



## ORIGINAL PAPER

# The option of the tourism economic operators for the legal form of limited liability companies

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### Abstract:

The status of tourism as a strategic domain of the Romanian economy places its specific activities under the influence of a rich general and special legislation. In turn, economic operators in tourism are a relevant component of the legal category of professionals and carry out economic activities specific to travel agencies, namely accommodation activities, public catering and other specific services in tourist reception structures as their owner and/or administrator. Despite the permissiveness offered by romanian tourism legislation regarding the legal form in which such subjects can operate on the market, in practice, they predominantly choose the limited liability company. The contextual analysis of the regulatory regime of this legal form of carrying out economic activity and the type of tourism services provided aims to clarify the aforementioned option.

**Keywords:** *economic operator; professional; limited liability company; tourism activities; tourism legislation.*

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### **General identification of legal subjects specific to the tourism sector**

In Romania, the importance of tourism is highlighted primarily by its own normative qualification as a strategic area of the national economy, namely by the text of article 1 paragraph 1 of Government Ordinance no. 58/1998 on the organization and conduct of tourism activity in Romania. As a framework law on the matter, this establishes its general legal regime, which is subsequently detailed in various aspects by other regulations. Tourism activity benefits from a complex profile, outlined by the multiple legal and economic implications of the specific services and operations in which it can materialize, as well as of the legal subjects involved.

The organization and conduct of tourism activities is mainly the responsibility of economic operators in tourism. The tourism field is not reserved exclusively for them, the legislation allowing a variety of professions specific to tourism activities, included in the Code on the Classification of Activities in the National Economy (e.g. certified guides, guides and persons who temporarily and occasionally provide the guiding profession), as well as the involvement of other associative entities with a specific role (e.g. destination management organizations established as public utility associations; non-profit or patrimonial associations and organizations, of a professional, scientific, cultural, religious or social nature, which have an active role in the activities carried out by the Ministry of Tourism). The vision of the specialized literature on the actors involved in tourism is an extensive one, which implicitly reveals the role of tourists, as well as the state, public authorities and international governmental organizations (Dumitru, 2018: 111-140).

Ordinarily, access to tourism activities is subject to a double check. A first check is carried out in the context of establishment in the chosen legal form, materialized in obtaining the desired legal status and recording in a public register, stages absolutely necessary to be able to start economic activity as a subject of law. The second check is specific to the field in question, namely the one in which the central public administration authorities and/or representative institutions and organizations at national level issue specific authorizations for economic activity in tourism. The terminology used covers the diversity of possible documents, regardless of their concrete title of approvals, attestations, authorizations, certificates, licenses and/or tourism patents. Completing the two types of procedures conditions the establishment and legal operation, implicitly contributing to ensuring the protection of tourists.

In relation to their weight and impact in tourism, the category of economic operators is the one that requires nuances. The terminology "economic operator" has recently been reformulated in terms of meaning in the special legislation in the tourism field. In the meaning of the law, *the economic operator* designates the natural person, the authorized natural person, the individual or family enterprise, the company or other legal person established according to the law, which carries out accommodation activities, public catering and other specific services in tourist reception structures as their owner and/or administrator, respectively the company or other legal person established according to the law, which carries out economic activities specific to travel agencies (art. 1 of the Order of the Ministry of Entrepreneurship and Tourism no. 510/2022).

In this context, it is necessary to clarify the status of economic operators in tourism, firstly by explaining their membership in the legal category of professionals, and secondly by identifying the legal forms nominated by the legislator in which such legal subjects can be constituted and function.

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### **Economic operators in tourism - category of the legal notion of professional**

Regarding the status of professional, we are considering the legal meaning of this term, introduced as a novelty in the national legal system by the Civil Code (on October 1, 2011), which reconfigured Romanian private law by implementing the monistic theory, thus leading to the assimilation of commercial law into civil law. In private law legal relations, professionals are distinguished from ordinary individuals by certain distinctive features (Piperea, 2012: 33) and have a different legal regime applicable to the contractual obligations assumed, set out in the Civil Code (Nicolae, 2015: 468-469) and by certain special laws.

The legal term "professional" has acquired, together with that of "enterprise", the value of a generic notion, being characteristic of private law in general and entailing the application of civil law. Private law legal relationships in which professionals participate are civil legal relationships. In turn, disputes generated by such legal relationships are "civil" disputes, and the civil courts competent to judge disputes with professionals will be notified, subject to the procedures of the Code of Civil Procedure and, where appropriate, of special laws (Stuparu, 2020: 13-14). Consequently, the legal relationships occasioned by the economic activity in tourism, although they have a pronounced commercial character, they no longer have a commercial legal nature, the change in the regulatory system of Romanian commercial law leading to a civil qualification. Currently, civil law is a common source of law in the commercial field, therefore including for the tourist field.

