

Automatic Separation of the Financial Liability of the Sole Entrepreneur - A Legal Study –



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Abstract: Through Law No. 172/22, the French legislator introduced a system for the automatic separation between the personal and professional assets (patrimony) of the sole entrepreneur. This constitutes a fundamental shift in regulating the professional liability of natural persons engaged in independent, self-employed activities. This reform eliminates the need to create a separate legal entity or undertake formal procedural steps, while legally ensuring the independence of professional assets. The resulting effects are comparable to those associated with legal personality under French law.

This system serves as a model for reforming Algeria's sole proprietorship framework, as it balances entrepreneurial freedom with the protection of personal patrimony. Furthermore, it aligns with global trends aimed at supporting small businesses by reducing the legal and financial risks that entrepreneurs may face.

Keywords: Automatic separation, Protection of patrimony, Sole entrepreneur, Sole proprietorship.

الفصل التلقائي للذمة المالية لرائد الأعمال الفردي.

- دراسة قانونية -

ملخص: أقرّ المشرّع الفرنسي من خلال القانون رقم 22/172 نظام الفصل التلقائي بين الذمة الشخصية والذمة المهنية لرائد الأعمال الفردي، مما شكّل تحولاً جوهرياً في تنظيم المسؤولية المهنية للأشخاص الطبيعيين الممارسين لنشاطات مستقلة لحسابهم الخاص.

يغني هذا الإصلاح عن الحاجة إلى إنشاء شخص معنوي منفصل أو القيام بإجراءات شكلية، مع ضمان استقلال الذمة المهنية قانوناً، وبآثار مشابهة لتلك المترتبة عن الشخصية المعنوية في القانون الفرنسي. ويُعدّ هذا النظام نموذجاً لإصلاح الإطار القانوني للمقاول الفردي في الجزائر، حيث يجسّد توازن بين حرية المبادرة وحماية الذمة الخاصة، ويتماشى مع التوجهات العالمية الرامية إلى دعم المؤسسات الصغيرة عبر تقليل المخاطر القانونية والمالية التي قد تواجه رواد الأعمال.

الكلمات المفتاحية: الفصل التلقائي، حماية الذمة المالية، رائد الأعمال الفردي، المقاول الفردي.

Introduction:

For a long time, sole proprietorship was the standard model within which a natural person conducted a professional activity on their own account without the need to establish a legal entity. This model invariably resulted in the unity of financial patrimony.

In recent decades, the rise of the digital economy and increased individual initiative has given rise to a new category of economic actors, referred to as sole entrepreneurs. These individuals do not necessarily fit within the traditional framework of sole proprietorship characterized by the unity of patrimony as known in classical legislation nor are they classified as legal entities, due to the regulatory and independence differences between the two.

Consequently, the concept of legal personality and financial patrimony for this new type of entrepreneur is distinctive.

Before the reform, the sole entrepreneur was governed either by general enterprise regulations or the Individual Entrepreneur with Limited Liability (EIRL) system. However, neither system was capable of achieving a satisfactory balance between entrepreneurial freedom and the protection of private assets.

In the former case (general rules), the patrimony remained unified, making the entrepreneur personally and boundlessly liable for their professional debts. In the latter (EIRL), despite the possibility of dedicating a separate professional patrimony, the system suffered from procedural complexity.

In response to these transformations, French Law No. 2022-172⁽¹⁾ introduced a fundamental reform. It explicitly stipulated the principle of the "automatic separation of patrimony" for the sole entrepreneur. By operation of law, a separation is effected between assets assigned to professional activity and those comprising the entrepreneur's personal patrimony.

This separation occurs without the need for any declaration or prior procedure, representing a paradigm shift in protecting private assets without establishing a separate legal entity.

The importance of this subject, both theoretically and practically, lies in addressing the duality of the natural person and the legal entity, and the possibility of

¹-Loi n° 2022-172 du 14 février 2022 en faveur de l'activité professionnelle indépendante, [JORF n°0038 du 15 février 2022](#).

reconsidering the limits of the general guarantee (a cornerstone of professional liability and creditor protection), as well as the mechanisms for bankruptcy and amicable or judicial settlement under an independent professional patrimony. Furthermore, this system could serve as a concept for framing independent professional activity in Algerian law, achieving a balance between encouraging individual initiative and protecting private assets.

