

Limited Liability Individual Company

August 29th, 2011 by [Nehring e Associados Advocacia](#)

On July 11th, 2011, Law # 12.441 changed the Brazilian Civil Code currently in force, creating the figure of the limited liability individual company. In Portuguese, this type of company is called “empresa individual de responsabilidade limitada,” which is being referred to by the initials “EIRELI.”

Individuals have been always able to constitute companies with only one partner, which were called, before the changes introduced in the Brazilian Civil Code in 2002, “firma individual.” After such changes, the designation for such type of company changed to “empresário individual.” Either way, the liability of the individual was unlimited, that is, the patrimony of the individual could be seized for the payment of debts made in name of the company.

In other words, the Brazilian Civil Code authorized individuals to enroll themselves before the Board of Trade of their jurisdiction, as individual entrepreneurs, in order to perform professional economic activity for the production or trade of goods, as well as for the rendering of services. However, there was not a liability limitation provision, meaning that these persons would be obliged to solve the debts arising from their entrepreneurship with all of their assets, related or not to their professional activities. Not too many individuals were willing to take such risk, since there was not a distinction between the company’s and the partner’s patrimony, both being jointly liable for the obligations of the company.

The main point and perhaps the most important change introduced by Law # 12.441 is that the confusion of patrimony between company and partners will cease to exist, since the limitation of liability is the main pillar of the EIRELI which approximates it to the figure of a limited company, largely used in Brazil, and the principal difference with the figure of “empresário individual.”

The requirements to be fulfilled in the incorporation of an EIRELI are the following:

- It must be created and further kept by only one person, who shall hold the totality of its corporate capital;
- An individual may not hold more than one EIRELI;
- The minimum corporate capital, duly paid-up, shall be of, at least, 100 times the highest minimum wage rate applicable in the country (the current wage is of approximately US\$ 350,00).

The discussion that is currently being carried out among lawyers and other law practitioners is whether the EIRELI may be constituted either by individuals and companies. Discussions focus on whether a legal entity may constitute and hold the EIRELI. This is because the changes introduced by the new legislation were placed in the Brazilian Civil Code in the chapter dedicated to an “empresário,” always understood to be an individual. As the wording of the first clause introduced in the Brazilian Civil Code says, “the EIRELI may be constituted by one person,” it is not totally clear whether the concept of company could be inferred from such definition.

It is also important to point out that an EIRELI may also result from the transformation of an existing company into an entity with only one partner (i.e., the other partners of the existing company must have left the company). The aforementioned Law #12.441 has also included a sole paragraph in Article 1.033 of the Brazilian Civil Code, exempting a company transformed into an EIRELI from the general rule which established that a limited liability company is automatically dissolved if it is held by only one partner for more than 180 days.

Besides the separation of the partner’s patrimony from that of the company, this new corporate type puts an end to the need for the search of partners for the mere constitution of a limited liability type of company. This is because the legislation provided for the mandatory composition of the corporate structure of a limited liability company with at least 2 partners. Most of the time, one of the partners was only the holder of one share of the company, in order to fulfill such requirement and to give to the company and its partners the benefit of the separation of patrimonies, differently from the figure of “empresário.”

Therefore, certain rules regarding the limited liability companies will also apply to the EIRELI. Basically, those rules are:

- (i) as set forth in article 1.052 of the Civil Code, the liability of an EIRELI’s owner shall be limited to its corporate capital, when and if fully paid up;
- (ii) the disregard doctrine may also be applicable to the EIRELI, in the specific cases provided for in the Brazilian Civil Code.

Application of the disregard doctrine to EIRELI is subject to rules of civil legislation.

Article 50 of the Brazilian Civil Code states that *“in case of abuse of the legal entity, characterized by misuse of purpose or by patrimonial confusion, the judge may decide, at the request of a party, or at the request of the Public Prosecutor Office when it is entitled to intervene in the lawsuit, that the effects of certain and determined obligations be extended to the private assets of the managers or partners of the corporate entity.”*

The misuse of the corporate structure is characterized when the individual uses the corporate structure to deviate the company's object on his/her benefit, and furthermore, uses such structure as a shield to protect his/her own personal patrimony from being seized for the debts of the company.

It is important to make it clear that all illegal acts allowing the application of the disregard doctrine are those practiced by the partner or manager, on behalf of the company but on his/her own personal benefit.

Such doctrine shall not be used against the mere insolvability or unpunctuality of the corporate entity. However, some judicial orders issued in labor lawsuits do not respect such rule, in a clear abuse of the institute.

The new legislation concerning the creation of the EIRELI will come into force on January 9th, 2012.