




The difficulties of the Brazilian individual entrepreneur

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Julianne Dutra da Costa¹, Natalie Araújo Miranda² and Amanda Ramalho³

ABSTRACT

This article addresses Brazilian entrepreneurship in a clear and explanatory way, presenting its obstacles to the reader and some strategies to deal with its problems. Law studies were used, dedicated to leaving the legislation and the most succinct explanations for those who seek to better understand the Brazilian entrepreneur and how to become one. Therefore, this research conducts a theoretical study on Brazilian business law, placing the entrepreneur as a central figure.

Keywords: Law, Business, Entrepreneur, Duties, Company.

¹ Undergraduate student of the 4th semester in Law, Higher Education Center of Pará. Undergraduate student of the 2nd semester in Degree in English, Estácio de Sá. Undergraduate student of the 1st semester in Mediation, at Faculdade Estácio de Sá.

E-mail: juliannedutrac@gmail.com

² 4th semester undergraduate student in Law, Centro de Ensino Superior do Pará

³ Tutor



INTRODUCTION

Entrepreneurship is the process of identifying business opportunities and, because it is such an important tool, it is one of the main drivers of economic growth in a country. In Brazil, entrepreneurship is important for the generation of employment, income and innovation. However, Brazilian individual entrepreneurs face a number of challenges due to their obligations not being widely publicized, making it an uncharted territory for most of the population. Among the problems, the high costs of implementation, the lack of education focused on business activity and excessive bureaucracy should be highlighted. Thus, the present work was done due to its relevance regarding the dissemination of rights, duties and the problems that are part of the creation and management of a business activity.

ENTREPRENEUR

According to article 966 of the Civil Code, an entrepreneur is considered to be an individual who professionally carries out organized economic activity, so that goods and services are produced and circulate. In this way, the entrepreneur is an individual who takes the risk of starting and operating a business and is responsible for making strategic decisions, managing resources, in addition to, commonly, leading a team. Thus, the figure of the individual entrepreneur is the individual who professionally carries out the activity of a company.

COMPANY

Undeniably, business law is the instrument that governs the relations between companies, their partners, their representatives, their entrepreneurs and all those who are involved in business activities, after all, companies are related to business activities, going beyond the concept of what would be a mere conventional physical establishment. Therefore, being an entrepreneur, as part of the prints, is also characterized as someone who holds the National Registry of Legal Entities, the CNPJ.

Being a legal entity means that a company is created, such as a person holding the Individual Taxpayer Registry (CPF), the document means the birth of an individual with legal and constitutional rights – the registry means that the state recognizes the birth of that legal personality, through its enumeration. In a way, the entrepreneur deals with a person, but this person has a less physical character and more related to economic activities, whose function was chosen by the entrepreneur and recognized by the state, but does not necessarily need a physical place.

As rights and duties vary according to the functions of companies, there are different types, such as sole proprietorship, association, and others, but we will only be working with the sole proprietorship throughout this article.



RESPONSIBILITIES OF THE SOLE PROPRIETOR

Individual Entrepreneur, as the name implies, is a corporate type for companies formed by a single partner. In this way, the entrepreneur's liability is direct and unlimited, meaning that he can respond with his assets and personal assets to the obligations assumed by the company, not limited to the share capital.

The share capital corresponds to the equity value which contributes to the business activity. In theory, it would be the amount needed to start the economic activity of a company, whether a new one or to maintain the old one, taking into account the time and profit needed to maintain it.

LEGAL IMPEDIMENTS TO THE ENTREPRENEUR

It is worth noting that according to article 972 of the Civil Code, only entrepreneurs who are in full enjoyment of civil capacity and are not legally impeded can exercise economic activity, therefore, they must be adult and capable individuals who do not carry out activities incompatible with business activity.

REGARDING PERSON

As for the individual entrepreneur, those prevented from carrying out the business activity are the incapable, without judicial authorization and the public servants, because they are prevented from exercising the individual company, as well as from assuming management/administration positions of business companies. There is no prohibition on the position of partner, even if majority.

REGARDING ACTIVITY

There are few impediments related to business activity and they are present in Article 176, §1 and Article 222, Caput of the Federal Constitution.

