the legal basis for the establishment of this relatively new form of family entrepreneurship in this country. The main research methods are: systemic analysis, monographic, logic etc. The main scientific results obtained in the article are based on identification, analysis and systematization of main legal norms of the legal framework for the initiation and regulation of family businesses in Romania.

Key words: family enterprise, family business, a representative of the family business, legal framework, law, regulation, Romania.

Actualitatea prezentului articol este determinată de necesitatea economico-socială imperioasă de a crea cadrul juridic necesar și favorabil inițierii și desfășurării afacerilor familiale în calitate de formă de business de succes și accesibil pentru membrii familiilor socialmente vulnerabile. Articolul are ca scop central cercetarea normelor legale principale ale cadrului juridic al afacerilor familiale în România, familiarizarea cu acestea a familiilor similare din Republica Moldova, preluarea normelor acceptabile pentru cazul Republicii Moldova și contribuția la crearea bazei legale pentru instituirea acestei forme relativ noi de antreprenoriat familial în această țară. Metodele principale de cercetare au fost: analiza sistemică, sinteza monografică, logică etc. Principalele rezultate științifice obținute în articol, urmare a cercetării, sunt identificarea, analiza și sistematizarea normelor legale principale ale cadrului juridic de inițiere și reglementare a afacerilor familiale în România.

Cuvinte cheie: întreprindere familială, afacere familială, reprezentant al întreprinderii familiale, cadru juridic, lege, reglementare, România.

Актуальность данной статьи определяется насущной социально-экономической необходимостью создания необходимой и благоприятной правовой основы для инициирования и развития семейного бизнеса в качестве успешной и доступной формы бизнеса для членов социально уязвимых семей. Главной целью статьи является исследование основных юридических норм правовой базы семейного бизнеса в Румынии, ознакомление с ними аналогичных семей в Республике Молдова, использование приемлемых норм и содействие в создании правовой основы для организации этой относительно новой формы семейного предпринимательства в этой стране. Основными методами исследования были: системный анализ, синтез, монографический, логический и др. Основные научные результаты, полученные в статье, как следствие исследования, являются выявление, анализ и систематизация основных юридических норм правовой основы для инициирования и регламентирования семейного бизнеса в Румынии.

Ключевые слова: семейное предприятие, семейный бизнес, представитель семейного предприятия, правовая основа, закон, регламентирование, Румыния.

JEL Classification: D1, K36, L26, M2.

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Introduction. Family businesses in Romania are regulated by the Government Emergency Ordinance (GEO) 44/2008 "On economic activities by authorized individuals, sole proprietorships and family businesses", published in the Official Gazette of Romania, Part I, no. 328 of 25 April 2008 with subsequent amendments [1]. Ordinance determines the access to economic activity, registration procedure in the trade register and authorization of functioning and the legal status of authorized individuals to carry out economic activities and individual enterprises and *family enterprises*. This emergency ordinance shall not apply to liberal professions.

Analysis of the legal framework of family business in Romania

For the purposes of this ordinance, terms and expressions have the following meanings:

a) *family* – husband, wife, their children over the age of 16 years at the date of approval of the family business, relatives and in-laws up to the fourth degree;

b) *family business* – *economic enterprise, without legal status, organized by an individual enterprising with his family*;

c) *the assets of affectation* – all assets, rights and obligations of authorized individuals, holder of individual enterprise or members of the affected family business (allocated, directed – Author's note) the purpose of exercising an economic activity constituted as a distinctive fraction of the heritage of the authorized individual, holder of the individual company or *family business members*, separated by the general pledge of their personal creditors;

Under the right to free enterprise, the right to free association and the right of establishment, any person, Romanian citizen or a citizen of another Member State of the European Union or the European Economic Area, can do business in Romania, under terms provided by law. Economic activities can be carried out in all fields, trades, occupations or professions that law does not expressly prohibit for the free initiative [1].

Individuals can pursue economic activities as *members of a family business*. Family enterprises must have an established office in Romania, as provided by law. Any permanent, casual or temporary economic activity held in Romania by *family businesses* must be registered and authorized under this ordinance. The *representative of the family business* is required to demand for the registration in the trade register and authorization before starting business. If he does not make the request within 7 days from the conclusion of the establishment agreement, any member of the family business can apply for registration in the trade register and authorization.

In all cases, the demand for registration in the trade register and functioning authorization must be made within 15 days of the conclusion of the establishment agreement provided in art. 29 par. (1). In case of violation of the time limit, it is necessary to conclude a new agreement.