Based on this premise, the following central problem is posed: How effective is the mechanism of automatic patrimonial separation in protecting the assets of the sole entrepreneur?

This study seeks to address this issue by employing a comparative analytical methodology, examining the legal establishment of the automatic separation system based on the French approach (first topic), and its implications for the legal status of the sole entrepreneur (Two topic).

FIRST TOPIC:

The Legal Establishment of Automatic Separation of the Professional Patrimony of the Sole Entrepreneur

For the purposes of this study, the French legislator defines a “sole entrepreneur” under Article L.526-22 of the Commercial Code as a natural person conducting one or more professional activities independently, in their own name⁽²⁾.

The principle of automatic separation of professional patrimony represents one of the most significant legal reforms in contemporary French commercial law. It came in response to the demands of economic actors and the need for an effective mechanism to protect the sole entrepreneur's assets. Traditional systems based on patrimonial unity faced increasing criticism for their inadequacy in dealing with professional risks.

This study adopts a comparative and analytical approach to examine the foundations and implications of this reform in French law, and to assess its potential relevance within the Algerian legal system. It highlights both the advantages of this mechanism in protecting private assets and its limitations, particularly with regard to creditor protection and legal certainty.

² - L.526-22-01de la loi n° 2022-172, op. cité.

This chapter aims to trace the evolution of this legislative path, from the unity of patrimony to its automatic separation (Section One), and to define its content by clarifying its elements and scope of application (Section Two).

Section One: Evolution of the Principle of Patrimonial Unity

The principle of patrimonial unity establishes that all assets of a natural person serve as a general guarantee for their creditors. This principle is deeply rooted in most traditional legislations, including the Algerian Civil Code. However, this rule exposes the sole entrepreneur to risk in the event of business failure, as no distinction exists between assets allocated to professional activity and those forming their personal patrimony.

The inadequacy of traditional patrimonial unity models prompted legislative attempts to introduce partial separation, culminating in the automatic separation framework.

Subsection One: The Failure of Patrimonial Unity Models to Protect the Sole Entrepreneur

Practical experience demonstrated that this system failed to provide sufficient protection for the sole entrepreneur, especially given the absence of guarantees preventing enforcement against their private assets. Certain legislations, primarily the French, attempted to introduce partial protection mechanisms, such as the declaration of non-seizability, but these did not achieve the desired outcome.

First: The Mechanism of the General Guarantee

Based on Article 2284 of the French Civil Code⁽³⁾ (which corresponds to Article 188 of the Algerian Civil Code), patrimonial unity remains the general principle in Algeria. All of the individual's assets remain subject to enforcement, unless explicitly stipulated otherwise by law. Currently, no text in Algerian Commercial Law or in the laws governing small and medium-sized enterprises enshrines the separation between professional and personal patrimony.

The principle of patrimonial unity continues to apply, making all of the debtor's assets vulnerable to enforcement should the professional activity fail.

The debtor's assets are considered a general guarantee for their creditors. Consequently, the entrepreneur, as a natural person conducting an economic activity,

³ - “ **Quiconque s'est obligé personnellement, est tenu de remplir son engagement sur tous ses biens mobiliers et immobiliers, présents et à venir**” -Article 2284 de l'Ordonnance n° 2006-346 du 23 mars 2006 relative aux sûretés.

guarantees the fulfillment of their professional obligations with all their assets, whether professional or personal.

This situation created risks to the personal patrimony; in the event of failure to meet professional obligations, the private assets become subject to forced execution.

Second: The Mechanism of the Declaration of Non-Seizability

The need arose to find a legal mechanism to protect personal assets. Therefore, the French legislator, under Law No. 2003-721⁽⁴⁾, adopted the mechanism of the declaration of non-seizability. This procedure aimed to protect certain private property, specifically the primary residence, from judicial seizure.

However, this mechanism proved insufficient. It required lengthy administrative procedures (notarization of the declaration, registration in the land registry, etc.) and did not apply retroactively. Furthermore, its scope was limited, covering only the primary residence and not the remainder of the personal patrimony.