From a normative point of view, the article 3 paragraph 2 of the Civil Code established that "all those who operate an enterprise are professionals". This approach, simultaneously generalist and minimalist, conditions the quality of professional exclusively on the operation of the enterprise (the operation of an enterprise constitutes the systematic exercise, by one or more persons, of an organized activity consisting of the production, administration or alienation of goods or the provision of services, regardless of whether it has a profit-making purpose or not). In an attempt to facilitate the identification of the categories of professionals the legislator established the scope of application of the definition through the nuances brought by Law no. 71/2011 for the implementation of the Civil Code. Thus, the notion of "professional" includes the categories of trader, entrepreneur, economic operator, as well as any other persons authorized to carry out economic or professional activities, as these notions were provided by law on the date of entry into force of the Civil Code (para. 1 of art. 8 of Law no. 71/2011). In our opinion, a fixed classification in the four categories nominated by the legislator is not always possible for private law subjects. In reality, the manner in which the same legal subject participates in the general civil circuit, falling under the incidence of several regulations, although it does not alter its legal quality as a professional, it can be simultaneously classified in one or more of the aforementioned terminological categories. Moreover, the possession of any of the titles nominated by Law no. 71/2011 is not in itself of a nature to confer professional quality.

to the same legal subject, depending on the private law contexts in which it is located, we note that its qualification as a professional is essential. In all cases, for this status it is mandatory to fulfill the condition of operating the enterprise, and when the legislator expressly imposes it, through a special law, this must be combined with the condition of registration in a special advertising register and/or authorization. Any of the titles of trader, entrepreneur, economic operator or person authorized to carry out

economic activities are only terminological titles, imposed by various normative acts, which are not criteria for acquiring the quality of professional, but have the role of entailing a certain legal regime of the existence of the respective legal subject (rights, obligations, formalities, legal status, etc.).

In conclusion, the professional is the natural person, legal person or entity without legal personality who operates an enterprise within the meaning of the Civil Code and, if applicable, under the conditions of special legislation, regardless of the title under which we find it in the legal landscape (Stuparu, 2020: 49). The operation of the enterprise is the essential, indispensable component for any professional and represents the organized activity, systematically exercised by the professional, which has as its object the production, administration or alienation of goods or the provision of services and a lucrative or non-lucrative purpose.

According to the legal principle *specialia generalibus derogant*, tourism legislation that regulates the meaning of the phrase economic operator has the status of a special norm and derogates from civil legislation that acts as a general norm. Being of strict interpretation and application, the special norm, becomes the primary reference point in identifying the types of legal subjects specific to legal relations in tourism.

Consequently, economic operators in tourism represent the special title assigned to legal subjects who meet the conditions established by tourism legislation, being a category of professional established by the Romanian Civil Code. Their quality as a professional does not derive from the title, but is determined by the cumulative fulfillment of the condition of operating the enterprise (within the meaning of the Civil Code), cumulated with the condition of registration in specific public registers when the legal form of establishment requires mandatory registration in the trade register. The subsequent obtaining of the various authorizations imposed by tourism legislation exclusively concerns the legal exercise of economic activity in the field, as a professional.

Specifically, before starting the economic activity in tourism, future professionals such as economic operators who opt for any of the legal forms mentioned in the text of Law no. 265/2022 (article 4) are obliged to request registration in the trade register. Considering its status as a public service of general interest, the trade register ensures the registration and advertising of professionals such as authorized natural persons, individual enterprises and family businesses, the registration and advertising of professionals such as companies, European companies, cooperative societies, European cooperative societies, credit cooperative organizations, economic interest groups and European economic interest groups, with their main headquarters in Romania, the registration and advertising of their branches, as well as of the branches of the listed legal entities with their main headquarters abroad.

Although tourism legislation does not require a mandatory specialized public register to ensure the publicity of legal subjects active in the field, there is nevertheless an electronic database managed by the Ministry of Economy, Digitalization, Entrepreneurship and Tourism, through the General Directorate of Tourism (<https://se.situr.gov.ro/OpenData/OpenDataMain>). Its consultation by any interested person allows access to updated information on the categories of legal subjects active in tourism.

For the purpose of protecting tourists, the offering, marketing, sale of tourist services and packages, as well as the creation of tourist products on the territory of Romania can only be carried out by economic operators in tourism authorized by the

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central public administration authority responsible for tourism, holders of tourism licenses or classification certificates, as the case may be.

