



Cambridge
International

Professional Research Thesis

Titled

**An analytical study of the principle of financial
Independence For one-person companies and its
impact on the personal financial liability of its
owner.**

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2024



Thanks and dedication

I dedicate this research to the soul of my father and mother, may Allah have mercy on them, as they always encouraged me to pursue scientific research and to continue my studies without settling for a certain limit. My gratitude is also eternally extended to my dear and beloved wife, who greatly supported me by providing the environment and conditions necessary for achieving my Master's and then my Doctorate degrees. Her impact on my current position is profoundly significant.

SUMMARY

Before 2018, the Egyptian Companies Law contained only six types of companies: general partnerships, limited partnerships, joint ventures, joint-stock companies, limited partnerships with shares, and limited liability companies. However, in 2018, the Egyptian legislator introduced the concept of the single-person company for the first time, through Law No. 4, issued on January 14, 2018, which amended the provisions of Companies Law No. 159 of 1981. This addition increased the number of company types in Egypt to seven.

The study Problem.

The problem of this study lies in the extreme difficulty of fully separating the assets of a partner in a single-person company from their personal assets. There is no doubt that any change in the company's financial assets, whether creditor or debtor, will positively or negatively affect the partner's personal financial situation. The issue becomes even more complicated when trying to prevent the partner from evading general liability to creditors and how to protect them from exploiting legal provisions to achieve this goal.

For example, in the event of the bankruptcy of a single-person company, which would result in the company being unable to manage its assets, will this restriction extend to the personal assets of the partner? Will the partner's personal assets be included in the company's bankruptcy proceedings or not?

Additionally, if the company enters into a supply contract with the partner personally, such as if the partner owns agricultural land and establishes a company to export the produce from that land, is this contract considered as contracting with oneself or not?

On the other hand, the separate legal personality of the individual may become a means to evade creditors by moving all personal assets out of reach, which might require creditors to use legal measures for protection, such as filing a clawback action, a fraudulent conveyance claim, or an indirect claim, and so on.

Another issue arises if a check is drawn on the company's account with insufficient funds—can the beneficiary of the check claim payment from the partner's personal account or not?

The importance of studying:

Although the principle is that the financial assets of a single-person company are independent from the personal assets of its owner, it is necessary to examine the extent to which this independence can be maintained. Specifically, we need to assess whether changes in the company's financial position affect the owner's personal assets and how personal assets are impacted by the company's bankruptcy, among other external influences. The importance of this study lies in the fact that this type of company is relatively new in Egyptian legislation, and the concept of segregating financial assets represents an exception to the general rule that each person has a single, indivisible set of financial assets.

Therefore, it is essential to explore how a person can have two sets of financial assets—one as a partner in a single-person company and another in their personal life. Additionally, we must investigate whether a person can have multiple sets of financial assets through the establishment of several single-person companies and the impact of this on their market credibility. The study should also consider how to protect creditors, whether in the context of the person being a partner or simply an individual.

Objectives of the study:

The aim of the study is to examine and analyze certain provisions of Egyptian law to determine the extent to which the principle of financial independence of a single-person company from its owner's personal assets can be applied. This will be achieved through:

- 1. Examining the provisions related to debtor attachment in the Code of Civil Procedure.*
- 2. Analyzing the provisions of the Bankruptcy Law and company liquidation.*
- 3. Reviewing the provisions that regulate commercial papers.*
- 4. Studying the Civil Code provisions concerning the protection of general security for creditors.*

The goal is to assess how well the principle of separating the partner's financial assets from their personal assets is applied and whether there is any conflict between this principle and Egyptian legislative texts.

Study hypotheses and questions.

The study at hand raises several hypotheses and questions.

- 1. To what extent can the financial assets of the company be separated from the personal financial assets of its owner? What is the impact, both positive and negative, of the company's financial status on its owner's personal assets, especially considering the changes that may occur due to the company's legal actions and its issuance of checks against its bank account?*
- 2. The effect of attachment on the partner and how it impacts the attachment of their personal assets, and how to protect the partner's creditors from actions that might harm them.*
- 3. The impact of bankruptcy or liquidation of the company on the financial assets of its owner.*

Study Approach.

The research methodology will rely on an analytical approach by examining the provisions of the Civil Code, the Code of Civil Procedure, the Commercial Code, and the Bankruptcy Law. This will shed light on the extent to which these provisions affect the financial independence of the partner's assets in a single-person company from their personal assets.

The limits of the study:

Spatial boundaries: The scope of the research will be limited to the boundaries of the Egyptian state and the laws governing single-person companies.