According to the first article, the research and mining of mineral resources, in addition to the use of potentials, can only be carried out with authorization or concession from the Union, in the national interest, by Brazilians or a company incorporated under Brazilian laws and that has its headquarters and administration in the country, in accordance with the law, which will establish the specific conditions when these activities are carried out in the border strip or indigenous lands.

At the same time, in the second article it is established that the ownership of a journalistic and radio broadcasting company and of sounds and images is private to Brazilians born or naturalized for more than ten years, or to legal entities incorporated under Brazilian laws and headquartered in the country.



Both articles follow the same direction, because they aim to restrict some types of companies to native or naturalized Brazilians, imposing some requirements.

AGENTS EXCLUDED

In the same way that there are certain impediments, there is also the restriction of who holds the title of entrepreneur, even if it is confused with other terms which must be used according to the circumstances of the activities.

Thus, the term entrepreneur can be used improperly, and it can be confused with the terms:

- Liberal Professionals (professionals who carry out an activity of an intellectual nature);
- Simple and Uniprofessional Companies;
- Cooperative Societies;
- Rural Economic Activity (activity in which registration is not chosen).

INTELLECTUAL PROFESSIONAL

It is worth mentioning that the entrepreneur can be confused with those who exercise an intellectual profession. However, according to the sole paragraph of article 966, established by the Civil Code, anyone who exercises an intellectual profession, of a scientific, literary or artistic nature, even with the help of assistants or collaborators, is not considered an entrepreneur, unless the exercise of the profession constitutes an element of a company.

The company element mentioned is organization, because organization is what divides the entrepreneur from the intellectual professional, because this type of professional wastes a lot of time in a single step of the process. For example, the writer who can lose months or even years in the production of a single book. At the same time, a publisher has an independent professional in each of its stages, meeting mass demands and accelerating productions.

Consequently, the presence of the intellectual is necessary when exercising his activity, even if it is merely organized, because it is not made up of stages and requires his knowledge, exclusively, even for the simplest activity and, thus, no matter how much he finishes stages quickly, the professional is still not able to do it en masse, just like a company. At the same time, the entrepreneur makes his stages completely autonomous from himself, being trivial only in the administration of his company, allowing himself to work with organization and not wasting time in any of the stages, nor being required in any of these.

Therefore, doctors who provide care, lawyers who make consultations, writers, artists and other professionals, whose profession depends exclusively on their intellect, meet the requirements to be intellectual professionals and cannot be considered entrepreneurs.



EXCEPTIONS

In some cases of terms that are not entrepreneurial, it is possible to have exceptions.

For example, when the liberal professional owns a company element, when he performs an activity of a technical, scientific and/or artistic nature, he has a company element, which is the organization. However, even if lawyers have a company element, they will always be simple partnerships, by force of law, which is established by the Statute of Advocacy.

In another case, it is worth mentioning that cooperative societies will always be simple. At the same time, Corporations will always be entrepreneurs.

GENERAL OBLIGATIONS OF ALL ENTREPRENEURS

There are obligations that are incumbent on all entrepreneurs, such as Registration, Bookkeeping, Business Name and, finally, Business Establishment.

REGISTRATION

Registration is a legal formality for each and every entrepreneur, but it is not the element that characterizes the activity. According to statement 199 of the CJF, III Conference on Civil Law: "The registration of the entrepreneur or business company is a requirement that delineates its regularity, and not its characterization". In addition, branches, branches and agencies are also subject to registration, which must be registered in the Articles of Incorporation (Application or Contract/Bylaws of the Entrepreneur)

Thus, registration is a legal obligation imposed on all entrepreneurs in order to guarantee, publicize, authenticate, secure and effective the legal acts of the Organizations, in addition to registering national and foreign business activities, keeping their information updated and registering auxiliary trade agents.

Therefore, this formality must be done before the start of business activities (article 967 CC/02) and failure to comply with prior registration constitutes the exercise of business activity on an irregular basis.