Thus, the system of patrimony remained unified from a legal perspective, leading this attempt to be considered not entirely effective in protecting the sole entrepreneur.

Subsection Two: The Individual Entrepreneur with Limited Liability (EIRL) System

The emergence of this system was considered an advanced step compared to the declaration of non-seizability, as it allowed for the possibility of allocating a separate professional patrimony at the entrepreneur's will (First). However, its procedural complexity and lack of tax incentives ultimately led the French legislator to abolish it and replace it with the automatic separation system (Second).

First: Content of the Individual Entrepreneur with Limited Liability System

Through Law No. 2010-658 of June 15, 2010, the French legislator introduced the EIRL system in a subsequent attempt to remedy the shortcomings of Law No. 2003-721. Its goal was to establish a separation between personal and professional patrimonies, allowing for the voluntary and declared allocation of a professional patrimony. Article L.526-6 stipulated that every entrepreneur may allocate a

⁴ -La loi n° 2003-721 du 01 août 2003 pour l'initiative économique, [JORF n°179 du 5 août 2003](#).

patrimony independent of their personal patrimony to their professional activity, without establishing a legal entity⁽⁵⁾.

This allocated patrimony consists of all assets, rights, obligations, or guarantees owned by the sole entrepreneur that are necessary for the exercise of their professional activity and which they decide to allocate to it, provided they are not included in more than one allocated patrimony. According to Article L.526-7, the creation of the allocated patrimony requires filing a declaration in the legal advertising register where the sole entrepreneur is obliged to register, or in the register of their choice in case of dual registration (with a cross-reference in the other register). For natural persons not obliged to register, the filing is done in a register maintained by the clerk of the competent commercial court at their principal place of business, or with the competent agricultural chamber for farmers⁽⁶⁾.

Article L.526-8 adds that register keepers shall not accept the filing of the declaration unless they verify that it includes a descriptive statement of the assets, rights, obligations, or guarantees allocated to the professional activity detailing their nature, type, quantity, and value.

The subject of the professional activity for which the patrimony is allocated must also be stated, and any amendment to this subject must be indicated in the register where the declaration was filed. Furthermore, the required documents proving compliance with the procedures set out in Articles L.526-9 to L.526-11 must be available.

Second: Abandonment of the Individual Entrepreneur with Limited Liability System

The entrepreneur under the EIRL system was obliged to make an explicit declaration of the professional patrimony and submit a periodic inventory of their assets associated with the professional activity, which required complex legal procedures. The practical experience clearly demonstrated the failure of the EIRL

⁵ -La loi n° 2010-658 du 15 juin 2010 relative à l'entrepreneur individuel à responsabilité limitée, [JORF n°0137 du 16 juin 2010](#).

⁶ - L.526-7 de la loi n° 2010-658 du 15 juin 2010 relative à l'entrepreneur individuel à responsabilité limitée, op. Cité.

system to achieve its intended goals, particularly in terms of the actual protection of private assets, leading most entrepreneurs to avoid adopting it⁽⁷⁾.

This failure was due to several factors, including its link to the traditional model of the individual trader, the multitude of administrative procedures, the difficulty of proving separation, formal errors in the allocation declaration, and the lack of sufficient tax incentives and legal guarantees.

These reasons ultimately led to the adoption of a simpler and more effective legal model: the automatic separation of patrimony.

Section Two: Content of the Automatic Separation of Professional Patrimony

French commercial law enshrined the principle of automatic patrimonial separation. As of May 15, 2022, every sole entrepreneur automatically possesses two independent patrimonies: professional and personal, by virtue of Articles L 526-22 to L 526-27.

This separation results in the general guarantee of professional creditors being limited solely to the professional patrimony and not extending to the personal patrimony. The personal patrimony remains relatively insulated from enforcement, except in cases of fraud, the provision of a personal guarantee, or deliberate commingling of the two patrimonies⁽⁸⁾.

It should be clarified that the automatic separation of patrimony does not create a distinct legal person. Rather, it establishes a dual patrimonial structure within the same natural person, granting functional independence to the professional patrimony without conferring full legal personality.