Time limits: Our research will focus on the period starting from 2019, beginning with the legal writings on partnerships since the introduction of Law No. 4 of 2018, issued on January 14, 2018. This includes the provisions from Article 129 bis 1 to Article 129 bis 9, as well as from Article 287 bis to Article 287 bis-7 of the Executive Regulations of the Companies Law, added by Ministerial Decree No. 16/2018, up to the date of writing the research in 2024.

Study plan.

Introductory Chapter: Theoretical Framework and Scientific Concepts

Preliminary Chapter: Theoretical Framework and Scientific Concepts

Section 1: Definition of the Company Contract in General and the Single-Person Company in Particular

1. Definition of the company contract in general, its substantive and formal elements, and its types.
2. Definition of a single-person company, its characteristics, elements, and establishment procedures.
3. Management of a single-person company and the responsibility of its founder.
4. Reasons for the dissolution of a single-person company.

Section 2: Financial Assets

1. Financial assets of a natural person.
2. Legal personality of the company and the consequences thereof.
3. Concept of the principle of financial independence of the partner in a single-person company and its implications.

Section 3: General Security for Creditors

1. Concept of general security for creditors over all the debtor's assets.
2. Legal means employed by the Egyptian legislator to protect creditors from debtor actions.
3. Methods of executing against the debtor's assets.

Chapter 1: The Rights of Company Creditors in Light of the Partner's Limited Liability

Section 1: Attachment of Company Assets and Its Impact on the Partner's Personal Financial Assets

1. The effect of precautionary attachment by creditors of a single-person company on the partner's personal financial assets.
2. Executory attachment of a single-person company.
3. Procedures for attaching movable assets of a single-person company in light of the partner's financial independence.

Section 2: Attachment of Company Assets Held by Third Parties in Light of Financial Independence

1. Definition and scope of attachment of assets held by third parties.

2. The impact of applying the principle of financial independence of the partner from the single-person company's financial assets on the procedures for attachment of assets held by third parties.
3. Conditions for the creditor to recover their claim from the third party in light of the financial independence of both the company and the partner.
4. Attachment by the partner of their own assets due to debts owed to the company, according to the principle of financial independence.

Section 3: Protecting General Security for Creditors from the Partner's Actions in a Single-Person Company

1. Contractual guarantees.
2. Legal guarantees.
3. Legal means for protecting general security for creditors in light of the principle of financial independence of the company from the partner.

Chapter 2: Bankruptcy of a Single-Person Company in Light of Financial Independence

Section 1: Conditions for Declaring Bankruptcy of a Single-Person Company in Light of Financial Independence

1. General conditions for declaring bankruptcy.
2. The applicability of these conditions to a single-person company.
3. The right to request a bankruptcy declaration for a single-person company.

Section 2: The Effect of Bankruptcy Judgement on a Single-Person Company

1. The effect of the bankruptcy judgement on the single-person company alone, excluding the partner.
2. The impact of the bankruptcy judgement on the actions of the single-person company after the judgement.
3. The impact of the bankruptcy judgement on the actions of the bankrupt individual prior to the judgement.

Section 3: The Effects of Bankruptcy Judgement on Creditors in Light of Financial Independence

1. Formation of the creditors' committee.
2. The annulment of all debt deadlines upon the issuance of the bankruptcy judgement.
3. Suspension of interest accrual.

Chapter 3: Legal Transactions by a Single-Person Company in Light of Financial Independence

Section 1: Contracts Between the Single-Person Company and the Sole Founder

1. Legitimacy of contracts between the single-person company and its sole founder.
2. Conditions required for the sole founder when contracting with the single-person company.
3. Oversight of contracts between the sole founder and their company.

Section 2: Partner's Responsibility When the Company Signs Commercial Papers

1. Commercial papers issued in favor of the single-person company in light of financial independence.
2. Commercial papers drawn on the account of the single-person company and the responsibility for honoring them.
3. Endorsement of commercial papers issued in favor of the company.

Section 3: Changes to the Legal Personality of a Single-Person Company

1. General causes for the dissolution of a single-person company in light of the principle of financial independence.
2. Specific causes for the dissolution of a single-person company in light of the principle of financial independence.
3. Liquidation of a single-person company in light of the principle of financial independence.
4. Liquidation by the sole owner's will and judicial liquidation.
5. Liquidation of a single-person company due to bad faith or mismanagement.

