

# MANAGEMENT AND LEGAL ASPECTS OF INDIVIDUAL ENTERPRISES

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Individual enterprises form the majority of the subjects of commercial law in every country. Until now, operation of individual enterprises established in Lithuania was regulated by various separate laws which caused much inconvenience. As the result, the Law of the Republic of Lithuania on Individual Enterprises entered into force on January 1<sup>st</sup>, 2004.

This article aims to present outstanding peculiarities of the individual enterprise as a legal entity which could be considered as certain advantages and disadvantages. The article considers the individual enterprise before and after the entry into force of the Law of the Republic of Lithuania on Individual Enterprises.

*Keywords: individual enterprise, establishment of enterprise, legal entity.*

## Introduction

Individual enterprises in every country form the majority of the subjects of commercial law. Lithuanian is no exception. According to the data of the Lithuanian Department of Statistics, in 2003 individual enterprises amounted to 51 percent of registered economic entities; in 2004 they amounted to 48 percent, in 2005 – 46 percent. Part of individual enterprises conduct agriculture related activities and 43 of them are the owners of land holdings (Free ..., 2005).

**Purpose of the research** – to present legal aspects and peculiarities of the individual enterprises as a legal entity.

**Object of the research** – individual enterprises.

**Methods of the research** – monographic, comparative and logical analysis and synthesis, analysis of legal acts.

## Results

The majority of the subjects of commercial law (i.e. economic entities which have the right to professionally conduct commercial economical activity in the name of their company) in the Republic of Lithuania is made of companies. The general legal principles of establishment and operation of companies are set forth in the Law of the Republic of Lithuania on Companies. The requirements on legal foundation of establishment, operation, reorganization, and liquidation of particular types of companies as well as other specific requirements are established in the laws and other legal acts for particular types of companies (Šatas, 1998).

According to the Law, the individual enterprise may also be owned by right of ownership by non-production organizations which have the rights of the legal entity. The owner of the individual enterprise may be a natural person by right of ownership or several natural persons by right of joint partial ownership. However, attention should be drawn to the fact that after the Law of the Republic of Lithuania on Individual Enterprises entered into force, the individual enterprises whose

owners are non-production organizations became considered as established for the period until 31 December 2004 and could be transformed, liquidated or transferred to other persons before the specified date (Stanislovaitis, 2003).

However, the enterprise cannot be identified with the property of the enterprise owner which is used to satisfy their needs and the needs of their family. The enterprise assets are accounted separately by keeping the books on the enterprise operation and turnover and drawing up enterprise balance sheets. The enterprise balance does not include the private property of the enterprise owner's family. Profit tax, income tax and other taxes are paid in the name of the enterprise (Vaišvila, 2000).

The generalized definition of individual entities of commercial law in various foreign countries is slightly different. The commercial economic entities of this type found in the laws and commercial practice of the countries, which inherited the British legal system or in which the so called monistic (unified) civil legal system is applied (i.e. the commercial law is not separated from the civil law), are most often called sole or individual owners (engl. – *sole proprietorship, sole trades or ownership*; in the USA – *individual proprietorship*; in Italy – *ditta individuale*) (Tzelepis, 2005). Two Codes – the Civil Code and the Commercial Code – are applied in the countries in which the so called dualistic civil (private) legal system, i.e. the commercial law is separated from the civil law, is applied. The entities of commercial law of this type are most often called individual entrepreneurs (Fr. *eterpreneur individual, enterprise individuelle*) (Labutienė, 1995).

Meanwhile, the liability covers all assets (both enterprise and private property). Thus, claim to all property may be imposed. However, giving the veto to creditors creates opportunities to abuse creditor's rights, drag out processes or evade the law.

## Conclusions

1. The Law defines the individual enterprise as a private legal entity of unlimited liability. This means that if enterprise obligations cannot be covered by the individual enterprise assets, they shall be covered by the individual enterprise owner. However, it should be pointed out that the individual enterprise acquired the rights of the legal entity only after the new Civil Code was adopted.

2. Emphasis should be made on the fact that the present Law on Individual Enterprises indicates that the individual enterprise owner may only be the sole person. According to the previous Law on Companies, a few persons could be individual enterprise owners. The Law specifies that the individual enterprise owner may not be the owner of another individual enterprise. Thus, one person may possess only one individual enterprise.

3. The Law on Individual Enterprises provides for that the individual enterprise may be transformed into a public limited-liability company, private limited-liability company as well as a public establishment. The specified general transformation requirements as well as peculiarities of transformation into a public limited-liability company or a private limited-liability company are related to the Eu-

ropean Union Company Law. The most popular are transformations into a private limited liability company and the main reason for that – limited civil liability.

4. The individual enterprise may not be reorganized except for the case when the individual enterprise is inherited by the person who is the owner of another individual enterprise. During the transitional period specified in the final provisions of the Law, the persons who possess two or more individual enterprises as well as the individual enterprises in whose name both spouses are indicated as the owners will be able to reorganize the individual enterprises. In the first case, such opportunity can be considered as advantage, in the second case – as disadvantage since it overburdens the spouses.

5. The individual enterprise may be liquidated on the grounds and according to the procedure of liquidation of legal persons as set forth in the Civil Code. Only liquidation peculiarities are specified in the Law.

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## VADYBINIAI IR TEISINIAI INDIVIDUALIOSIOS ĮMONĖS YPATUMAI

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Kiekvienoje šalyje individualios įmonės sudaro komercinės teisės subjektų daugumą. Iki šiol Lietuvoje įsteigtų individualių įmonių veiklą reglamentavo įvairūs atskiri įstatymai ir tai kėlė daug nepatogumų. Tačiau nuo 2004 m. sausio 1d. įsigaliojo LR individualių įmonių įstatymas. Šiame straipsnyje siekiama atskleisti individualios įmonės kaip juridinio asmens išskirtinius ypatumus, kurie sudaro tam tikrus trūkumus ir privalumus. Straipsnyje nagrinėjama individuali įmonė prieš Lietuvos Respublikos individualių įmonių įstatymą ir po šio įstatymo.

Analizuojant LR individualių įmonių įstatymą pabrėžiama, kokios jo normos turės tiesioginės įtakos jau veikiančioms individualioms įmonėms bei jų savininkams, akcentuojama šio įstatymo svarba tolimesnei individualių įmonių veiklai, steigimui bei likvidavimui.

*Raktiniai žodžiai: individualioji įmonė, įstatymas, norma.*