As a consequence, the non-compliance with the business obligation brings the impossibility of contracting with the public power, participation in bids and classification of MEI, cannot request judicial reorganization or bankruptcy, the omission of accounting documents (crime), the Company in common: unlimited liability for all partners and exclusion of benefit of order and the absence of legal personality.

Other companies that need to be registered are branches, branches and agencies and each of the types of company may have fewer and more requirements. For example, a branch is a business company that operates under the direction or management of another (called a parent company), but



maintains its legal personality and assets. At the same time, the branch is an accessory and distinct business point from the main point, responsible for dealing with the latter's business and administratively subordinate to it, which does not have another CNPJ. Finally, the agency is a company specialized in providing services that acts specifically as an intermediary. He has another CNPJ and another title. The bond is contractual.

The only exceptions are the rural entrepreneur and the small entrepreneur, who have different treatment according to article 970 CC/02, in relation to the option of registration of the rural entrepreneur (article 971 CC/02).

To register a company, registration acts are required, such as: registration, filing and authentication. In the registration, the act of registration is practiced by the Board that refers to specific professionals, called trade assistants (auctioneers, public translators, etc.). In filing, an act of registration that concerns the articles of incorporation, amendment, dissolution and extinction of individual companies, business companies and cooperatives and must follow the rite of article 32 of Law 8.934/94. In the end, when authentication occurs, the registration of bookkeeping instruments and copies of documents and uses and customs established in their records (business books, etc.).

There are also registration bodies, such as the National System of Registration of Mercantile Companies (SINREM), the Department of Business Registration and Integration (DREI) and the Boards of Trade. For SINREM and DREI, they register through a technical plan, consisting of supervising, guiding, coordinating and standardizing while the administrative plan consists of coordinating and supplementing. In addition, there are the Boards of Trade and each federal unit has its own, whose functions are to perform the services provided for in article 32 of this law, to prepare the price list of its services, in compliance with the pertinent legal rules, to prepare the respective Internal Regulations and their amendments, as well as the administrative resolutions necessary for the faithful compliance with the legal rules, regulatory and regimental regulations, issue professional practice cards of persons legally registered in the Public Registry of Mercantile Companies and Related Activities and, finally, carry out the settlement of commercial uses and practices.

BOOKKEEPING

This legal obligation is imposed on all entrepreneurs, and it is a duty that is commonly given through business books. Thus, the bookkeeping is done by the accountant regularly qualified to exercise the profession, in his class body (CRC).

Bookkeeping consists of the systematic and chronological record of all accounting and tax facts of a company, an obligation for entrepreneurs, both individuals and business companies. After all, everyone has the duty to keep a history of their current and previous accounts, in addition to their events, chronologically, under penalty of document falsification. In this regard, they have a public



character for criminal purposes, as a way to ensure the existence or not of tax fraud by companies. Thus, this obligation must be carried out exclusively by a qualified professional, who must be an accountant, with an existing exception, which is when there is no degree in accounting sciences nearby.

In the Civil Code, bookkeeping is regulated by articles 1,179 to 1,195. These articles establish that the bookkeeping must be done in books registered with the Board of Trade, or in forms, as long as it is in chronological order. Books must be covered with intrinsic and extrinsic formalities, which guarantee their authenticity and regularity.

When observing the history of commercial life, it is possible to verify the company's equity changes over time, favoring inspection and the adoption of measures to curb capital simulation, thus avoiding various frauds and this allows the entrepreneur to prove in court in the face of the lawsuit. Therefore, its functions are asserted with the explanation of Fábio Ulhoa Coelho, who simplified them into managerial, fiscal and documentary.

Bookkeeping must be done completely, clearly and accurately, based on reliable documents. In accordance with article 1,182 CC/02, it is established that there is no prejudice to the provisions of article 1,174, the bookkeeping will be under the responsibility of a legally qualified accountant, unless there is none in the locality. The entrepreneur or administrator who does not carry out the bookkeeping correctly may be penalized, with a fine and even imprisonment.

Law 10,406/2002 (New Civil Code), article 1,179 – The entrepreneur and the business company are required to follow an accounting system, mechanized or not, based on the uniform bookkeeping of their books, in correspondence with the respective documentation, and to annually draw up the balance sheet and the economic result.