### **Legal forms available to economic operators in tourism**

The special legislation in the tourism field delimits the legal forms available to economic operators in relation to the type of activity they carry out. On the one hand, legal subjects who carry out accommodation, public catering and other specific services in the tourist reception structure as their owner and/or administrator may act as natural persons, natural persons of the authorized natural person type, individual enterprise or family enterprise, as well as legal persons of the company type or other legal person. On the other hand, the carrying out of economic activities specific to travel agencies is allowed exclusively to legal persons established as a company or in other legal forms according to the law.

*Economic operators of the type of natural persons* have recently come to the attention of the national legislator (Order of the Ministry of Entrepreneurship and Tourism no. 510/2022). The terminology covers those natural persons, not constituted in a specific legal form, but only in consideration of their capacity as owners of tourist reception structures with accommodation functions such as apartments and/or rooms for rent in family homes. In their case, the procedure they must follow to operate in the tourism sector is strictly one of authorization of economic activity, by obtaining the classification certificate in accordance with the law from the central public institution responsible for the field of tourism.

*The authorized natural person, the individual enterprise and the family enterprise* are legal statuses accessible exclusively to natural persons, including those aiming at the quality of economic operators in tourism. Their legal regime is outlined, mainly, by the Government Emergency Ordinance no. 44/2008 on the conduct of economic activities by authorized natural persons, individual enterprises and family enterprises. The three legal statuses are normatively defined as an economic enterprise, that is, as economic activities carried out in an organized, permanent and systematic manner, combining financial resources, labor, raw materials, logistical means and information, at the risk of an entrepreneur, in the cases and under the conditions provided for by law. None of these economic enterprises acquires legal personality, and the natural person who organizes them is generically called an entrepreneur.

As economic enterprises, *the authorized natural person* is organized by a natural person who mainly uses his labor force and professional skills, while *the individual enterprise* is organized by a natural person entrepreneur. In turn, the one called *family enterprise* is organized by 2 or more members of a family. The notion of "family" refers to the husband, wife, their children who have reached the age of 16 on the date of authorization of the family enterprise, relatives and in-laws up to the fourth degree inclusive.

Despite a terminological inconsistency offered by the text of the framework law, important only from a theoretical point of view (we refer to the use of the terms entrepreneur, trader and professional), we note that all natural persons who have access to the status of authorized natural person, individual enterprises or family enterprises have in common: the obligation to register in the trade register before starting economic activity (imposed by Law no. 265/2022 on the trade register), the fact that they operate an economic enterprise (under the terms of G.E.O. no. 44/2006, otherwise the meaning of the notion being consistent with that outlined by the Civil Code for the operation of the

enterprise), the possibility of carrying out the same types of activities (production, administration or alienation of goods or provision of services) and the existence always of an exclusively lucrative purpose.

Individuals who access any of the three legal statuses regulated by G.E.O. no. 44/2008 acquire the status of professional, the result of registration in the trade register (mandatory prior to starting economic activity) and of operating the enterprise. In return their statute of economic operator in tourism derives exclusively from the object of activity of the economic enterprise, being revealed by the existing electronic database in the tourism field.

As differences, imposed by G.E.O. no. 44/2008 depending on the legal status acquired by a natural person, we mention the number of classes of activities allowed, respectively the number of employees, employed with an individual employment contract, concluded and registered under the law. Thus, the authorized natural person can have in its object of activity a maximum of 5 classes of activities provided by the Code on the Classification of Activities in the National Economy, while the individual enterprise can have in its object of activity a maximum of 10 classes of activities provided by the Code on the Classification of Activities in the National Economy. Instead, family businesses are not subject to restrictions on the number of activity classes. Regarding the status of employer, this is recognized by the legislator exclusively to any natural person registered as an authorized natural person and as individual enterprise, with some nuances. As an authorized natural person, they can carry out authorized activities, alone or together with a maximum of 3 employees, while as an individual enterprise they can employ a maximum of 8 employees, third parties. The need to adjust the number of employees can be resolved by accessing the option of changing the legal status of the employer as an individual, G.E.O. no. 44/2008 allowing deletion from one form and registration under the other form, explicitly doubled by the prohibition of the accumulation of the status of an authorized natural person with that of an individual enterprise in the person of the same holder. It is also possible to involve the spouse/ the husband of the owner of the individual enterprise or the owner of the authorized natural person who, without being registered in the trade register and authorized to operate as the owner of the individual enterprise/authorized natural person or without being an employee, may regularly participate in the activity of the individual enterprise/authorized natural person, performing either the same tasks or complementary tasks, under the conditions of the law. Such a situation is recorded as a mention in the trade register, respectively is deleted at the time of termination, under the conditions of the law. In the case of a family enterprise, the economic activity for which it was authorized may only be carried out by its members.

