

SOME CONSIDERATIONS ON THE WORK OF THE AUTHORIZED NATURAL PERSON

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Abstract: *In the current socioeconomic situation in Romania, the best way of efficient functioning of a small business is the authorized natural person. The authorized natural person is a natural person who meets the conditions provided by law to carry out any form of economic activity permitted by law, using mainly its workforce. The economic activities provided by an authorized natural person may be carried out in all areas, trades, occupations or professions that law does not expressly prohibit for free initiative. The authorized natural person may conduct its activity according to the purpose for which it was established or may employ, as an employer, third parties with an individual employment contract concluded under the law. A person can cumulate the status of authorized natural person with that of employee of a third party that works both in the same field, and in another area of economic activity than that for which it is authorized. The authorized natural person shall not be considered an employee of third parties with whom they collaborate, even if collaboration is exclusive.*

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In the current socioeconomic situation in Romania, the best way of efficient functioning of a small business is the authorized natural person.

According to the definition given by the law, the authorized natural person is an individual who meets the conditions provided by law to carry out any form of economic activity permitted by law, using mainly its workforce¹.

Thus, under the right to free enterprise, the right to free association and the right of establishment, any person, Romanian citizen or a national of another Member State of the European Union or the European Economic Area, can do business in Romania, as provided by law².

Economic activities provided by the authorized natural person can be deployed in all areas, trades, occupations or professions that law does not expressly prohibit the free initiative.

More specifically, authorized individuals can carry out economic activities as follows:

- a) individually and independently as authorized natural persons;
- b) as sole owners of an individual enterprise;
- c) as members of a family business³.

Any economic activity performed permanently, casually or temporary in Romania by freelancers must be registered and authorized under the conditions provided by law.

Authorizing the operation does not exempt individuals from the requirement to obtain before starting work, permits, approvals, licenses and other as such, under special laws for the conduct of certain economic activities.

Thus, these individuals are required to apply for registration with the Trade Registry and authorization before starting business, as authorized natural persons (ANP); the

¹ Art. 2, letter i) of O. U.G no. 44/2008 of 16 April 2008 on the economic activities carried out by authorized individuals, sole proprietorships and family businesses, as amended by Law no. 4/2014 for the Government Emergency Ordinance no. 44/2008 on the economic activities carried out by authorized individuals, sole proprietorships and family businesses, published in the Official Journal of Romania no. 328/25 April 2008.

² Art. 3 of G.U.O. no. 44/2008.

³ Art. 4 of G.U.O. no. 44/2008.

application for registration must be made within 15 days of the conclusion of the agreement setting¹.

Where, the husband or wife of the authorized individuals typically participate in the work of ANP, the latter is obliged by law to apply for registration in the trade register of their participation. Also, if the spouse ceases activity, it shall be mentioned in the Trade Register on this fact, within 15 days, based on his own responsibility statement of the person authorized individual.

Under the law, can carry out economic activities as authorized natural person, individuals who:

- a) have reached the age of 18;
- b) have not committed acts sanctioned by the financial, customs and tax laws concerning financial discipline, as those who enroll in the tax record;
- c) have an established office declared in accordance with the legal provisions;
- d) declares in their responsibility statement that he qualifies as required by the legislation specified in healthcare, veterinary, environmental protection and occupational safety².

Therefore, an authorized natural person may carry out economic activities in all fields, trades, occupations or professions that the law does not expressly prohibit for the free initiative, if they have professional training the field they want to endorse.

Also, people who wish to start ANP must have a registered professional establishment and must declare in their responsibility statement that they meet the legal requirements for functioning. For professional office establishing, they must prove the right to use the building, through measures such as rental certificate or contract of sale.

According to art. 9 paragraph. (3) G.U.O. no. 44/2008, economic activities through a permanent establishment by nationals of other Member States of the European Union or the European Economic Area is done in compliance with regulations on the permanent establishment.

Demand for trade registration and functioning authorization shall be submitted to the Trade Registry of the Court in the county where the applicant establishes its registered professional offices and will be accompanied by documentation required by law, according to art. 10 para. (1) and (2) of G.U.O. no. 44/2008.

According to Art. 11 para. (1) and (2) of G.U.O. no. 44/2008, registration in the Trade Register, the natural person authorized is done by resolution motivated by the Director of the Office of Trade Registry of the tribunal, unless it considers the conditions provided by law, fulfilled; In this case, he shall order the registration in the Commercial Register and authorization of the authorized individuals. By the same resolution shall order registration in the Commercial Register of the statement on his own responsibility given under Law no. 359/2004, as amended and supplemented.