There can be carried out economic activities in any form by the individual if the representative or members of the family business:

- a) are at the age of 16;
- b) have not committed acts sanctioned by the financial, customs laws and those regarding
- c) the financial and fiscal discipline, as those who enroll in the tax record;
- d) have an established office according to the present GEO;
- e) declare on oath that meet the conditions required by the specific legislation in healthcare, veterinary, environmental protection and occupational safety.

Where, according to special legal provisions for certain economic activities is necessary to fulfill the conditions of professional training and/or certification of vocational training, *family business* members must prove their fulfillment.

Family business has the professional office declared by the application in the trade registration and authorization of functioning. For professional office setting is necessary for any *member of the family business*, case by case, to hold a right of use over the building at which it is registered.

Request for registration in the trade register authorization of functioning is submitted to the trade register of the Court in the county where the applicant establishes its professional office and will be accompanied by documentation provided in the annex which is an integral part of this emergency ordinance. Registration in the trade register of the *family business* is made by the motivated resolution of the Director of Trade Registry of the tribunal. Articles 11 and 12 of the GEO govern the legal procedures related to registration in the trade register of the *family business*.

Trade register office of the tribunal will issue the registration certificate containing the unique registration code, certificate issued on the basis of the affidavit and other documents provided by law, as

applicable. Registration certificate containing the unique registration code, is the document certifying the registration in the trade register authorizing the operation and the taking of evidence by the competent tax authority.

Article 14 of GEO governs the legal procedures related to:

- Changing the professional office and main object of activity;
- registration of premises in the trade register;
- issuance of a new registration certificate, certificate of claims registration and examiner certificate, etc.

Changing the agreement of establishing *the family business* is declared within 15 days of the conclusion of the additional act, at the trade register in which *the family business* is recorded. Trade register office of the tribunal will record changes and issue the certificate of mentions registration.

Family business representative will keep single-entry accounting, according to the regulations on the organization and management of single-entry bookkeeping by individuals who act as taxpayer in accordance with Law no. 571/2003 regarding the Fiscal Code, as amended and supplemented.

The legal regime of family business

For the organization and operation of its business, individual entrepreneur, as a natural person employer may engage third parties with an individual employment contract, registered at territorial labor inspectorate, according to the law, and may work with other individuals (PFA), other enterprising individuals who hold individual companies or ***representatives of family businesses*** or other legal entities to carry out an economic activity, that will change the legal status acquired under this section.

Family business consists of two or more members of a family.

Members of a family business can be simultaneously PFA or holders of individual businesses. They also can have the quality of employee of a third party that works both in the same field, and in another area of economic activity than those related to the family business. Members of family businesses are insured in the public system of pensions and other social insurance rights and are entitled to be insured in the health insurance and unemployment insurance, as provided by law.

Family business is established by an agreement of establishment, signed by family members in writing as a condition of validity. Foundation agreement will stipulate the names and surnames of members, representative, the date of preparation, participation of each member in enterprise, conditions of participation, percentage shares in which will share the net revenues of the enterprise, the relationship between members of the family business and conditions for withdrawal, subject to absolute nullity.

The representative designated by the establishing agreement will manage the family business based on a special mandate as a document under private signature. The special mandate shall be signed by those members of company who have legal capacity and legal representatives of those with limited legal capacity.

In order to exercise the activity for which it is approved, the family business, through its representative, can collaborate with other authorized individuals as PFA, individual entrepreneurs holders of individual businesses or representatives of family businesses or other natural or legal persons, for carrying out an economic activity.

Family business does not have its own assets and shall not acquire legal personality by registration in the trade register. But by the establishing agreement of the family business, its members may stipulate the establishment of an ***affectation asset***. In this case, through the founding agreement or an additional act shall establish quotas for the participation of members at the establishment of the ***affectation asset***. If members agree unanimously, the ownership stakes may be different from those required for participation in the company's net income or losses.

Members of the family business are individual merchants from its registration in the trade register and are jointly and severally liable for debts incurred by representative in exploiting enterprise with affectation assets, if it was established, and in addition, the entire patrimony corresponding to participation quotas.

Decisions on the current management of the family business are taken by the designated representative. Acts of disposition on the affected property of family business activity shall be taken by simple majority of members' consent, so that such majority includes the owner's consent that shall be subject to the act.