For *economic operators in tourism as legal entities*, tourism legislation allows the option between a company and other forms of legal entity.

Regarding *companies*, we note that the current Romanian Civil Code has introduced a new classification based on the presence or absence of legal personality (Cărpénaru, Piperea, David, 2014: 6), respectively into companies without legal personality (e.g. simple company, joint venture, other forms regulated by law) and companies with legal personality (e.g. company regulated by Law no. 31/1990 on Companies, cooperative societies). In the matter of economic operators in tourism, we appreciate that the notion of "company" currently nominated by the legislator, refers to companies with legal personality (in fact, prior to the changes in the field of private law, the phrase "commercial company" was expressly used). The category of companies is diverse, being the subject of regulation by several normative acts, each of which has the

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role of a framework law that establishes the specific legal status (establishment, organization, operation, modification, cessation of legal existence, etc.).

*Companies regulated by the Law no. 31/1990* represent the main choice, including in tourism. These companies with legal personality, set up by natural persons and legal persons with a view to carrying out activities for profit, are still called, in doctrine and case law, commercial companies. This terminology is not altering the content of the legal institution (Angheni, 2019: 120). Companies regulated by Law no. 31/1990 can be established according to article 2 only in one of the following forms: general partnership, limited partnership, joint stock company, partnership limited by shares and limited liability company. The Romanian Law on Companies also regulates the limited liability company with a single shareholder, which is not a variety or a new form, but a limited liability company with a different number of shareholders (Săuleanu, 2012: 116), as well as the European company when it has its main registered office on the territory of Romania. For the latter legal subject, Law no. 31/1990 supplements, to the extent of compatibility, the Council Regulation (EC) no. 2157/2001 on the Statute for European Companies.

*Cooperative societies*, depending on their object of activity, can be: credit cooperatives - a component of credit cooperative organizations regulated by G.E.O. no. 99/2006 on credit institutions and capital adequacy - and cooperative societies regulated by Law no. 1/2005 on the organization and functioning of cooperation. If credit cooperatives carry out activities specific to credit institutions for the purpose of helping their members, following the legal regime of a joint-stock company (Smarandache, 2013: 26, 31, 39-41), cooperative societies covered by Law no. 1/2005 can be established in various forms, in relation to their object of activity (Găină, 2017: 438-530). Both forms of legal entities are accessible to economic operators active in the tourism sector, while respecting the specificity of their legal regime.

The legislator left the economic operators the option for other legal entities, without limiting the legal forms. We consider that the economic activity of tourism, regardless of its typology, can also be carried out in legal forms such as: autonomous management, national company or society, economic interest group, European economic interest group, European cooperative society, research and development institute in tourism. The argument in favor of this support is represented by the fact that each of these legal entities carries out economic activities, tourist activity can always constitute their object of activity.

### **The main arguments explaining the option for limited liability companies**

The analysis of specific electronic databases in tourism, which ensure the record of economic operators in the field, reveals the overwhelming preference for establishment as limited liability companies. From a legal point of view, we consider that the option is justified, mainly, by the advantages of establishing and operating as legal entities of this type.

Law no. 31/1990 on Companies, subject to numerous and consistent textual amendments throughout its existence (Săuleanu, 2025: 11-14), has succeeded in transforming the limited liability company (with sole or more shareholders) into the most desirable option for Romanian traders, regardless of the economic activity targeted.

*The mixed character of the limited liability company*, derived from the combination of the *intuitu personae* element - taken from partnerships companies- with the element of limited liability of associates for social obligations - taken from capital

companies - constitutes a primary point of attraction, including for economic operators in tourism.

The option of establishing a limited liability company with solo shareholder is chosen by those who, although they do not want associations with other persons, pursue the benefits of this legal form. The option of a limited liability company (with many shareholders, but without exceeding the maximum limit of 50 imposed by the legislator) is chosen by those who associate with known and trusted persons, their person and qualities being decisive.

For future shareholders, the option of a limited number is doubled by the advantage of the nature of their liability during the existence of the corporate form. The obligations assumed by any limited liability company are guaranteed, mainly, with the company's patrimony (a constituent element of its legal personality itself), and, in the subsidiary, with the liability of the shareholders, which is practically limited to the contribution assumed according to the law and the constitutive act. This form of liability becomes an advantage because it sets the protection of the personal assets of the shareholders against the company's creditors. In turn, the personal creditors of the shareholders do not have access to the company's patrimony. However, the legislator has recognized certain specific instruments for the recovery of receivables without interfering with the autonomy of the company's patrimony. As an exception, the benefit of limited liability may be lost (Bodu, 2025: 233-243). The company's creditors will be able to pursue the shareholders of the limited liability company that has the status of debtor only in the situations expressly and restrictively provided for by the legislator (e.g., under Law no. 31/1990, if: the shareholders have defrauded the interests of the creditors during the dissolution and liquidation stage of the company; the case of the company's nullity occurs; on the occasion of exercising the right to oppose the decision of the associates to transfer the shares to persons outside the company).