The provisions of art. 17 of Law no. 359/2004, as amended and supplemented from transmission of-standard declarations to the competent public authority is applied accordingly.

According to art. 11 para. (3) G.U.O. no. 44/2008 if the documents submitted in support of the application are incomplete, the director of the Trade Registry Office under the tribunal will decide by reasoned resolution granting of maximum 15 days for their completion. The term will be either immediately communicated to the applicant, if present, or by registered letter with acknowledgment of receipt. In all cases will indicate the

¹ Art. 7 para.(1) and (2) of G.U.O. no. 44/2008.

² Art. 8 para.(1) of G.U.O. no. 44/2008.

documents to be submitted by the deadline given. At the reasoned request of the applicant, the period of 15 days can be extended.

If the legal conditions are not met, the director of the Trade Registry Office under the tribunal will decide by motivated resolution, the refusal of registration in the Commercial Register and for licensing for authorized natural person.

These resolutions issued on registration and any other operations registered in the Trade Register are enforceable, meaning it is executed immediately without any further formality; based on them, are to be registered ordered by them.

Against the resolution, of the Director of the Trade Registry Office under the tribunal it can be filed a complaint within 15 days after delivery or notification as appropriate. The complaint filed with the court in whose territorial jurisdiction the applicant's professional office and judges in common law, according to art. 12 of G.U.O. no. 44/2008.

If the Director of the Office of the Trade Registry considers legal conditions to be met or if a final judgment which orders so, the Trade Register Office by the Law Court will issue the registration certificate containing the unique registration certificate issued in the statement based on the own responsibility statement, as well as the other documents provided by law, as applicable. The period for issuing the certificate of registration and, where applicable, the Certificate of Registration of entries is 3 days and 5 working days of the date of filing or, where applicable, from the date of the application with the required documents. Registration certificate containing the unique registration code, is the document certifying the registration in the Commercial Register, authorizing the operation, as well as the taking of evidence by the competent tax authority¹.

A person can have only one registration certificate for the legal status or the ANP.

Also, changing professional headquarters and main object of activity is recorded in the Trade Register and to exercise an activity for which there was no request for the registration in the trade register and authorization is necessary to obtain them.

An authorized natural person will keep bookkeeping simple, 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.

Authorized natural persons pay a flat tax in accordance with income set annually by the General Directorates of Public Finance territorial compared to the specific activity and the area in which it operates, however, it is mandatory that the activity to be part of the nomenclature of independent activities for which the net income can be determined based on annual income rules for operating individual taxpayers.

In accordance with art. 16 of G.U.O. no. 44/2008, of exercising the activity for which it was authorized, ANP can collaborate with other authorized natural persons as freelancers, sole proprietors holders of individual businesses or representatives of family businesses or other natural or legal persons to conduct a economic activity without changing its legal status acquired by law.

According to amendments to the art. 17 of G.U.O.no. 44/2008, ANP shall operate in accordance with the purpose for which it was established or may employ, as an employer, third parties with an individual employment contract concluded under the law. However, a person can accumulate the quality of authorized natural person with that of employee of a third party that works both in the same field, and in another area of economic activity than that for which it is authorized. ANP shall not be considered an employee of third parties with whom they collaborate, even if collaboration is exclusive.

¹ Art. 13 para. (1), (2) and (3) of O U.G no. 44/2008 of 16 April 2008 on the economic activities carried out by authorized individuals, sole proprietorships and family businesses.

Also, ANP is provided in the public system of pensions and other social insurance rights and is entitled to be insured health insurance system and unemployment insurance, as provided by law.

Similarly, under Article 20 para. (1) G.U.O. no. 44/2008, ANP is liable for its obligations with assets of affectation, if it was established, and in addition, with all its assets and in case of insolvency, will be subject to the simplified procedure provided by Law no. 85/2006 on the insolvency procedure, as amended, if it is a trader. If not a trader, lenders will execute according to common law claims.

Under the law, any interested person may make proof of trader within the insolvency procedure or separately by finding action if a legitimate interest.

ANP ceases activity and is removed from the Trade Register in the following cases:

- a) death;
- b) its will;
- c) under.

Art. 25 of Law no. 26/1990, republished, as amended and supplemented. Under this statutory provision, any natural or legal person injured as a result of a registration or by an entry in the Commercial Register has the right to request deletion of the harmful registration, all or only on certain elements, if by final court decision were abolished in whole or in part or modified the documents that were the basis on which registration is requested cancellation of if by the judgment it has not been disposed an indication in the Trade Register. The request for removal, accompanied by a certified copy of the original papers proving, as appropriate, shall be submitted to the Trade Registry Office of the Court in which it is established professional establishment, by any interested person¹.

