

Interpretation of the Concept of “Enterprise” in the Context of Latin American Legal Scholars’ Contemporary Ideas on the Tasks of Civil and Commercial Codifications

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Abstract: The relevance of the study is connected with its complex nature, giving an understanding of the vector of development of civil and commercial codifications in some Latin American countries, based on recent statutory regulations, which were not previously adequately reflected in the doctrine. From this perspective, therefore, this study fills the gap in the relevant knowledge. The author examines the features of the legal regime in certain Latin American countries to comprehend and show which trends prevail in a particular country and how this is reflected in the tasks of civil and commercial codifications. Thereby, the results obtained by the author are given in a comparative aspect in the context of Latin American legal experts’ ideas on the tasks of civil and commercial codifications concerning the legal recognition of the interpretation of the concept of “enterprise”.

Keywords: Latin America, Brazil, Argentina, Colombia, Peru, the theory of enterprise, the theory of commercial law, trading fund, *Universitas*, a set of assets, civil and commercial codifications, tasks of civil and commercial codifications.

I. INTRODUCTION

The *relevance* of this study is determined by the fact that at present Russian and foreign, for instance, Latin American, legal scholars are addressing the issue of the need for a legal distinction between the concepts of “legal entity” and “enterprise” on account of the possibility of many legal entities’ participation within a unified property fund in the context of personification of enterprises. They propose to consider the “enterprise” either as a set of assets (trading fund – *Fondo de comercio*), or as an entrepreneurial activity (*Actividades del empresario*), or as *Universitas*. Discussions are related to the fact that the term “enterprise” is used in a broad sense and allows including various forms of organizations, or one enterprise, or a group of independent legal entities linked by relations of economic dependence. When several (many) legal entities can operate within a unified property fund, which in general affects the configuration of civil and commercial codifications (Volpentesta, 2017; Belikova, 2019; Odintsov *et al.*, 2020). For this reason, it seems appropriate and practically significant for supporters of any legal order to refer to the interpretations of the concept of “enterprise” presented by foreign systems of law. In this very case, we have chosen the legal systems in many Latin American countries as our research subject.

The *purpose* of this article within the aforementioned framework is to study the approaches of certain Latin American countries to the interpretation of the concept of “enterprise” taking into account the Latin American legal scholars’ ideas on the tasks of civil and commercial codifications. Considering *approaches* to achieving this goal and the research subject, firstly, we proceed from the need for defining the concept of “enterprise”, and, secondly, for recognizing its value for solving problems related to civil and commercial codifications. The *novelty* of this research is determined by an integrated approach to achieving the goal, taking into account both the range of countries and legal sources chosen by the author for investigation and the very goal of identifying modern national approaches to regulating these relations in comparison.

The *theoretical and practical significance* of the results obtained is determined by the fact that foreign readers will be provided with modern scientific information about the state of legislation in the field under analysis in some Latin American countries, which in practical terms will contribute to the awareness of the approaches and achievements in this area of rule-makers and representatives of the academic community.

II. LITERATURE REVIEW

This research is aimed at studying the approaches of certain Latin American countries to the interpretation of the concept of “enterprise” taking into account the

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Latin American legal scholars' ideas on the tasks of civil and commercial codifications. Within this framework, it is carried out based on expert data contained in the works of domestic and foreign researchers of a selected range of issues, based on the fact that the importance of the interpretation of the concept of "enterprise" stipulated by the national legislator is significant. Since the role of the latter as a market participant along with physical and legal entities is steadily increasing, which, in turn, affects the framework of civil and commercial codifications that contain the corresponding regulations. Among them are the following persons: Jorge Roberto Volpentesta (2017), K.M. Belikova (2019), Patricia González G. (2015), Geovanny Perdomo Charry (2010), Carlos Reynoso Castillo (2014), Alejandra Moreno López, Juan Emilio Torres (2017), Thiago Henrique Moreira Goes, Helder Henrique Martins, Cláudio Antonio Pinheiro Machado Filho (2017), Fuentes G. Lombardo, Hernández Ortiz M.J., Vallejo Martos M.C. (2008), etc.