Preliminary Chapter: Theoretical Framework and Scientific Concepts

Section 1: Definition of the Company Contract in General and the Single-Person Company in Particular

1. Definition of the Company Contract in General, Its Substantive and Formal Elements, and Its Types

Definition of the Company Contract:

A company contract is an agreement whereby two or more individuals commit to contributing either money or labor to a financial project, in order to share any profits or losses arising from the project. Additionally, any natural or legal person may establish a single-person company under the provisions of Law No. 4 of 2018, as an exception to Article 505 of the Civil Code.

The essence of the company idea lies in the collaboration of several individuals to achieve better results than what could be achieved individually. By pooling the partners' shares, a separate and independent financial entity is created, which is dedicated to the agreed-upon purpose. This results in the creation of a new entity, the legal person or corporate entity.

General Substantive Elements of the Company Contract.

As a general rule, a company is established through a contract. Therefore, it is necessary for the general elements required for the contract to be valid, which are consent, subject matter, and cause.

- 1. **Consent:** The partners must reach mutual agreement to establish a company with legal personality through an offer and acceptance based on their consent, evidenced by signing the company contract. This consent must be free from any defects such as mistake, fraud, coercion, or duress. If the consent of any party is tainted by such defects, they have the right to seek the contract's annulment.*

Consent must pertain to a genuine company contract. Hence, both fictitious companies and de facto companies are considered invalid for the following reasons:

- **Fictitious Company:** This is a company that appears to exist only on the surface and conceals an individual business to evade unlimited liability. The judiciary has consistently invalidated such companies due to the absence of an intention to participate or provide real shares, thus rendering the company non-existent.*
- **De Facto Company:** This arises in violation of the law and is invalid only for the future. The company is considered to have existed from*

its formation until its nullification to protect the apparent status and legal positions that have been established. For it to be recognized, the company must have actually started its operations. The purpose of this concept is to protect the rights of third parties who have dealt with the company without knowing the reason for its invalidity.

*2. **Subject Matter of the Company:** This refers to the activity towards which the company directs its assets. The law requires that the subject matter must be possible and legal, not contrary to public order and morals.*

*3. **Cause of the Company:** This is the purpose for forming the company, which is often mixed with the subject matter. It must be legal and not contrary to public order and morals.*

*4. **Capacity:** The partner must possess full legal capacity, having reached the age of majority (21 years) and not suffering from any legal incapacity such as insanity, mental disability, or lack of judgment.*

Therefore, a minor or an incapacitated person cannot be a partner in a company. However, a guardian or trustee, with the approval of the competent court, may invest the minor's funds by purchasing a share in

a limited partnership as a limited partner, or in a limited liability company, or shares in a joint-stock company or a partnership limited by shares as a contributing partner. Their liability is limited, and they do not acquire the status of a merchant.

Regarding Partnership in a Solidarity or Simple Commandite Company as a General Partner

In such companies, the rules of commercial capacity and trading profession apply. However, a partner in a single-person company must meet the requirement of complete legal capacity because, according to general rules, they must be capable of engaging in trade.

Specific Substantive Elements of the Company Contract:

The company contract is distinguished from other contracts by the necessity of having specific elements:

Element 1: Multiple Partners

The general rule for forming a company is that there must be at least two partners, except for joint-stock companies, where the law requires at least three founders, according to Law No. 159 of 1981. This requirement does not apply to single-person companies.

If the number of partners falls below the required threshold, the company is considered dissolved by law unless it meets the required number within six months. Remaining partners are personally liable for the company's obligations during this period or the company may convert into a single-person company, as stipulated in Article 8 of the Companies Law, amended by Law No. 4 of 2018.

There is no prohibition against a partner being either a legal person or a natural person. A legal person can be a partner in a single-person company as long as it is within its objectives to establish such a company or other companies.

Element 2: Contribution to Capital

The company must have multiple shares, with each partner contributing a specific share of the company's capital. Therefore, a contract where each party agrees to collaborate to achieve a specific task is not a company contract but rather a cooperation contract.

In a single-person company, the sole partner must provide the entire capital upon establishment since they are not sharing the establishment with others.

The Court of Cassation has ruled that every partner must contribute to the company's capital, which can include cash, securities, movable assets,

real estate, usufruct rights, labor, trade names, patents, or debts owed by others, according to Articles 505 and 509 of the Civil Code. Generally, anything that can be an object of obligation can be a contribution to the company.