Within three days from the filing date, submit the application to the Trade Registry Office tribunal in whose jurisdiction the trader is located and where branches established in another county court in that county. Court ruling on the request by summoning the Trade Register Office and the trader. The judgment settling the request can only be challenged by appeal and the appeal period runs from the ruling for the parties present, and communication for the missing parts. Trade Register Office will perform the erasure and publish the final judicial decision in the Official Journal of Romania, Part IV, based on expense of the party which submitted the request. To this end, the court will notify the Trade Registry Office judgment, legal copy, marked irrevocable².

Also, the spouse of the authorized individuals can be ensured in the public pension system based on social insurance contract, in the unemployment insurance system, through a contract of unemployment insurance under the terms of art. 22 of Law no. 76/2002 on the unemployment insurance system and stimulation of employment, as amended and supplemented, and the health insurance system, as provided by law³.

Therefore the advantages that a natural authorized person has compared to an ordinary trader are related primarily to:

- the documentation required is fairly simple on creation and approval;
- Low costs of establishing up to 200-300 lei; because of cost differences that may arise in the different counties, the costs are expressed as the price range;

¹ Art. 21 para. (1) and (2) of the O U.G no. 44/2008 of 16 April 2008 on the economic activities carried out by authorized individuals, sole proprietorships and family businesses.

² Art. 25 of Law no. 26 of 5 November 1990 on the trade register, as amended and completed. Text reprinted in the Official Journal of Romania, Part I, no. 49 of 4 February 1998 and updated based on amending normative acts, published in the Official Journal of Romania, Part I, until 30 April 2008.

³ Art. 21 of G.U.O. No 44/2008, as amended by art. 3 of Law no. 4/2014 for the Government Emergency Ordinance no. 44/2008 on economic activities carried out by authorized individuals, individual enterprises and family enterprises was published in the Official Journal, Part I no. 15 of January 10, 2014.

- Very low taxes;
- The very short time for obtaining a certificate of registration for 3-5 days depending on the differences that may exist between offices in different counties of the Trade Registry;
- Simplified financial statements and tax;
- the fact that it may have their own employees and can use the money without paying dividends;
- how they organize accounts, simple entry respectively, therefore ANP does not need an accountant to sign the balance sheet, income records can be kept even by the authorized natural person; without the obligation of keeping a cash book, the money can be taken out at any time from the firm and the fee to be paid to the state is 16% based on the net income;
- the fact that a person can accumulate the quality of authorized natural person with that of employee of a third party that works both in the same field, and in another area of economic activity than that for which ANP is authorized.

The legal provision according to which are necessary specialized studies or professional attestation certified in the field they are to operate the authorized natural person can also be interpreted as an advantage, as a guarantee on the quality of services provided by a ANP that is professional in the field.

In the case of authorized natural persons disadvantages are few and limited to that in the event of the insolvency or bankruptcy of responding with personal wealth.

In conclusion, we can say that:

- the natural person has freedom of choice of where and how to work , as well as the work program;
- the natural person has the freedom to operate for more customers;
- the risks inherent in the business are assumed by the individual who operates;
- work is performed by using the patrimony of the natural person who carries it out;
- work is performed by the individual through use of intellectual and / or physical performance thereof, depending on the specific activity;
- the natural person is part of a body / a professional character of with role of representation, regulation and supervision of the profession conducted under special regulations governing the organization and the profession in question;
- the natural person has the freedom to conduct business directly with staff or in collaboration with third parties under the law¹.

References

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2. Law no. 26 of 5 November 1990 on the trade register, as amended and completed. Text reprinted in the Official Journal of Romania, Part I, no. 49 of 4 February 1998 and updated based on amending normative acts, published in the Official Journal of Romania, Part I, on 30 April 2008.

¹ Art. 1 of Law 187/2015 approving Government Emergency Ordinance 6/2015 amending and supplementing Law no. 571/2003 regarding the Fiscal Code. Published in the Official Journal of Romania, Part I no. 499 of July 7, 2015.

3. Law no. 4/2014 for the Government Emergency Ordinance no.44/2008 on economic activities carried out by authorized individuals, individual enterprises and family enterprises was published in the Official Journal of Romania, Part I no. 15 of 10 January 2014;
4. Law 187/2015 approving Government Emergency Ordinance 6/2015 amending and supplementing Law no. 571/2003 regarding the Fiscal Code. Published in the Official Journal of Romania, Part I no. 499 of July 7, 2015.