When remembering the principles present in the General Theory of business law, it is observed that the deed is an essential element, since it is directly linked to fidelity and clarity to the real situation of the company, secrecy (partial or total exhibition), freedom (exception: daily and special books).

Bookkeeping can be carried out by means of books, a set of cards or sheets, a set of continuous sheets or microfiche extracted from computer microfilming. In addition to the Civil Code, bookkeeping is also regulated by other laws, such as the Corporations Law (Law No. 6,404/76) and the National Tax Code (Law No. 5,172/66). In addition to the other books required by law, the Diary is indispensable, which can be replaced by cards in the case of mechanized or electronic bookkeeping.

Regarding the exhibition, except for the cases provided for by law, no authority, judge or court, under any pretext, may make or order diligence to verify whether or not the entrepreneur or the business company observes, in its books and files, the formalities prescribed by law. However,



secrecy does not apply to the tax authorities, in the exercise of the supervision of the payment of taxes, under the terms of the respective special laws. Such is article 1,190 of the Civil Code. However, there are exceptions, such as Article 420 CPC, at the request of the party, the liquidation of a company, succession by death and when and as the law determines.

In the end, the full exhibition is present in article 421 CPC, before an official letter or at the request of the party, being done in the presence of the entrepreneur, the business company and/or someone he trusts. At the same time, in partial suspension there may be a refusal to protect business secrets, however, in the event of a court decision to that effect, the books must be presented in court. However, in partial exhibition, what the party requesting the exhibition alleges will be considered true. However, it can be refuted with documentary evidence to the contrary.

CORPORATE NAME

This is a personal right, protected by law against acts of unfair competition, with a view to the social interest and technological development of the country (NEGRÃO, 2020, p. 157). Therefore, the entrepreneur, in order to acquire and retain clientele, needs to identify himself and his activity for the general public. To this end, the entrepreneur makes use of the distinctive signs of the business activity (name, trademarks, title of the establishment), which gain great importance, given the relevance of these elements for the relations with the clientele. (TOMAZETTE, 2020, p. 154).

There is a difference between the nomenclatures trademark and business name, because the name is the attribute of personality, through which the company is exercised, which is protected by registration with the Company Registration Body. Unlike the name, the trademark is the visually perceptible distinctive sign used to distinguish a product or service from an identical, similar or similar one. Legal Nature: industrial property right, protected by registration with the INPI.

The title of establishment and the insignia can also be elements to be confused, so they will be explained, because while the title is the designation of an object of law, also known as a trade name. Legal Nature: intellectual right protected against misuse, regardless of registration. At the same time, the insignia is the sign or emblem, which is formed by figures, drawings, symbols, conjugated or not with phrases. Legal Nature: intellectual right protected against misuse, regardless of registration. Composed of civil names of the owner of the company, partners or directors of the company or owners of the company, in complete or abbreviated form.

For the formation of the name, the individual firm is constituted by the name of the entrepreneur, admitting a more precise designation of his person or the type of activity with the condition that the name of the entrepreneur must be distinguished from others already registered with the Board of Trade, in the UF. If it is homonymous, it must insert elements that differentiate them. In this way, it can be used by all business companies, except the corporation



BUSINESS ESTABLISHMENT

The business establishment is governed by articles 1,142 to 1,149 of the Civil Code, since 2002, which states that the business establishment is "Any complex of assets organized, for the exercise of the company, by an entrepreneur, or by a business company." In this way, goods are separated into tangible and intangible goods that together have a unitary destination - universality in fact. Intangible property, integrated with tangible assets. In addition, the business point is also part of the business establishment, being the place where the entrepreneur sets up his establishment to exercise his business there.

It is worth mentioning that the *Trespasse* is when "in the case of a *de facto* universality, it is certain that the establishment can be alienated as a whole, as a collective thing - it is what receives the denomination of *trespasse* in the doctrine. In this negotiation, the set of assets and their organizational nexus is transferred and, consequently, the *trimming*". (TOMAZETTE, 2020, p. 143).