The aforementioned publications highlight multiple facets of the issue of legal consolidation of the interpretation of the concept of "enterprise". However, they lack integrity. This gap has been at least partly filled in by the author in this work. The works cited in the study were selected using keywords in search engines and networks, such as Google Scholar, ResearchGate, Science Direct, Publons according to the following criteria:

- Publications referring to the last decade;
- Publication language is English;
- Access to the full text of the publication.

III. METHODOLOGY

Based on analytical reflections on the information drawn from the sources mentioned in literature references, the article analyzes the provisions of statutory regulations in many Latin American countries that create legal regulation patterns of the concept of "enterprise" and reinforce its notion. The methodology is based on materialist dialectics and consists of collecting data through analysis of the legal acts and documents and a descriptive approach to the legal regulations in the field under study likewise reflective practice. Thus, the method of systematic analysis and reflection on the ideas provided in the aforementioned articles, book chapters, etc., along with such operations as induction and deduction, is used in the course of consideration of the provisions of Latin American

normative acts in the field under study. Methods of formal and dialectical logic help understand the relationship between the needs of participants in economic turnover and their normative regulation. The materialistic view of the processes and phenomena of the external world as a whole makes the study proceed from the fact that differences in the interpretation of the concept of "enterprise" in the countries under study are crucial and have an impact on the pattern of civil and commercial codifications that contain the appropriate regulations.

The results obtained during the study and the undertaken analysis show and make clear the following.

1. It became apparent that in the modern Latin American private law doctrine and legislation, as a result of the ongoing reforms, there is a shift in emphasis from the interpretation of the content of commercial law as a *law regulating a set of legal acts*, the boundaries of which are predetermined by *the nature of transactions*, to the interpretation that defines commercial law through the prism of the concept of "enterprise", as *the law of the enterprise (derecho de la Empresa)*.
2. The very concept of "enterprise" thereto is defined by Latin American legal scholars and legislators, using the concept of "entrepreneurial activity". Its result – an organized asset group intended for the operation of an enterprise, according to the terminological uniformity – a "trading fund" (a business – *Fondo de comercio, establecimiento comercial*) – differs in the content of the concepts reinforced by Latin American legislators. For instance, in some countries the trading (entrepreneurial) fund is the assets of the enterprise minus its debts (Argentina, Peru); in others, a trading fund is interpreted as a set of assets organized by an entrepreneur to achieve the enterprise's goals, which also includes responsibilities in the area of trade derived from business activities (Brazil, Colombia).
3. It has been established that, despite these differences, the legislators in all countries allow both the "bulk transfer" of the trading fund (a sale "in a state of economic uniformity", as a single and indivisible object), and the certain asset transfer (except for Brazil).

4. Proceeding from the idea that no enterprise (trade) can exist without a material base represented by the “economic uniformity”, a trading fund, as well as the existence of a “trading fund, a business”, a shift in emphasis towards the legalization of an “enterprise” in new interpretations is an attempt to combine the understanding of the enterprise as an activity and the material component necessary for its implementation, where *establecimiento* is a legal object regarding which the entrepreneur (business partnership) acts as the entity organizing its activities.

IV. DISCUSSION

Let us first refer to the concept that reveals the essence of the enterprise through the prism of the concept of “trading fund” (*fondo de comercio, fondo de negocio*). Latin American legal scholars believe that any enterprise has a trading fund based on which the enterprise’s activities are legally organized. Some of them, for example, F.J. Torres Manrique consider a trading fund to be a combination of productive forces and property attached to a particular trade or industrial activity, which, as an economic unity, functions and exists independently of the person who established it (his heirs), acquiring his clientele. Others correspond a business with a business reputation, ownership of intangible assets that allow this particular company to be more successful in comparison with other similar ones (for instance, L.Ribó Durán, J. Fernández Fernández). In the same vein, it is proposed to distinguish between tangible and intangible assets, combined for trade, inalienable and alienable components of the trading fund’s intangible assets, referring clientele and chances to the first one, and business reputation to the second one, which is the core element to be evaluated when it is alienated (Ribó Durán *et al.*, 1998; González, 2015).

Argentine Law on the Transfer of Rights to a Trading Fund No. 11.867 of 1934 (Ley No. 11.867, 1934) (further – *The Law of Argentina of 1934*) as constituent elements of a trading fund (*fondo de comercio*), as well as a commercial establishment (enterprises – *establecimiento comercial*) establishes (for the purpose of transferring rights to them on any basis): equipment; goods in stock; trade name and designation; clientele, the rights to the premises; patents for inventions; trade marks (hallmarks); industrial models; and other rights based on industrial property law (Art. 1).