Subsection One: Elements of the Professional Patrimony

The professional patrimony consists of all the assets, rights, obligations, and securities necessary for the professional activity. It is defined precisely to avoid any ambiguity during enforcement. This definition serves to protect the personal

⁷ - Hamelin, J.-F, Jullian, N, La réforme du statut de l'entrepreneur individuel : Analyse et commentaires de la loi du 14 février 2022 et des décrets du 28 avril et 14 juin 2022, LGDJ, Paris, pp. 119.

⁸ - To avoid repetition, the exceptional cases will be addressed in the element of automatic separation cessation (the second requirement of the second section).

patrimony from forced execution by professional creditors, while establishing clear rules of evidence in case of dispute.

Despite its apparent efficiency, the automatic separation system raises several legal concerns.

In particular, the absence of a distinct legal personality may create ambiguity regarding the exact scope of rights and obligations attached to the professional patrimony. Moreover, creditor protection may be weakened in cases where the professional patrimony is insufficient to cover debts. This raises the question of whether the system achieves a fair balance between the protection of the entrepreneur and the security of commercial transactions.

First: Inclusions of the Professional Patrimony

The French legislator stipulated the inclusions of the sole entrepreneur's professional patrimony in the second paragraph of **Article L.526-22 of the Commercial Code**. It states that the professional patrimony of the sole entrepreneur is comprised of the assets, rights, obligations, and securities that they own and that are necessary for their professional activity or activities. Subject to Book Six of this Code, this patrimony cannot be fragmented⁽⁹⁾.

Assets not included in the professional patrimony constitute their personal patrimony. The sole entrepreneur is obliged to include their professional status on all professional documents, which enhances transparency and provides a presumption regarding the scope of the professional patrimony.

The burden of proof falls on the sole entrepreneur in any dispute relating to forced or protective enforcement procedures concerning the inclusion of certain assets within the scope of the general guarantee for creditors. Without prejudice to **Article L.121-2 of the Civil Procedure Code for Enforcement**, a seizing creditor may be held liable for abusive seizure if they carry out an enforcement or protective measure on assets not covered by their general guarantee.

Second: Debts of the Professional Patrimony

In addition to the aforementioned assets, the professional patrimony includes the debts arising from the professional activity, which are:

⁹ - L.123-1-1 Code de commerce, Modifié par Ordonnance n°2024-662 du 3 juillet 2024, portant modernisation du régime des fonds d'investissement alternatifs, JORF n°0157 du 4 juillet 2024.

A- Guaranteeing Professional Debts: The distinction between the sole entrepreneur's personal and professional patrimony does not permit them to personally guarantee a debt for which they are the principal debtor. In other words, even with the separation of patrimonies, the entrepreneur cannot guarantee their own debt. For example, if they borrow funds to finance their professional activity, they are the principal debtor to the lender, and therefore cannot offer their personal property as a guarantee for the professional patrimony.

There is no utility in the principal debtor guaranteeing their own debt, as a guarantee presupposes another person ensuring payment in case of the debtor's default. Given that the automatic separation system aims to automatically protect the personal patrimony, the entrepreneur is not permitted to waive this protection indirectly through a personal guarantee.

If they wish to provide guarantees on their private assets to their professional creditors, it must be through an explicit pledge or legal privilege, or a formal waiver as stipulated in **Article L.526-25**.

As an exception to the provisions of **Articles 2284 and 2285 of the French Civil Code**, and without prejudice to the provisions regarding the non-seizability of certain assets, the sole entrepreneur is liable to creditors whose rights arise in connection with their professional activity only up to the limit of their professional patrimony, unless contractual securities or a waiver are provided under the conditions stipulated in **Article L 526-25**.

B- Professional Debts of a Social Nature: Debts owed by the sole entrepreneur to social security organizations, as well as contributions, are considered to arise in connection with their professional activity. This includes all amounts the sole entrepreneur must pay to social security and social insurance bodies, such as compulsory social security contributions, health insurance premiums, pension contributions, or work accident insurance.

Therefore, the French legislator, in the second paragraph of the aforementioned **Article L.526-25**, considered them part of the sole entrepreneur's professional patrimony. In comparison to Algerian law, and given the lack of automatic separation, social obligation debts remain commingled. In case of inability to pay, social creditors may enforce against the entirety of the entrepreneur's private assets.