It can occur through a session or sale of the business establishment, being a legal transaction surrounded by legal formalities, requirements that give validity and security to the contracting parties and through sale, usufruct and is also subject to leasing, but only produces effects before third parties, when recorded in the registration of the entrepreneur, in the registration body and the act has been published. In the case of alienation, the transfer takes place by ownership of assets from an individual or group of individuals to a third party(ies), which can be converted into cash. At the same time, in usufruct it occurs through a real right over other people's things, giving the usufructuary the ability to use the utilities and fruits (rents) of the good, even if he is not the owner. The usufructuary has the right to possession, use, administration and perception of the fruits (rents). Thus, in leasing, the transfer takes place by contract, in which a person, owner of real estate, assures to another, through a fixed or adjustable contribution for a fixed term, the use and enjoyment of these assets.

According to the transfer, the sale will only be effective in the absence of debts, with the consent of the creditors (expressly or tacitly - silence, after 30 days of notification) or when sufficient assets (of the seller) are safeguarded to settle the debts contracted and it is important that the formalities are imposed for the protection of the creditors' rights. Once the creditors are paid, their interests will cease to exist in relation to the transfer.

Among the conditions of effectiveness, it is recalled that the acquirer succeeds the obligations regularly accounted for. However, the seller remains jointly and severally liable for debts incurred before the transfer, for a period of one (1) year from the date of their maturity. Being separated into overdue credits, which came before the publication of the due date and the credits due, which came after the publication of the due date.



STEPS

Among the steps, for an economic activity to be completely legalized, there are a series of laborious steps, which must be followed rigidly and can hinder the process of opening companies and represent a challenge for Brazilian entrepreneurs. Sequentially, these steps are: Registration with the Board of Trade; Obtaining the CNPJ; Opening of a bank account; Obtaining the business license; Issuance of invoices.

According to the order of the articles, the first step is to register the company with the Board of Trade of the state where it will be installed (967 of the CC), due to the obligation to register in the Public Registry of Mercantile Companies of the respective headquarters, before the start of its activity. After registering with the Board of Trade, it is necessary to obtain the National Registry of Legal Entities (CNPJ), by means of an application that contains what is necessary, according to article 968. Next, the company needs to open a bank account to receive payments and make payments. Then, there is the need to issue the operating license, through the local city hall, which authorizes the company to operate. Finally, companies must issue invoices to sell their products or services.

It is notorious that there are challenges to be faced by Brazilian individual entrepreneurs in each of the stages. For example, the lack of division between the entrepreneur's personal assets and the company's assets, even if they do not receive large amounts, may occur at the stage of opening the bank account and making payments, although it is recommended, so that the entrepreneur's personal assets are not affected by a lawsuit against the company.

RIGHTS AND DUTIES OF COMPANIES

Brazilian companies have rights and obligations. The main rights of Brazilian companies are: the license to operate, because companies have the right to operate legally and regularly; Ownership of property, so that companies have the right to own assets, such as real estate, equipment and vehicles; Freedom to contract so that companies have the right to hire employees, suppliers and customers.

According to the law and the process of creating a company, which must be bureaucratic and have a certain systematization, in order to avoid tax fraud, the initial articles of company law are present in the Civil Code, but there are also some laws to deal with different cases, specific cases which are not in the central rule, as in other branches.

The main duties of Brazilian companies are the payment of taxes, so that companies are required to pay taxes, such as Income Tax, the Tax on Industrialized Products (IPI) and the Tax on the Circulation of Goods and Services (ICMS), in addition to compliance with the legislation,



because companies are required to comply with Brazilian legislation, including labor laws, environmental laws, and tax laws.

ENTREPRENEURSHIP IN BRAZIL

The corporate type of sole proprietorship is placed at the center of this work because it is the most common in Brazil, since most citizens do not have enough knowledge to be able to add more partners.

It is not new that Brazil has difficulties in dealing with some kind of bureaucratic process or high national taxes, so much so that not all Brazilians are aware of their rights, not even as citizens. Thus, the hypothesis of lack of understanding of the subject should be considered and, in this way, give more visibility to the entrepreneur's issues.