The fact of the transfer of the right to the trading fund is subject to publication in a daily Metropolitan newspaper (federal or corresponding provincial), as well as in one or more daily or periodicals at the place of business (Art. 2, *The Law of Argentina of 1934*).

In addition, the legal or actual transfer of the seller’s property to the buyer is recognized as a sham if it can harm the creditors’ interests (Art. 9). In cases of alienation in the form of a “bulk transfer” (*ventas en block* – the trading fund as such) or in parts (*ventas en fraccionadas de las existencias* – separate parts of the trading fund) by means of public auction, the duties of the auctioneer include drawing up an inventory of the property and publishing it in the aforementioned media. Any violations of the provisions of the Law in question make the buyer (purchaser), seller (transferor), notary public and auctioneer jointly and severally liable (Art. 11). Therefore, everything provided for in Art. 3, 4, 5, 6, 7, 8, 10 of the *Law of Argentina of 1934*, the procedures for bringing to the attention of the buyer the list of creditors with their addresses, the amount and maturity of the debt and ensuring their rights are usually executed without claims.

In other Latin American countries, the sale (transfer) of a trading fund (business) is also accompanied by the mandatory publication of information about it, albeit in various options in the number and place of publication (for example, in Colombia, it is three times with the 10-day interval), giving these creditors the right to independently declare about their rights. If the requirement for publication with all the specifics has been ignored, the purchaser of the trading fund is usually recognized jointly and severally liable with the transferor for the existing debts (for example, Art. 151 of the *Commercial Code of Colombia of 1971 (CC de Colombia, 1971)* (further – *The Commercial Code of Colombia*)).

However, it should be noted that currently, according to the legal doctrine, the idea of a “trading fund, business” (*fondo de comercio, establecimiento comercial*) as only a static “legal entity” that includes property (for example, equipment, goods) and actual relationship having value (*clientele, reputation*), seems meaningless without an enterprise (*empresa*) that dynamically ensures due to its activities, not only the nature of these relations, but also realizes a certain goal in the course of its activities according to a plan previously created.

For example, the Peruvian legislator uses the term “entrepreneurial fund” (*fondo empresarial*) instead of

the term "trading fund", defining it as a set of assets and rights organized by entrepreneurs (one or more individuals or legal entities) and intended for the production, circulation of goods or provision of services, for which the fact of registration sets the limit of liability. The same entity can be the owner of several entrepreneurial funds; each set of assets and rights recognized by an entrepreneurial fund may have one or more owners (Carceres, n.d.).

At the same time, there is a concept that *identifies an enterprise with Universitas (Universidad* – a set of assets). Following this concept, the Colombian legislator uses the same terminology as the Argentinean one, however, putting in it a different content and the terms "*establecimiento de comercio*" and "*Fondos de comercio*" do not denote the enterprise's assets without debts, but the aggregate of assets organized by the entrepreneur to achieve the purposes of the enterprise performance (Art. 515 of the Commercial Code of Colombia). For this reason, the trading fund includes, along with movable property, equipment, finished goods and goods in the process of manufacturing, as well as rights related to intellectual property rights (trade names and trademarks, inventions and industrial designs, etc.) and the right to protect the reputation of the company and to prohibit the "enticement" of the clientele. At the same time, the fund includes debts and rights of claim related to the rights and obligations specified in contracts (Art. 516).

The consequence of the sale of a trading fund (business) in whole or in parts is the termination of any trade relations between its owner and third parties (Art. 19, Art. 151 of the Commercial Code of Colombia). The compulsory transfer of a commercial business for any reason is presumed to be a "bulk transfer" (*enajenación en bloque*), a sale "in a state of an economic unity" (*enajenación en su Estado de Unidad económica*) without a detailed listing of the elements (Art. 525) or in parts that make up its elements (*enajenación separada de sus distintos elementos*), by concluding several contracts of sale and purchase that are not formally related to each other (Art. 517). The approach, within the framework of which the presumption of including not only assets but also debts, is valid, is not new. Thus, according to German law, the legal consequences of the transfer of an enterprise depend on whether the enterprise is transferred with or without the firm (trade) name. If a business (company – *Handelgeschäft*), acquired by a transaction between the living, continues with the firm (trade) name, even in case of legal succession, then both the rights of the

claim and the debts arising from the activities of the enterprise pass to the acquirer. If a business is acquired without a firm (trade) name, then the acquirer, generally, is not liable for previous obligations (§ 25 German Commercial Code) (CC of Germany, 2005; Pedromo Charry, 2010).