The Egyptian legislator has not set a minimum capital requirement for limited liability companies, leaving it to the partners to agree upon. However, it is advisable to impose a minimum capital limit for this type of company to prevent the establishment of a company with insufficient capital, which could undermine public interest. For example, a company engaged in residential construction and sales should have capital commensurate with its business to protect the interests of a large sector of the public.

For joint-stock companies, the legislator has adopted a different approach:

a. Joint-Stock Companies Offering Shares to the Public: The capital must be no less than one million pounds, with the founders subscribing to at least half of the issued capital, and the authorized capital must not exceed five times the issued capital.

b. Companies Not Offering Shares to the Public: The capital must be no less than two hundred fifty thousand pounds, with at least a quarter of this amount paid in cash at establishment.

The legislator requires that part of the capital of joint-stock companies be in cash, thus prohibiting them from consisting solely of in-kind contributions. It is suggested that this requirement also be applied to single-person companies and limited liability companies, as cash is essential at the start of a business to enable the company to operate, acquire premises, equipment, labor, and other essentials.

Forms of Partners' Shares:

There are three forms of partners' shares:

Form One: Cash Contribution

This is when a partner contributes a sum of money to the company's capital and is obligated to pay this amount by the agreed-upon deadline.

Form Two: In-Kind Contribution

This involves a partner providing movable property or real estate, such as a car or house, or intangible assets like patents or trademarks. In-kind contributions can be provided to the company with the intention of ownership, thus transferring ownership from the partner to the company.

This property becomes part of the general guarantee for the company's creditors, who can seize it, and the company can dispose of it according to the rules of a sales contract.

Alternatively, the in-kind contribution may be provided merely for usufruct, meaning the company has the right to use the property without transferring ownership. In this case, the distinction is between a real right to the property for the company versus a mere personal right. In the former case, the partner retains ownership and recovers the property at the end of the company's term, with no right for the company to dispose of it, nor for creditors to seize it. In the latter case, the company only has the right to use the property without acquiring any real rights. An example is providing a property for lease; the partner's share is valued based on the lease income throughout the company's duration, and the property deteriorates as the partner retains ownership. In both cases, the company must return the property to the partner at the end of the company's term.

Form Three: Contribution of Labor

This is when a partner contributes specific work to the company, particularly if the partner possesses specialized skills relevant to the company's activities, such as being an engineer. The work must be related

to the company's purpose, legal, significant, and not trivial. If the work lacks value, it is not considered a contribution but rather a service for which the partner is paid a share of the company's profits.

The partner's labor contribution is valued based on the benefit it provides to the company and determines their share of the profits. The company contract must specify the type and number of hours of work. The partner is also required not to compete with the company, as mutual participation in the company's business is a fundamental aspect of the company contract.

Element Three. Sharing Profits and Losses

What distinguishes the company contract is that partners share in the company's profits and losses as stipulated in Article 505 of the Civil Code. However, this element does not apply to single-person companies, as the sole partner bears the results of the company's activities, whether profits or losses.

Therefore, the absence of this element leads to the nullification of the company contract. For instance, if a partner agrees to share in the profits but not in the losses or shares in the profits regardless of the company's losses, such conditions are invalid and render the company itself invalid.

It is noteworthy that a partner contributing labor has special considerations; they may stipulate not to bear losses if no compensation is agreed upon for their labor, which is natural because if the company incurs losses, they lose their compensation. In this case, it is required that the partner has not received any payment for their work or provided additional cash contributions; otherwise, the exemption from losses is deemed invalid.

Profits and losses are distributed according to the agreement between the partners. If no agreement is reached, distribution is made based on the capital contribution ratios.

Definition of a Sole Proprietorship Company, Its Characteristics, and How to Establish It

Definition of a Sole Proprietorship Company.

Article 4 bis of Law No. 4 of 2018 defines a sole proprietorship company as "a company wholly owned by a single person, whether natural or legal, provided that this does not conflict with its purposes. The founder of the company is not liable for its obligations beyond the capital allocated to it. The company must have a name derived from its purposes or from the founder's name and must include a statement indicating that it is a sole proprietorship company with limited liability. This name must be displayed at its headquarters and branches, if any, and on all its correspondence."

This definition contradicts the Civil Code and the Companies Law as it implies that a sole proprietorship company has a distinct status, being recognized as a company and a system rather than a contract. This is because a contract typically involves at least two parties, whereas a sole proprietorship company is established by just one party.

The legislator introduced a new principle alongside the company's systemic nature, which is the principle of asset segregation. This principle

allows for the division or multiplicity of financial accounts for a single individual.