The automatic separation allows for the possibility of judicial settlement or liquidation procedures concerning the professional patrimony without affecting the

personal patrimony. This separation also serves as a basis for determining the applicable tax regime, which may vary between the regime for industrial and commercial profits or the simplified regime, depending on the nature of the activity and the turnover volume⁽¹⁰⁾.

Subsection Two: Effectiveness of the Automatic Patrimonial Separation

The French legislator specified the commencement date for the automatic patrimonial separation to prevent retroactive protection and ensure transparency toward creditors. **Article L.526-23 of the French Commercial Code** stipulates that the exceptions provided for in the fourth paragraph of **Article L.526-22** shall only apply to debts arising from the date of registration in the register competent for the sole entrepreneur's activity, where such registration is mandatory. If registration in several registers is mandatory, the exception applies from the earliest registration date.

The exception applies from the date of the declared start of activity if the registration date is subsequent to that date. In the absence of mandatory registration, the exception applies from the date of the first act performed in the capacity of a sole entrepreneur, provided this capacity is indicated on professional documents and correspondence⁽¹¹⁾.

In Algerian law, the absence of an explicit mechanism for the automatic separation of patrimony means that the principle of patrimonial unity remains fully applicable. Consequently, the sole entrepreneur remains subject to unlimited liability, with all personal assets exposed to professional risks.

This highlights the potential relevance of the French model, while also underscoring the need for a carefully adapted legislative framework that takes into account the specificities of the Algerian legal and economic environment.

¹⁰ - Hamelin, J.-F, Julian, N, op. Cité. pp 120–135.

¹¹ - L.526-23, de la loi n° 2022-172, op. cité.

TOPIC TWO:

The Legal Nature of the Automatic Separation of the Sole Entrepreneur's Patrimony

The system of automatic patrimonial separation, as introduced by the French legislator through **Law No. 2022-172**, represents a fundamental change in the legal framework for sole proprietorship. This system established the principle of independence for the patrimony allocated to professional activity from the entrepreneur's private patrimony, without the need to establish a legal entity.

This has created a new legal status characterized by flexibility and effectiveness. This legislative development raises a broad jurisprudential discussion, necessitating an investigation into the legal nature of this separation: whether it is merely an exceptional protection mechanism, or if it goes beyond that to implicitly establish a professional legal personality (**Section One**), and the extent of its mandatory nature, its scope of application, its transferability, and the limits that may restrict the financial independence it grants (**Section Two**).

Section One: Provisions of the Automatic Separation of Professional Patrimony

Studying the legal framework underlying the automatic separation requires defining its source (Subsection One), clarifying the possibility of transferring the professional patrimony as an independent unit, and reviewing the limits that may restrict its independence from the private patrimony (Subsection Two).

Analysis of these aspects reveals that the French legislator has granted the professional patrimony a privileged status within the natural person, akin to the formation of a "special financial entity" that achieves relative independence without rising to the level of a legal entity (Subsection Three).

Subsection One: Regarding the Source of Automatic Separation

Automatic separation derives its basis from an explicit legislative text, making it operative by force of law upon the exercise of the professional activity, without the need for any formal procedure or specific intent from the entrepreneur.

The law imposes the independence of the professional patrimony from the private patrimony, even without the need for formal procedures or explicit consent

from the concerned party. This gives the separation a mandatory, imperative character, making it part of the public order of sole proprietorship ⁽¹²⁾.

The non-voluntariness of the automatic separation poses a problem regarding the extent to which third parties (especially the tax administration and creditors) can rely on it as a basis for the entrepreneur's liability.

While the law acknowledges this separation, the effectiveness of invoking it remains contingent on the clarity of the separation in administrative, accounting, and registration records. The protection of private patrimony faces a challenge against creditors, particularly in cases of bad faith or commingling of assets. The automatic separation is considered a deterrent measure to link liability only to the professional patrimony, unless collusion or fraud on the part of the entrepreneur is proven ⁽¹³⁾.