The enterprise transfer is carried out based on a notarial act or agreement of the parties, signed by a competent official (Article 526 of the Commercial Code of Colombia) and is accompanied by the transfer to the purchaser by the transferor of the total balance of the enterprise reflecting separately its debts in the Appendix which is certified by the state auditor (*Contador público* – Art. 527).

The transferor and the purchaser of the commercial establishment shall be jointly and severally liable for all obligations assumed in the course of the normal activities of the commercial establishment until the moment of its alienation if such has been reflected in the enterprise (trade) reporting books that are mandatory for keeping. The liability of the transferor and the rights of creditors terminate upon the expiration of two months from the date the fact of sale of the commercial establishment is entered in the commercial register.

A commercial establishment can also be pledged, leased, become an object of usufruct, antichresis, and other restrictions of owner's rights (Articles 532, 533 of the Commercial Code of Colombia) (Dudin *et al.*, 2016).

However, the sale of an enterprise "in a state of economic unity" constitutes a rebutting presumption, and in some cases, this allows making its transfer in parts that make up its elements. A set of assets (*Universidad*) is not often a new object of rights from a legal point of view, which, on the contrary, can be recognized the things that make up this set, since they constitute it and exist in it. *Universitas* is nothing more than an indefinite plurality of things and property rights, variable in its composition, which the legal order endows with the property of *universitatis* and makes it the subject of regulation as a unified whole. While the transfer (alienation) of an enterprise occurs without characteristics of the set, that is, rights and obligations are transmitted *ipso jure* (Pérez, 1999).

At the same time, Latin American legal scholars believe that an enterprise cannot be reduced only to a set of assets in terms of a trading fund or "economic

unity” (aggregate of assets): an enterprise (*empresa* or *estabelecimento*) is an expression of the spirit of an entrepreneur, owner of such an enterprise, who can combine heterogeneous elements with his will to achieve the desired goal, which is expressed in obtaining an economic result from the sale of goods or the provision of services (Goddard, 1966). Under this format, there has been a trend to focus on the figure of an entrepreneur who, through own efforts, in the course of own – entrepreneurial – activity creates an enterprise.

The reinforcement of the interpretation of an enterprise as the entrepreneur’s entrepreneurial activity (*empresa como atividade del empresario*) at the legislative level can be found in the Civil Code of Brazil of 2003 (CC of Brazil, 2002), (hereinafter referred to as the CC of Brazil), which abolished the first part of the Brazilian Commercial Code of 1850 On Trade in General (*Do comércio em geral*), and established new rules for enterprises’ activities (*empresas*) (Código Comercial do Império do Brasil, 1850).

The CC of Brazil in 2003 in Title I of Book II of the Special part “Law of an Enterprise” (*Direito de Empresa*) departed from the system enshrined in the Brazilian Commercial Code of 1850, based on the figure of a merchant and professional trade (*teoria dos atos de comércio*, based on the idea that commercial law is a set of commercial transactions) and confirmed the category of “entrepreneur” (*empresário*) and “entrepreneurial activity” (*atividade empresarial – teoria da empresa*, based on the idea that the key figure in commercial law is the “enterprise”) (Castillo, 2014; Belikova, 2010; Bulgarelli, 2000). The key figure becomes an entrepreneur, who is recognized as anyone who carries out economic activities on a professional basis, organized for the production or introduction of goods and services into circulation (Art. 966 of the CC of Brazil) (Machado, 2002).

