
A NEW MODEL FOR LIMITED LIABILITY COMPANY IN BRAZIL: THE “EMPRESA INDIVIDUAL DE RESPONSABILIDADE LIMITADA” – “EIRELI”

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On July 12th, 2011, Brazilian Law n. 12.441¹ was published by the official gazette, amending the Brazilian Civil Code (Law n. 10,406/02). This new amendment created a new type of limited liability company, the so called “*Empresa Individual de Responsabilidade Limitada*” or simply “EIRELI”. Along with this new addition to the Civil Code, several questions regarding this matter arose.

This new company model is something that has long been expected by the Brazilian society and that has been discussed for too long behind the scenes in the Congress.

This new model of company works as a “sole proprietorship limited liability company”, allowing one individual to own 100% of the company’s quotas and will certainly be widely used as it creates a whole range of new opportunities.

1. Basic aspects of the “EIRELI”.

As already mentioned, this new company model allows one individual to own 100% of the company’s share capital. Therefore, sole proprietorship of a limited liability company – where its owner is responsible only for the paid-up capital – has been created.

This means that, unlike what happens to the other sole proprietorship corporate

model, the “*empresário individual*” (individual entrepreneur), the EIRELI owner can draw a line between his personal goods from those of the company allowing its owner to carry out his business activities without worrying about being held personally liable for company’s debts and other unwanted events.

By doing so, the EIRELI owner directly distinguishes its personal estate than those of the company (“EIRELI”), creating a limit between them and their situation.

A straight conclusion that can be drawn from this is that the EIRELI owner can now detach part of his belongings for this enterprise, isolating the remainder of the estate from the risks of the activities performed by the EIRELI.

The general rule for limited liability companies (“*Ltda.*”) in Brazil still applies to the EIRELI. Therefore, EIRELI owners must be aware that, for this reason, the general rules for piercing the corporate veil might apply to EIRELI type of companies.

2. Incorporating an “EIRELI” company

In order to incorporate an EIRELI company in Brazil, the law (n. 12.441/11) sets out a few important requirements.

In general, there are three requirements that stand out from the rest.

¹ Law n. 12.441/11: “Changes the wording for Law n. 10.406, of January 10th, 2002 (Civil Code), in order to allow the incorporation of limited liability companies of sole proprietorship.”

The first² one concerns the EIRELI corporate capital. According to the rules, the EIRELI shall have paid-in capital equal to at least the value of 100 (one hundred) times the minimum wage in Brazil, at the time of its incorporation.

The second³ important requirement makes reference to the use of the expression “EIRELI” after the corporate name. The EIRELI rules demand this sort of company to be easily identified and distinguished from the others.

The third⁴ one concerns the participation of the EIRELI owner in other companies such as this one. According to the EIRELI rules, one shall own only one company in this format. It is clear here that the Congress has attempted to restrain the misuse of the EIRELI.

Notwithstanding the above, it is possible for an EIRELI company to be formed as a result of an event unrelated to the initial proposed business model.

This type of situation can be considered, e.g. when one person becomes the owner of the total shares/quotas of a regular limited liability company. This derived form of the EIRELI shall be then legalized through the filing of the proper application

transforming the regular limited liability company (“Ltda.”) into an EIRELI.

3. Final remarks

Although it is early to state and to better assess the impact of this new business model and possibility, it is certain that the EIRELI shall be widely used when dealing with personal asset management plans, estate plans, and others, especially those involving family owned business plans.

The cited Law still leaves room for different interpretations and does present a few aspects that have yet to be answered, for example, if a legal entity can hold the corporate capital of an EIRELI company.

Also, only time shall adjust and definitely adapt this new type of company to the existing legal complex, allowing potential users of the EIRELI to better assess its form and uses.

The Law introducing the EIRELI to the Civil Code shall come into effect 180 days after its publication by the official government gazette (last July 12th, 2011).

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² Brazilian Civil Code: “Article n. 980-A. The sole proprietorship company shall be incorporated by a single person owning its total corporate capital, fully paid-in, worth no less than one hundred times the minimum wage at the time of its incorporation”.

³ Civil Code: “Article 980-A. (...) §1 The company shall bear the expression “EIRELI” after its corporate name”.

⁴ Civil Code: “Article 980-A. (...) §2 The individual person incorporating a limited liability company of sole proprietorship shall only participate in one company of this kind”.