Legal Nature of the Sole Proprietorship Company:

There is a debate among scholars regarding its legal nature due to the exceptional nature of this type of company. Some scholars view it as a partnership company because the personal status of the partner is essential for its establishment and continued existence, given that trust in the partner is a key consideration in dealings.

Others consider it a capital company since the basis of such a company is limited liability, focusing on its capital rather than personal considerations. There are also views that see it as a hybrid with characteristics of both partnership and capital companies. The prevailing view is that the independent nature of this company is more appropriate due to its exceptional characteristics.

Characteristics of a Sole Proprietorship Company:

- 1. Limited Liability of the Partner: The partner's liability for the company's debts is limited to its capital and does not extend to their personal assets. However, there are circumstances where, according to Article 129 bis of Law No. 159 of 1981, the partner may be liable with all their assets.*

- *If they act in bad faith by liquidating the company or ceasing its activities before its term or achieving its intended purpose.*
- *If they fail to separate their personal financial assets from those of the company.*
- *If they enter into contracts or conduct transactions in the name of the company under establishment that are not necessary for its formation.*

*2. **Ease of Transformation or Merger:** The nature of the company allows for easy transformation into another type of company or merging with another company. A new partner can join, turning it into a partnership (e.g., general partnership or limited partnership). In the event of the partner's death, it can be transformed among the heirs into a limited liability company, or it can merge into another company or the owner can decide to sell their share.*

1 .The Company Name:

Egyptian legislation has established restrictions for naming a company. It requires that the name of the company be derived from its purpose or the name of its founder, and it must include the phrase "Sole Proprietorship

Company with Limited Liability." This name must be used on all company correspondence, its headquarters, and any branches, if present.

2 .Limited Creditworthiness.

This is a natural characteristic due to the fact that the company is owned by a single person with limited liability confined to the company's capital. Consequently, the company's creditors will not be able to claim their rights from the personal assets of the owner in case of insolvency or liquidation.

3 .Ease of Decision-Making.

Since the founder and owner of the company is a single individual who exercises all the powers and authorities of the board of directors, the general assembly, and the extraordinary general assembly, decisions can be made quickly without needing to consult others. This facilitates prompt decision-making, which can positively impact profitability and increase company activity.

General Objective Elements of a Sole Proprietorship Company.

Capacity of the Founding Partner.

The founding partner must have the legal capacity to act, meaning they must be of legal age, sound mind, and not under any legal disability

affecting their capacity. This is essential as it involves transferring the entire company's capital from the partner's personal assets to the company's assets.

There may be a question about whether a minor authorized to engage in business can establish a sole proprietorship company. The nature of the company and its limited liability allow a minor to set up a sole proprietorship company, provided they obtain special permission from the Family Court. While a general authorization for conducting business covers existing businesses, establishing a new company requires specific permission. This is because, under Article 129 bis of Law No. 159 of 1981, the partner may be liable with all their assets under certain conditions.

If they act in bad faith by liquidating the company or ceasing its activities before its term or achieving its intended purpose.

If they fail to separate their personal assets from the company's assets.

If they enter into contracts or conduct transactions in the name of the company under establishment that are not necessary for its formation.

Hence, setting up such a company is a serious matter for a minor due to the potential risk to all their assets under these conditions, making it necessary to obtain specific permission for its establishment.

Purpose.

This refers to the activity or activities the company will undertake, which must align with its nature. The activity or purpose must be feasible and lawful, and not contrary to public order or morals.

Cause.

This is the underlying motive for establishing the company, which reflects the founder's desire to manage the company's activities in a single-entity model without partners, while maintaining the separation of the founder's personal assets from the company's assets.

Specific Objective Elements of a Sole Proprietorship Company:

Since a sole proprietorship company is established by only one partner, it does not have the elements related to multiple partners, capital contributions, or the distribution of profits and losses, nor does it have the element of the intention to participate, as there is no other party involved in the partnership.

Formal Requirements for Establishing a Sole Proprietorship Company:

The formal requirements for establishing a sole proprietorship company include writing and registration. Additionally, if the founder of the

company is a public law entity, approval from the Prime Minister or the relevant minister must be obtained, depending on the circumstances.

Methods for Establishing a Sole Proprietorship Company:

There are two methods for establishing a sole proprietorship company: direct establishment and indirect establishment. These will be detailed as follows:

Method 1. Direct Establishment of a Sole Proprietorship Company:

The company is established by submitting an application to the Investment Authority, either by the prospective founder or an authorized representative. The application must include the company's articles of association, specifying all its basic details (name, purpose, activity, duration, management structure, address of the headquarters and branches, if any, capital amount, and details of the founder).