Based on the interpretation of the concept of an entrepreneur enshrined in the CC of Brazil, Brazilian legal scholars characterize entrepreneurial activity (*atividade empresarial*) as that which is:

- Carried out on a professional basis (as a trade – *critério do profissionalismo*) – therefore, any trader’s sporadic, occasional, or non-systematic activities are not recognized as entrepreneurial: only the systematic activities aimed at the production or introduction of goods or services gives a person entrepreneurial status;
- Economic activity (*atividade econômica organizada*) organized in the form of mediation between the producer and the consumer (user) of goods or services based on the use of factors of production: capital, work, and means of production and technology aimed at gaining profit (*atividade lucrativa*) as a result of intermediation between the manufacturer and the consumer (user) of goods or services based on the use of factors of production: capital, work, means of production and technology;
- Consisting in the production or putting into circulation of goods or services (*atividade de produção ou circulação de bens e serviços*) in the form of mediation between the manufacturer and the consumer (user) of the goods or services (López and Torres, 2017).

These ideas were supported in by the Russian legal scholar G.F. Shershenevich in his work 100 years earlier (Shershenevich. 2003).

The consequence of the Brazilian legislator’s reduction of the concept of “enterprise” to organized activities (*empresa*) is to highlight especially the result of such activities – any organized set of assets, intended for the business activities either by an entrepreneur or their business (partnership, establishment (*estabelecimento*), etc.) (Art. 1.142 The CC of Brazil).

A business that includes debts and liabilities can act as a unified and indivisible object (*objeto unitário*) of rights and legal transactions aimed at changing or establishing rights and obligations consistent with its nature (Art. 1.143 of the CC of Brazil). Its transfer is subject to the principle of publicity. The agreement, the subject of which is the transfer (establishment of usufruct or business lease), comes into effect about third parties after it is made public by entering it into the public register of commercial enterprises and publication in the official media (Art. 1.144).

The transfer of the debts of the transferred business to the purchaser enters into force concerning creditors from the moment of publication informing about the transfer of the business (Art. 1.149). While the purchaser of the business is responsible for the payment of debts created before the business transfer to him, and the liability of the original debtor – the transferor – is limited to an annual limitation period (Art.1.146). This situation is also known to German law:

if the purchaser of the trade business is liable for previous obligations based on the further use of the company (trade) name, then the former owner is liable for these obligations only when they are due before the expiration of five years (§ 26, Commercial Code of Germany).

Further, the CC of Brazil also establishes the obligation of the transferor of the business not to compete with the purchaser for 5 years, and in cases of business leasing or usufruct, this prohibition is valid during the term of the relevant agreement (Art. 1.147). Usually, the business transfer involves the transition to the purchaser of contracts concluded to support the business activities, by subrogation, although third parties (contracting parties) have the right to terminate any of such agreements within 90 days after the publication about the business transfer (Art. 1.148).

The CC of Brazil does not recognize as entrepreneurs (Art. 966) persons of intellectual professions (*quem exerce profissão intelectual*) engaged in scientific, artistic or literary activities (*quem exerce profissão de natureza científica, literária ou artística*), still referring them to legal activities. While the modern doctrine and practice also classify the activities of persons of free professions as entrepreneurial on such grounds that, firstly, there is no special law for such professions that would provide for the procedure for carrying out their activities (for example, lawyers' activity) (Fortes, n.d.), and secondly, the "element of the enterprise" (*elemento de empresa*) is evident in this activity.

The CC of Brazil of 2003 also classifies activities in the field of agriculture and the activities of cooperatives as activities that are not recognized as entrepreneurial. As for entrepreneurship in the field of agriculture, in Brazil, at present, the legal forms of organizing production in agriculture can be considered from two aspects:

- As large enterprises of the "agricultural industry" (*grandes agroindústrias*), engaged in the agricultural sector of industry applying modern methods of concentration and centralization of capital, forms of joint-stock companies, hired labor, advanced and high-tech means of production, etc.,
- As agricultural associations of the "family" type (*agricultura familiar*), employed in limited areas of production, the key driver of which is the work

of the agricultural worker's family members (Wesz Jr., 2010; Moreira Goes, 2017; Cardona and Balvín, 2014; Lombardo *et al.*, 2008).

In this context, the Brazilian legislator, striving to support a small agricultural producer, has included provisions in the Civil Code that enshrined mechanisms facilitating the implementation of agricultural activities, primarily by "family" agricultural associations. Whereupon, a producer engaged in agriculture, for whom such an occupation is his main trade (main profession), in compliance with the provisions of Art. 986 of the CC of Brazil may apply for inclusion in the Public Registry of Trading Enterprises (*Registro Público de Empresas Mercantis*), after which it acquires the status of an entrepreneur with all the ensuing consequences regarding his rights and obligations (Art. 971).