Documents that acquire goods for the family business are made by a representative without a prior approval of members, if the asset value on ending the act does not exceed 50% of the value of goods that have been allocated to the business (and the amounts of money available to the company at the time of the act). The acquired assets are in co-ownership of members in their quotas.

Family business ends its activity and is removed from the commercial register in the following cases:

- a) more than half of its members died;
- b) more than half of the members of the company require its termination or withdraw from the enterprise;
- c) under art. 25 of Law no. 26/1990 [2], which stipulates that any natural or legal person injured as a result of a registration or by an entry in the trade register has the right to request deletion of harmful registering respecting the established legal procedures.

The request for removal, accompanied by a certified copy of the original papers proving, as appropriate, shall be deposited with the commercial registry of the court in which it is established professionally, by any interested person. The provisions of art. 11-13 of this GEO, which regulates the registration in the trade register of the family business, are applied accordingly.

If the family business members constituted a patrimony of affectation or acquired goods, the goods are divided according to the provided quotas. If that was not constituted an affectation patrimony, property acquired under this Ordinance shall be divided according to the rates provided in the same act.

Final provisions of Ordinance

Municipal authorities can to build up helpdesks and representation of individuals referred to in art. 4 of this GEO (authorized individuals, individual enterprises and family businesses) through business reorganization conducted under the provisions of Law No. 300 of 28 June 2004 on the authorization of individuals and family associations that are doing business independently, which was in effect from 27.09.2004 until 25.04.2008, being repealed (a) and replaced (a) by the emergency Ordinance no.44/2008 [3].

Individuals can opt to carry out the formalities provided in chapter II of this GEO and through assistance and representation offices. Helpdesks and representation may represent the individual requesting the procedures for obtaining authorization and registration in the trade register on the basis of representation request.

Pt. (4) of art. 35 of the Ordinance establishes assistance offices and representation skills. For the provided services, municipalities will be able to charge fees that they can determine autonomously under the principle of local autonomy.

Municipalities will make publicly available a standard form of the request for representation. The request for representation, the registration in the trade register request and for functioning authorization and supporting documentation can be submitted to the competent commercial register electronically using the system for approving and registering online and / or in hard copy, by post, registered mail with confirmation of receiving with declared content, or directly to trade register.

Where this emergency ordinance lacks, the Law no. 26/1990, republished, as amended and supplemented, and the Law no. 359/2004, as amended and supplemented, shall apply accordingly, to the extent that are not inconsistent with this ordinance.

Individuals engaged in an authorized economic activity and recognized in another Member State of the European Union or the European Economic Area, in forms similar to those provided by this emergency ordinance may be authorized to carry out in Romania the same types of activities they were authorized in that other state. In this case, the demand for trade registration and functioning authorization is for the Director of the office of trade registry of the court within whose jurisdiction was elected and declared the professional office.

Members of the ***family business*** are under taxable income under the terms of Law no. 571/2003, as amended and supplemented.

In case where the competent public authorities establish that there are no longer met the conditions of work that formed the basis of the authorization function and apply complementary sanctions (lifted sanctions), they notify the trade register office by the law court in the county where the professional office of the sanctioned ***family business*** is declared.

Point 3 of the Ordinance Annex sets out six documents supporting the request for trade registration and authorization to operate the ***family business***, and point 4 – documents certifying training or professional experience.

Family businesses have a real potential to become an important factor of sustainable economic growth both in Romania and Moldova [4].

Results and conclusions:

- 1) They were exposed main meanings of terms and expressions from GEO 44/2008.
- 2) Any individual person, with Romanian citizen or with citizenship of another Member State of the European Union/ European Economic Area, can do business in Romania, including as a family enterprise, as provided by law.
- 3) There were specified mandatory requirements to be met by representative members of the *family business* in order to manage business as an individual person.
- 4) They were revealed legal procedures related to registration of the Trade Registry of the field of *family business*.
- 5) It was described the procedure for amending the agreement on establishing of procedure of the family business.
- 6) The incomes of the family business members are taxable under the terms of Law no. 571/2003, as amended and supplemented.
- 7) The ANNEX (Point 3) of the Ordinance sets out six documents which are supporting the request for trade registration and authorization for good operating of *the family business*, but point 4 – documents is certifying training or professional experience of the person.
- 8) They are highlighted other essential rules of the legal regime of family businesses in Romania as well as *Final Provisions of the Ordinance* GEO 44/2008.
- 9) Family businesses have a real potential to become an important factor of sustainable and qualitative economic growth quality both in Romania and Moldova.

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Recommended for publication: 06.04.2016