After dealing with the state, the entrepreneur's next task is to face the national market. In the domestic market, the main challenges involve the characteristics necessary for the entrepreneur, if he wants to keep his company in operation over the years. Such as adaptability, proactivity and others.

Brazilian business owners face a number of challenges, including: High costs of implementation: The costs of setting up a business in Brazil are high, which can make it difficult to access entrepreneurship. Lack of education focused on business activity: Brazilian entrepreneurs often lack the knowledge and skills necessary to run a company. Excessive bureaucracy: The process of opening and operating a company in Brazil is complex and bureaucratic, which can hinder entrepreneurship.

HIGH IMPLEMENTATION COSTS

There are high costs both in the creation and in the process of legalizing a company, preventing many entrepreneurs from feeling encouraged to comply with the CLT instead of seeking alternative strategies to deal with the costs of employability. Such as, associating the proletariat, employing only interns, looking for minor apprentices, exchanging labor for shares or a salary increase for those who do not seek to sign, so that the cost of labor is reduced in some way.

ENTREPRENEURSHIP AROUND THE WORLD

When facing the international market, the challenges become even greater. However, there is a diversity of opportunities for Brazilian companies to grow abroad.

The process of opening and operating a company in Brazil is already expensive, generating high costs. Likewise, the process of opening and operating a company in Brazil is bureaucratic. The Brazilian market is competitive, with great competition. The Brazilian economy is unstable, becoming a significant obstacle for Brazilian entrepreneurs.



Most entrepreneurs around the world can deal with fewer difficulties, including Brazilians themselves.

OVERCOMING PROBLEMS

Brazilian business owners can overcome the challenges they face through planning and research, seeking support, and networking.

When planning is mentioned, it is remembered the organization in the business activity and, therefore, entrepreneurs must carefully plan their business and conduct market research before starting their operations.

To overcome challenges, it is also possible to do so by seeking support, because entrepreneurs can also receive it through financial institutions, governments and non-governmental organizations.

It is also worth mentioning that entrepreneurs, regardless of the area and the company, can always connect with other entrepreneurs in an English term called "networking", having a broader meaning, but in short it means "work of connections". This term, when used as a way of overcoming, maintains that to share information and experiences, it is possible to find support, partners and opportunities to continue in the market.

It is visible that regardless of the path to be taken, help is the best option and is not a reason for shame or demonstration of weakness, but for strength and courage to confront the challenges together with the most experienced, who are the ones who can give the most tips and comfort other entrepreneurs in their field, in addition to giving the opportunity to disseminate their knowledge, if you go through any complicated situation within the company itself.

CONCLUSION

In summary, the figure of the Brazilian entrepreneur is present in Business Law, characterized by compliance with the requirements of article 966, present in the Civil Code and its importance is due to the function of producing or maintaining goods or services in circulation, meeting social demand. Some strategies are used to deal with the problems of the Brazilian entrepreneur, mainly with the high costs of implementation.

Entrepreneurship is important to Brazil, but Brazilian entrepreneurs face a number of challenges. To overcome these challenges, it is necessary to have determination, adaptability, variability and a lot of courage. These are skills needed to cope with difficulties and, regardless of what happens, there are many opportunities for Brazilians, inside or outside the country.

However, there is a need to reduce implementation costs. It is possible to do so, using new nomenclatures, more appropriate for the business, when changing needs, such as becoming a MEI or



a rural entrepreneur in the search for lower government costs related to the implementation of a company. It is also possible to do so by asking for help or receiving tax and financial incentives.

Furthermore, to improve the dissemination of information about the rights of entrepreneurs, the Brazilian government can improve education focused on business activity through training programs, even so, the best opportunities for new entrepreneurs are still networking and seeking support from suitable people.

With the aim of simplifying the bureaucracy to open and operate a company through legislative and administrative reforms is planning, handling situations with caution and discernment.

Therefore, it is concluded that among the greatest difficulties to undertake in Brazil are the excess of bureaucracy, high taxes and the lack of education focused on business activity, problems that end up demotivating those who wish to undertake. That is why this work was created with the objective of spreading knowledge to those who are interested in Brazilian entrepreneurship.



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