In turn, *the legal regime of the obligation to contribute* to a limited liability company plays a significant role in the option for this legal form, both in consideration of its object and the relationship with the share capital to the formation of which it contributes. Similar to any form of commercial company, the establishment of a limited liability company requires the making of a cash contribution, without this obligation being incumbent on each of the future shareholders who can also choose the option of a contribution in kind (movable, tangible or intangible assets, and/or real estate). The advantage offered by the regulation consists in the modest nature of the value, respectively the amount of this type of contribution, as revealed by the recent amendments to the legal regime of the share capital for which the previously existing mandatory minimum level (of 200 lei) was eliminated. Currently, in a limited liability company, the partners must pay 30% of the value of the subscribed share capital no later than 3 months from the date of registration in the trade register, but before starting operations in the name of the company. The difference in the subscribed share capital must be paid within 12 months from the date of registration, for the contribution in cash, respectively within 2 years from this date, for the contribution in kind.

*Economic activity* accessible to limited liability companies highlights the advantage of the diversity and plurality of concrete activities that can be carried out simultaneously by such a legal subject. Regarding the object of activity, the constituent act must necessarily mention the main activity and the field of activity, and optionally any other activity, with the nomination in all cases of the related codes from the Code on the Classification of Activities in the National Economy. An extended object of activity,



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clearly identified from the moment of establishment, is not only possible in comparison with other types of legal entities, but also avoids the expenses and procedural aspects of subsequent additions.

*The legal formalities for establishing as professionals, such as commercial companies*, recently simplified by the text of Law no. 265/2022 on the trade register, have become an additional argument for choosing economic operators in tourism. In the broader context of the implementation of digitalization measures, future associates have as an alternative to the classic establishment option that of setting up a limited liability company online (this is possible for any type of commercial company). In the online establishment procedure, the drafting of the constitutive act replaced by the completion of a standard form of articles of association, made available by the National Trade Register Office, by using electronic identification means. The documents required for registration are also transmitted by electronic means and are submitted, according to the new law, in electronic format, signed with a qualified electronic signature, or, as the case may be, in a copy certified by a party with a qualified electronic signature. In turn, the number of these documents has been reduced, it being sufficient for the registration application to be accompanied only by the constitutive act of the future company, proof of the declared headquarters, as well as by the acts or opinions provided for by special laws for the establishment.

In this procedural context, *the reduced period for establishment* must also be mentioned, which is also applicable to any professional subject to registration in the trade register. If the legal requirements for establishment are met, the registrar of the trade register where the application for establishment was submitted issues an admission decision, within one working day from the date of registration of the application with the trade register office or, as the case may be, from the date of completion of all formalities and receipt of all documents and information for establishment and registration. Registration in the trade register is carried out within 24 hours from the date on which it was ordered by the registrar by decision. Subsequently, within a maximum of 3 working days from the date of registration in the trade register, the legal advertising formalities must be carried out, consisting of publishing the decision in the Electronic Bulletin of the Trade Register, respectively in the Official Gazette of Romania.

*The bodies that ensure the functioning of a limited liability company* benefit from a flexible legal regime, the establishment and exercise of powers being governed by flexible rules compared to the other corporate forms regulated by Law no. 31/1990. In summary, the corporate bodies give rise to the following delimitations: the deliberation and decision-making body is the general meeting of associates, in the case of a limited liability company with a single shareholder, its rights and obligations reverting to the single shareholder; the administration is carried out by one or more administrators (regardless of whether they have the quality of associate or third party), each having the right of representation, unless there is a contrary stipulation in the constitutive act; the control is exercised, on a case-by-case basis, by financial auditors, censors or associates who are not also administrators.

The procedural, time and concrete legal regime advantages, synthetically presented above, individually and together constitute the basic argumentative corpus to explain the preference of economic operators in tourism for the form of a limited liability company. Moreover, this is consistent with the very dominant option of the majority of commercial professionals who have their main headquarters in Romania who choose this corporate type as a priority for organizing their businesses. Inevitably, we recall that in

addition to the legal arguments, when manifesting the option, it becomes relevant, despite the legislative variations in the matter, including the fiscal regime.

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