Subsection Two: Transfer of the Professional Patrimony

French commercial law permits the sole entrepreneur to transfer their entire professional patrimony for consideration, without consideration, or as a contribution to a company without liquidation. The transfer includes all rights, assets, obligations, and securities. For the transfer to be valid, it must encompass the entire professional patrimony. Furthermore, the available assets must be sufficient to cover the outstanding liabilities, and neither party to the transfer must be subject to personal bankruptcy penalty or legal prohibition.

The transfer becomes effective against third parties from the date of its legal publication, and creditors may object, with the transferor being obliged to repay the debts or provide guarantees ⁽¹⁵⁾ ⁽¹⁴⁾.

It is clear from the above that the professional patrimony is established as an independent financial unit, capable of being transferred as a single unit. In this way, it closely resembles the assets of a commercial company that are eligible for sale or

¹²- Mohamed Ben Nacef, *Commercial Law - Enterprise, Trader, and Commercial Acts*, Dar Al-Jami'a Al-Jadida, Alexandria, 2019, P 107.

¹³- Souaker Kassem, *Algerian Commercial Law - Trader and Commercial Acts*, Dar Houma, Algeria, 2016, P.29.

¹⁴- Jean-Michel Bruguière, « La séparation automatique du patrimoine de l'entrepreneur individuel », *Revue trimestrielle de droit commercial et de droit économique*, 2022, p429.

¹⁵ - Jean-Pierre Legros, " société en difficulté", *Revue des sommaires*, n° 126, octobre 2022, p15.

merger. The French legislator thus reinforces the idea that automatic separation implicitly establishes a professional legal personality, even if it is not explicitly declared ⁽¹⁶⁾.

Subsection Three: Limits on the Independence of the Professional Patrimony

The French Commercial Code, in **Articles L.526-22 to L.526-27**, stipulates that the professional patrimony comprises all assets, rights, and obligations related to the activity, and is solely allocated to guarantee professional creditors. This allocation suggests that the sole entrepreneur retains their natural personality.

However, this independence does not create a separate legal entity from the natural person, as it lacks essential elements of legal personality (such as independent legal capacity, the right to litigation, separate legal representation, etc.). The professional patrimony remains linked to the natural person, both in terms of management and disposal actions.

The first jurisprudential trend considers this separation to be the embodiment of a statutorily presumed objective protection system, without the need for willful intervention by the entrepreneur, thereby achieving legal protection based on public order. It is inferred that the professional patrimony is an independent financial patrimony within the natural person itself, not possessing independent legal personality like that enjoyed by companies; that is, it is not a new legal person. However, it does possess attributes of legal personality in terms of financial and functional independence, as it contains assets and liabilities dedicated exclusively to the professional activity.

This allows professional creditors to enforce against these assets without prejudice to personal assets, and enables the entrepreneur to exercise financial rights and obligations as if acting through a specific entity for the activity. This analysis reflects a shift in the relationship between the natural person and their professional activity. Previously, the natural person and the sole entrepreneur were considered one entity in terms of patrimony (unity of patrimony), but now the natural person has two patrimonies. This allows the entrepreneur to conduct their activity within an independent legal framework without establishing a legal entity.

¹⁶ - Pierre Crocq, Droit des entreprises en difficulté, LGDJ, 2023, pp99-100.

The other trend went further, considering the patrimony separated by law to constitute a legal entity in its own right, even if it does not rise to the level of a legal person, thereby giving rise to a new form of autonomy.

It is clear from the foregoing that the automatic patrimonial separation system constitutes a reconsideration of the legal system for sole proprietorship in general, and represents a transition from the principle of simple protection to the relative legal independence of the professional patrimony. Nonetheless,

The French legislator has reshaped the professional patrimony as an independent legal vessel, making it function as a "special legal structure" as described by Pierre Crocq; who believes this model expresses an evolution in the concept of functional legal personality, even if it is not explicitly founded on the traditional model of a legal person.

Section Two: Cessation of Automatic Separation of the Sole Entrepreneur's Patrimony

The automatic separation has created a new balance between protecting private assets and ensuring creditors' rights. However, it remains constrained by precise legal controls, whether through its role in protecting certain categories of entrepreneurs by defining the cases of its cessation (**Subsection One**), or the consequences of that cessation, such as the return to the unity of patrimony system and the widening of the scope of liability (**Subsection Two**).