The executive regulations of the Companies Law – Article 287 bis – stipulate that the minimum capital for a sole proprietorship company must not be less than 50,000 Egyptian pounds, and it must be paid in full upon establishment. The capital contributions cannot be in the form of tradable shares, and the company may not issue any type of securities upon its establishment or capital increase.

Legal scholars argue that setting a minimum capital of 50,000 pounds contradicts the legislative approach for limited liability companies, where the amount is left to the founders' discretion. This seems to undermine the purpose of establishing this form of company, which is to encourage small businesses. Given that a limited liability company serves as the general rule for a sole proprietorship company where no specific provision applies, it would have been better to allow the partner to determine a sufficient capital amount based on the company's activities.

The law also prohibits a sole proprietorship company from engaging in insurance, banking, savings, deposit-taking, or investment activities on behalf of others.

A sole proprietorship company is registered and acquires legal personality from the date of its registration in the commercial register. All transactions conducted by the founder in the name of the company under establishment will be binding on the company after its formation, provided they are necessary for the establishment of the company.

Method 2. Indirect Establishment of a Sole Proprietorship Company:

The company can be established through one of the following methods:

Method 1. Conversion of an Existing Commercial Company into a Sole Proprietorship Company:

If there is an existing company in its traditional form, whether a partnership (general or limited) or a capital company (joint-stock, limited partnership by shares, or limited liability), and it is desired to convert it into a sole proprietorship company (excluding partnerships with no legal personality), the necessary legal procedures must be followed. This includes a decision by the general or extraordinary assembly, registration, and public notice by updating the commercial register. Additionally, the company must not have been engaged in any activities prohibited for sole proprietorship companies before the conversion.

It is noteworthy that if the sole partner in a sole proprietorship company disposes of part of the company's capital, the legal structure of the company collapses due to this action. Therefore, the company must adjust its legal status according to the required legal form within ninety days from the date of the transaction, provided that the Investment Authority is notified prior to the transaction, with a commitment to complete the adjustment procedures within the ninety-day period. Otherwise, the company will be considered to be in liquidation by default.

Scenario 2: Transformation and Adjustment of the Status of an Existing Company Due to Failure to Meet the Minimum Number of Partners:

An existing company that has fewer founding partners than the legal minimum required as stipulated in Article 8, as amended by Law No. 4 of 2018 (which states: "Except for sole proprietorship companies, the number of founding partners in joint-stock companies must not be less than three, and this number must not be less than two for other companies governed by this law, unless it promptly, within six months, completes the required number or the remaining partners request within this period to convert it into a sole proprietorship company. The remaining partners are responsible with all their assets for the company's obligations during this period"), may convert into a sole proprietorship company instead of being dissolved by force of law. This is provided that the company does not engage in activities prohibited for sole proprietorship companies according to Article 129 bis - 2 of the law.

Management of a Sole Proprietorship Company and the Founder's Responsibility:

The Egyptian legislator has prohibited sole proprietorship companies from performing certain legal actions and transactions due to the nature of these companies relying on a single individual and their limited liability confined to the capital registered in the commercial register, excluding the founder's personal assets.

According to Article 129 bis - 2, added by Law No. 4 of 2018, sole proprietorship companies are completely prohibited from.

- 1. Establishing Another Sole Proprietorship Company: The legislator has prohibited a sole proprietorship company from creating a new company of the same type or any other type of company.*
- 2. Public Subscription: Whether at its establishment or when increasing its capital, as this is restricted to joint-stock companies, due to the risks involved in gathering funds from subscribers and dealing with banks, which is incompatible with the nature and objectives of a sole proprietorship company.*
- 3. Dividing Capital into Tradable Shares: This is restricted to joint-stock companies and partnerships limited by shares for shareholders.*
- 4. Borrowing through Issuing Tradable Securities: Such as issuing bonds to borrow money on behalf of the sole proprietorship company.*
- 5. Engaging in Insurance, Banking, Savings, Receiving Deposits, or Investing Funds on Behalf of Others: These activities are also prohibited for limited partnerships and limited liability companies.*

Penalty for Violating the Prohibition.

If a sole proprietorship company engages in any prohibited activities, the legislator has granted the company a grace period of up to one year to meet the required minimum number of partners. Otherwise, any interested party has the right to request the judicial dissolution of the company if it fails to correct the minimum capital requirement, as per Article 67/2 of the Executive Regulations of Law No. 159 of 1981.

