

Italian and European Company Law

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Dott.ssa Giulia Serafin

Partnerships and companies are organizations of persons and means created by private autonomy for the joint exercise of a productive activity.

Partnerships and companies are the typical organizational structures provided by the legal system for the exercise of a **business activity** in associated form.

Article 2082, Civil Code:

«An entrepreneur is one who **professionally** carries on an **organized economic activity** for the purpose of producing or exchanging goods or services.»

- Organization:

this means that there can be no enterprise activity without planning and coordination of the series of acts in which the enterprise develops and without the coordinated use of productive factors (capital and work).

- **Economic method:**

What characterizes business activity from this point of view is not only the productive scope to which it is directed but also the method by which it is carried out. A business activity can be said to be conducted economically when it is carried out in such a way that costs are covered by revenues.

- Professionalism:

this means that the exercise of business activity must be a habitual and not occasional exercise of productive activity.

“General statute of the entrepreneur”:

- discipline of the business assets (azienda)
- distinctive signs
- competition law
- consortia
- Antitrust Law (TFUE; Italian law n. 287/1990)

Distinctions provide by the Civil Code about the business activities:

- depending on the object of the business activity: commercial entrepreneur and agricultural entrepreneur;
- depending on the size of the business: small entrepreneur and medium-sized entrepreneur;
- depending on the person carrying out the business activity: individual entrepreneur and enterprise carried on using a collective form.

In addition to the “general entrepreneur statute”, depending on the type of entrepreneur, the special **“commercial entrepreneur statute”** also applies.

This special statute includes Business register regulations, business representation regulations (statutory agency), and bankruptcy regulations.

Art. 2135 c.c.

Agricultural entrepreneur:

«An agricultural entrepreneur is one who engages in any of the following activities: cultivation of land, silviculture, animal breeding and related activities.»

A) Main agricultural activities;

B) Connected activities:

- Transformation, manipulation, conservation, commerce, exploitation of products obtained, in prevalence, from an essentially agricultural activity
- Supply of goods and services by using in prevalence instruments or resources usually employed in agricultural activity

→ subjective connection

→ objective connection

Art. 2195 c.c.

Commercial entrepreneur:

«The following are required to be registered in the business register who engage in:

- 1) an industrial activity directed to the production of goods or services;
- 2) an intermediary activity in the movement of goods;
- 3) an activity of transportation by land, water or air;
- 4) a banking or insurance business;
- 5) other activities ancillary to the above.»

Art. 2083 c.c.

Small entrepreneurs:

«Small entrepreneurs are the direct cultivators of the fund, the artisans, small traders and those engaged in a professional activity organized mainly with his own work and family members' work.»

Application criteria of Insolvency Law:

the commercial entrepreneur who demonstrates the joint possession of the following requirements is not subject to bankruptcy:

1. having had in the three financial years prior to the date of filing the bankruptcy petition assets of a total annual amount not exceeding 300.000 €
2. having in the three fiscal years prior to the date of filing of the bankruptcy petition gross revenues in a total annual amount not exceeding 200,000 €
3. having an amount of debts, including overdue debts, not exceeding 500.000 €

Individual entrepreneur and enterprise carried on using a collective form:

- partnerships
- companies
- public enterprises
- associations
- foundations

Art. 2086 c.c.

«The entrepreneur, whether operating in corporate or collective form, has the duty to establish an organizational, administrative and accounting structure accounting appropriate to the nature and size of the enterprise, also in function of the timely detection of the enterprise's crisis and of the loss of business continuity, as well as to take action without delay for the adoption and implementation of one of the instruments provided for by the law for overcoming the crisis and recovery of the business continuity.»

“Commercial entrepreneur statute”

A) Legal publicity and Business register
(artt. 2188 et seq. c.c.)

B) Accounting records
(artt. 2214 et seq. c.c.)

C) Statutory agency
(artt. 2203 et seq. c.c.)

C) Insolvency Law

A) Legal publicity and Business register
(artt. 2188 et seq. c.c.)

The **ordinary section** includes:

- partnerships and companies
- cooperative companies
- consortiums with external activity and consortium companies
- companies incorporated abroad with administrative or secondary offices on Italian country
- European economic interest groups
- public entities whose exclusive or main purpose is a commercial activity
- individual (non-small) business entrepreneurs

A special section includes :

- agricultural enterprises
- small entrepreneurs and/or direct farmers
- simple partnerships
- artisan enterprises (annotation).

Then there are **other special sections** in which the enterprise is registered as:

- innovative start-up
- certified incubator
- innovative SME
- social enterprise
- entity exercising management and coordination activities and that which is subject to them (group companies).

Effects of registration:

→ legal publicity

→ constitutive effects

→ normative effects

→ only certification (not legal publicity)

B) Accounting records - (arrt. 2214 et seq. c.c.)

Art. 2214 c.c.:

«An entrepreneur engaged in a commercial activity must keep a **journal** and the **inventory book**.

He must also keep such other accounting records as are required by the nature and size of the business and keep for each business the originals of letters, telegrams and invoices received, as well as copies of letters, telegrams and invoices sent.»

C) Statutory agency (art. 2203 et seq. c.c.)

- **Factor** (institore): a person in charge of the management of a commercial enterprise (or a branch)
- **Attorneys in fact** (procuratori): even though they are not in charge of the management, they have the power to perform all acts pertaining to the enterprise (due to the relationship on a continuous basis)
- **Clerks** (commessi): employees who, due to the tasks they are entrusted with, are granted a limited power to represent the enterprise

Business assets (azienda):

Art. 2555 c.c.:

«a set of assets organized by an entrepreneur for the purpose of carrying out the business activity».

The Civil Code regulates five aspects in the context of business transfer:

- 1) the form of the transfer contract
- 2) the non-competition of the transferor
- 3) the succession in business contracts
- 4-5) the business credits and debts

Distinctive signs (artt. 2563 et seq. c.c.):

- Business name (ditta): distinguishes the person of the entrepreneur in the exercise of the business activity.
- Banner (insegna): identifies the places where the business activity carried out.
- Trademark (marchio): identifies and distinguishes the goods or services produced.