Subsection One: Cases of Cessation of Automatic Patrimonial Separation

The automatic separation of patrimony ceases in the following cases: cessation of activity, death, tax fraud, waiver in favor of a creditor, or the comprehensive transfer of the patrimony.

First: Final Cessation of Professional Activity or Death of the Sole Entrepreneur

Automatic separation ceases in the event that the sole entrepreneur permanently ceases all independent professional activity, in application of the last paragraph of **Article L.526-22**, whereby the professional patrimony merges with the personal patrimony. It also ceases in the event of death, without prejudice to the provisions of **Articles L.631-3 and L.640-3** concerning the specific rules for the liquidation of the professional patrimony in bankruptcy or judicial liquidation.

Second: Fraud in the Declaration of Public Debts

The general privilege of the tax administration and social security organizations extends to both the professional and personal patrimonies in the event that the entrepreneur commits fraudulent manoeuvres or severe and repeated violations of their tax or social obligations, according to the conditions stipulated in the tax law and social security law. The same privilege also extends to both patrimonies for taxes specified in the reference texts. This leads to the removal of protection from the personal patrimony and the cessation of separation.

Third: Voluntary Waiver of Protection in Favor of a Specific Creditor

Under **Article L.526-25**, the sole entrepreneur may, upon a written request from a creditor, waive the exception stipulated in the fourth paragraph of **Article L.526-22**, for a specific obligation whose duration and amount must be stated. The waiver is not valid until seven full days have passed for reflection from the date of receipt of the waiver request. The entrepreneur can waive the protection of automatic separation in favor of a specific creditor under formal conditions. If a personal guarantee is requested to finance the activity, the concerned creditor can enforce against the personal patrimony despite the automatic separation.

Fourth: Enforcement by Personal Creditors Against the Professional Patrimony

Personal creditors can enforce against the professional patrimony up to the limit of the profit made in the last financial year, in the event that the entrepreneur's personal patrimony is insufficient to satisfy their personal debts. This measure is considered a partial and temporary breach of the automatic separation in favor of personal creditors, limited to the profits realized in the professional patrimony.

Fifth: Comprehensive Transfer of the Professional Patrimony

The entrepreneur may transfer the entire professional patrimony to another person (natural or legal). The professional patrimony is transferred to the new owner, and thus the automatic separation ceases for the former owner upon the legal publication of the transfer operation.

Subsection Two: Impact of the Cessation of Automatic Patrimonial Separation on the Sole Entrepreneur

The automatic separation between the professional and personal patrimonies of the sole entrepreneur represents a fundamental preventive mechanism, aiming to reassure individuals and encourage them to engage in economic activity without

fearing damage to their family and financial stability. However, this protection remains contingent upon the separation remaining in effect, as its cessation leads to serious consequences for the sole entrepreneur's status.

First: Return to the Patrimonial Unity System

Upon cessation of the separation, the dividing lines between the professional and personal patrimonies disappear, and the traditional rule returns, subjecting the sole entrepreneur to the principle of patrimonial unity.

This means that all of their assets, whether related to the professional activity or dedicated to their private life, become a guarantee for the satisfaction of all debts. Thus, the legislator retreats from one of the most important achievements of the reform: the relative independence of the professional patrimony. This result represents a legislative setback from the principle of independence enshrined by the French legislator in 2022 under **Law No. 2022-172**.

The return to patrimonial unity deprives the entrepreneur of the protection that ensured a portion of their wealth remained immune from the risks of economic activity, which directly impacts their financial and social stability. Jean-Michel ¹⁷ Bruguière clarified that the collapse of the separation "returns the sole entrepreneur to an old logic that legislative development has overcome, where they once again face the absolute risks they were supposed to avoid".

This confirms that this reversal weakens the effectiveness of the new system and makes its incentives less potent.

Second: Widening the Scope of the Sole Entrepreneur's Liability

The cessation of separation also results in the widening of the scope of liability. While the professional patrimony alone guaranteed the debts arising from the activity, its merger into the personal patrimony causes all of the entrepreneur's assets to guarantee all creditors, whether personal or professional. This situation allows personal creditors to enforce against professional equipment, machinery, and commercial stock, and permits professional creditors to enforce against the residential property or private bank accounts.