Powers of the Founder and Owner of a Sole Proprietorship Company.

The founder is responsible for all necessary actions to manage the company's activities, overseeing all its affairs, and must act in the best interest of the company, adhering to the standard of care expected of a diligent person in managing it and executing his duties.

To safeguard the company's interests, the manager may not manage another company, regardless of its type, if it operates in the same sector as the company or one of its branches. Additionally, the manager may not contract with the company he manages for personal gain or on behalf of others, nor can he engage in activities similar to those of the company for others.

The law specifies the founder's powers as follows:

- 1. Amend the Articles of Incorporation.*
- 2. Dissolve and liquidate the company.*
- 3. Merge the company with another company or convert it into a company of a different type.*
- 4. Increase or decrease the company's capital, provided it remains no less than fifty thousand pounds.*
- 5. Appoint one or more managers for the company, define their roles and powers, and approve their signatures.*

The manager or managers represent the company, or those designated by the founder in case of multiple managers, before the court and third parties, and they are responsible for managing the company before the owner.

Reasons for the Termination of a Sole Proprietorship Company:

A sole proprietorship company is dissolved by law if any of the general reasons for dissolution occur, similar to a limited liability company. However, due to the unique nature of the sole proprietorship company, the legislator has specified particular reasons and conditions for its dissolution, which include:

1. *Loss of Half of the Capital.* Unless the owner decides to continue its operations.
2. *Dissolution of the Legal Person Owning the Capital.*
3. *Incapacity or Loss of Legal Capacity of the Owner.*
4. *Death of the Owner.* Unless the company is inherited by a single heir, or the heirs choose to continue it in the same form and adjust its status within six months from the date of death.

Although the legislator did not specify the effects of dissolution, according to the law, the company is considered to be in a state of liquidation to collect its assets, exclude its rights, and settle its obligations. As the executive regulations of the law do not provide details on the liquidation of a sole proprietorship company, the rules applicable to the liquidation of a limited liability company should be applied, considering the nature of the sole proprietorship company. The company retains its legal personality throughout the liquidation period to the extent necessary to complete the liquidation process.

Conclusion.

Since 2018, Egyptian legislation has introduced the concept of a "Sole Proprietorship Company," which has a separate financial entity from its sole founder. A Sole Proprietorship Company is established through the unilateral will of its founder, and thus lacks the element of multiple partners or the intention of partnership. Furthermore, its creation does not require the existence of a contract.

The Egyptian legislator has introduced the system of financial allocation and partitioning, a concept previously unknown in Egyptian legislation. There is debate among scholars about whether this type of company should be classified as a company of capital or a company of persons, but it is generally considered to have a unique and independent nature due to its exceptional character. Although the legislator has regulated this type of company under Law No. 4 of 2018, it has referred to the rules governing limited liability companies for matters not specifically addressed.

The bankruptcy of the company does not lead to the bankruptcy of its founder, and vice versa, due to the separation of their financial entities. Additionally, the partner does not acquire the status of a trader because their liability is limited.

The legislator has prohibited the company from engaging in certain activities, including:

- *Establishing another Sole Proprietorship Company.*
- *Public subscription, whether at its formation or upon increasing its capital.*
- *Dividing the company's capital into tradable shares.*
- *Borrowing through the issuance of tradable securities.*
- *Engaging in insurance, banking, savings, accepting deposits, or investing funds on behalf of others.*

The legislator has specified particular reasons for the dissolution of the company, which are:

1. *Loss of half of the capital, unless the owner decides to continue its operations.*
2. *The dissolution of the legal entity owning the company's capital.*
3. *The incapacitation or loss of legal capacity of the owner.*
4. *The death of the owner.*

The general guarantee for the company's creditors is confined to its capital and assets and does not extend to the personal assets of the owner.

However, according to provisions in the Egyptian Civil Code, protection of the creditors' general guarantee can be achieved through indirect lawsuits, fiduciary lawsuits, and fictitious lawsuits against the owner's actions.

The independence of the company's financial entity from its owner means that, during compulsory execution procedures, enforcement is limited to the company's assets only and does not extend to the partner's personal assets. Thus, any seizure of the debtor's assets should target the company's assets, not the personal assets of the partner. Likewise, seizures of movable property are limited to those owned by the company alone.

In the case of the bankruptcy of a Sole Proprietorship Company, the restriction applies only to the company's assets and not to the founder's assets, reflecting the separation of their financial entities. The creditors' group consists of the company's creditors and does not include the founder's creditors due to the separation of their financial entities.

The legislator permits a Sole Proprietorship Company to contract with its founder, a new and unusual rule allowing commercial contracts between the sole founder and the Sole Proprietorship Company itself. This means that the sole founder may negotiate in their own name and on their own behalf, concluding contracts with the financial entity allocated to the Sole

Proprietorship Company, as its legal representative. This unusual arrangement involves two financial entities of the same person engaged in commercial transactions.

Results:

- *The establishment of a Sole Proprietorship Company under Egyptian law was introduced for the first time in 2018. This model represents an exceptional form of companies. According to this model, an individual, whether a natural person or a legal entity, can establish such a company alone by allocating a sum of their own funds to invest in a specific financial project. The founder is only liable for the company's obligations towards third parties up to the amount invested.*
- *The bankruptcy of a Sole Proprietorship Company does not impact its sole founder.*
- *Egyptian law does not prohibit an individual from establishing multiple Sole Proprietorship Companies. This undoubtedly affects the general guarantee for creditors due to the multiple financial entities of the same person.*
- *The liability of the partner in a Sole Proprietorship Company is limited and does not extend to the partner's personal assets. This necessitates legislative and judicial safeguards for the creditors of a Sole Proprietorship Company in the event of the company's dissolution, whether through liquidation or bankruptcy.*

- *There are specific cases where the sole founder's liability is not limited and extends to all their assets. These cases include:*
 - *If the founder maliciously liquidates the company or ceases its activities before its term or before achieving its purpose.*
 - *If the founder fails to separate their personal financial assets from those of the company.*
 - *If the founder enters into contracts or makes transactions in the name of the company under formation that are not necessary for the company's establishment.*
- *The Egyptian legislator has sought to balance the advantages of the Sole Proprietorship Company with the rights of its creditors to ensure that these creditors are not disadvantaged. Therefore, it has prohibited the company from engaging in certain commercial activities and has set a minimum capital requirement that must be fully paid.*
- *Upon the liquidation of a Sole Proprietorship Company, the liquidation assets are confined to the company's capital only and do not extend to the founder's personal assets, unless the liquidation is carried out in bad faith or with poor management by*

the founder. In such cases, the liquidation may extend to include all of the founder's personal assets.

Recommendations:

- *Amend the Substantive Elements of the Company: Modify the requirements for the company's structure to address the absence of multiple partners or the intention of partnership, given that a Sole Proprietorship Company is an exceptional form of company.*
- *Amend Legislation to Prohibit the Establishment of Multiple Sole Proprietorship Companies by the Same Person: Prevent the creation of multiple financial entities by the same individual, which diminishes the general guarantee for creditors.*
- *Increase the Minimum Capital Requirement: In light of the depreciation of the Egyptian pound, the current minimum capital requirement of fifty thousand pounds is insufficient to protect creditors.*
- *Include the Bankruptcy of the Sole Founder as a Cause for the Company's Dissolution: Since the continuation of the company after the bankruptcy of its sole founder is unrealistic, bankruptcy should be included as a reason for the company's dissolution.*
- *Allow the Company to Continue if the Legal Entity Founding the Sole Proprietorship is Replaced by Another Legal Entity: The current law's provision that the dissolution of the founding legal entity leads to the dissolution of the company contradicts the separation*

established by the legislator. It should be amended to allow the company to continue if another legal entity replaces the founding entity.

- *Establish a Specific Regulation for the Bankruptcy of Sole Proprietorship Companies: Due to the unique nature of these companies, a specialized regulation for their bankruptcy should be established.*
- *Require the Appointment of an Auditor for the Company's Books: To oversee the partner's transactions and ensure the separation between the partner's personal assets and the company's assets.*
- *Make the Founder's Liability Unlimited if the Company Loses Half of Its Capital and the Founder Wishes to Continue: If the company loses half of its capital and the owner wishes to continue, the founder's liability should become unlimited, and creditors should have the right to object to the continuation of the company and seek its judicial dissolution.*
- *Grant Creditors the Right to Object to the Founder's Decision to Dissolve or Liquidate the Company: If such a decision adversely affects them, creditors should have the right to challenge it.*

- *Allow Creditors to File Direct Lawsuits Against the Founder for the Company's Debts: Enable creditors to pursue direct legal action against the founder to claim the company's rights.*
- *Adopt the French Approach for Liquidating Sole Proprietorships Owned by Legal Entities: In cases where a Sole Proprietorship Company owned by a legal entity is liquidated, its financial assets should be transferred to the founding legal entity.*

The reviewer:

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