¹⁷ -«La disparition de la séparation automatique ramène l'entrepreneur individuel à une logique ancienne, celle d'une responsabilité illimitée, que l'évolution du droit avait pourtant vocation à dépasser.» - Jean-Michel Bruguière, op. Cité, p521.

This leads to a loss of any priority or special protection, and facilitates procedures for forced execution and liquidation, thereby reducing opportunities for amicable settlement. Pierre Crocq¹⁸ considered that "the abolition of separation deprives the sole entrepreneur of all the guarantees they enjoyed, and subjects them to unlimited liability that constitutes an obstacle to free initiative". Michel Storck¹⁹ stated that "the commingling of patrimonies after the cessation of separation creates a state of legal instability and undermines the confidence of individuals in the sole proprietorship system". Philippe Simler²⁰ added that: "Unlimited liability, after the legislator sought to overcome it, is incompatible with the requirements for encouraging modern entrepreneurship; rather, it places psychological and legal barriers before individuals entering the business world".

Consequently, the cessation of automatic separation is considered a radical change that returns the sole entrepreneur to a vulnerable position, exposing their entire financial patrimony to the risks of economic activity, and thus weakening the ability of this system to encourage investment and entrepreneurship.

Conclusion:

It has been shown that the system of automatic patrimonial separation for the sole entrepreneur constitutes a qualitative leap in comparative legislation, particularly in French law. It provided a practical legal mechanism to enshrine the principle of independence between the professional and personal patrimonies, thereby enhancing legal protection for entrepreneurs and fostering a climate conducive to initiative and risk-taking.

However, this separation remains inherently fragile, as its cessation triggers a reversion to the traditional patrimonial unity system. This results in the widening of the scope of liability and the possibility of enforcement against the entrepreneur's entire assets, whether professional or personal. effectively representing a legislative regression. at the level of the established protection, as it cancels one of the most important achievements of modern reforms. It returns the entrepreneur to the position of complete risk that was severely criticized under the traditional system.

¹⁸ -«La suppression de la séparation prive l'entrepreneur de toute protection et le replace dans un régime de responsabilité illimitée, véritable obstacle à l'initiative économique» - Pierre Crocq, op. Cité, p 112.

¹⁹ -«La confusion des patrimoines après la disparition de la séparation engendre une insécurité juridique manifeste et fragilise la confiance dans le régime de l'entrepreneur individuel.» - Michel Storck, Droit commercial, Dalloz, 2022, p337.

²⁰ -«Le retour à une responsabilité illimitée n'est pas compatible avec les exigences modernes de l'entrepreneuriat, il constitue un frein psychologique et juridique à l'entrée dans les affaires.» - Philippe Simler, «Les régimes de l'entrepreneur individuel», Revue des sociétés, 2022, p745

The automatic separation system is not only about its effectiveness while in force, but also about ensuring its continuity and preventing its easy cessation, as balancing creditor protection with the imperative of encouraging entrepreneurial initiative remains a central challenge for legislators.

Despite the drawbacks associated with the automatic separation system, especially during its cessation phase, the Algerian legislator would benefit from drawing inspiration from the French experience by adopting a special legal system for the sole entrepreneur.

This system should codify automatic separation of patrimony and curtail unlimited liability, and include the concept of professional patrimony in Algerian legislation within commercial law and the law on small and medium-sized enterprises, while defining the constituent elements of this patrimony and its legal effects.

In any future reform, the Algerian legislator should move towards making the automatic separation more stable thereby ensuring legal security for entrepreneurs and fostering confidence among economic actors.

This should be done by providing robust safeguards for professional patrimony and specifying additional guarantees to limit a return to unlimited liability, ensuring the continuity of separation even in cases of liquidation or bankruptcy.

However, the adoption of such a system in Algeria should not be mechanical. It requires a balanced approach that ensures both the protection of the entrepreneur's personal patrimony and the safeguarding of creditors' rights. Any future reform should therefore be accompanied by clear legal definitions, effective control mechanisms, and guarantees aimed at preventing abuse and ensuring legal certainty.

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