For comparison, in Argentina's economy, the share of the agricultural sector remains significant (Efe.com, n.d.); in agriculture, business entities can be both legal entities (usually in the form of cooperatives, "associations for cooperation" (*agrupación de colaboración*), which can be carried out based on either a contract of association (*contrato de agrupación*), or companies (*la sociedad accidental o en participación or asociación de cuentas en participación*, etc., acting based on Articles 367-376 of the Law on Trade Associations No. 19.550 (Ley No. 19.550, 1984)) and individuals.

The legislation of some other Latin American countries (for example, Mexico, etc.) explicitly identify cooperatives among commercial partnerships (for instance, Clause VI of Article 1 of Mexico's General Law on Business Entities of 1934 (Diputados, 2009)) on the assumption that they are associations of persons for the joint achievement of an *economic goal*, and as such are considered as an organizational form of management, a tool for modernizing agriculture, fishing, and handicraft production. In some countries (e.g., Argentina, etc.) cooperatives are not part of trading partnerships. Thus, the Argentinian Law of Cooperatives No. 20.337 (Ley No. 20.337, 1973) establishes the interpretation of a cooperative as an institution based on personal efforts and mutual assistance to organize the provision of services (Art. 1).

Since by their nature cooperatives are aimed at carrying out activities similar to the activities of commercial partnerships, they can be consumer-oriented, industrial, related to mutual insurance,

lending, mutual provision of medical services, and others. The main feature that distinguishes them from commercial partnerships is the possibility of voluntary entry into the cooperative of an unlimited number of participants and the presence of “variable” capital and its “fluidity” (*variabilidade do capital social*) (Wesz Jr., 2010; Odintsov *et al.*, 2020).

However, the CC of Brazil of 2003 classified cooperatives as “simple partnerships” (*sociedades simples*), recognized as civil, non-entrepreneurial, regardless of what type of activity they are engaged in (the Only paragraph of Art. 982) simultaneously eliminated the division of partnerships into those acting under the provisions of civil law and trading ones. Now partnerships are divided based on the registry of their registration: entrepreneurial (*sociedades empresárias*) – in the State Register of Commercial Partnerships (*Registro Público de Empresas Mercantis*); non-entrepreneurial (*sociedades não-empresárias*) – in the Civil Register of Legal Entities (*Registro Civil das Pessoas Jurídicas*).

The former division of civil partnerships according to the subject of their activity into entrepreneurial and non-entrepreneurial ones has also been abolished. Now, if partnerships decide to engage in entrepreneurship, they will be considered as entrepreneurial, applying the provisions of Art. 1.039-1.092 of Civil Code (as general (simple) or limited liability partnerships, and limited liability companies or joint-stock companies). If the partnerships do not carry out an entrepreneurial activity, they will be considered simple partnerships (*sociedades simples*), and their activities will be governed by the provisions on simple partnerships of Art. 997-1.038 of the Civil Code. In this respect, the law allows simple partnerships to take any of the two aforementioned forms.

Thus, a non-entrepreneurial partnership can be created in the form of a limited liability company registered in the Civil Register of Legal Entities, but an entrepreneurial partnership is any joint-stock company, regardless of the subject of its activity (Article 982 of the Civil Code).

V. CONCLUSION

As the research has demonstrated, for the concept of “enterprise”, it can probably be argued that in some cases the material, “tangible”, “property” component of the enterprise may be very insignificant. And then the concept of an enterprise can be expanded by

attributing to this category lawyers, doctors, artists, singers, etc., since it is these persons’ activities – singing, defense in court, a painting that is sold, etc., are significant to determine it. While material (tangible) components, such as a law firm renting a specific space; musical instruments, etc. are auxiliary, additional. Such enterprises receive their greater or lesser value due to and in proportion to the success of their activities as such, and not due to the value of the property providing the organization of these activities. At the same time, for many enterprises, it is the material component that plays an essential role. For example, centralization through joint-stock companies carried out the widespread construction of railways and their development at a moment’s notice. In other words, any enterprise (trade) cannot exist without a material base in the form of a trading fund, “economic unity” or “a single and indivisible object” (an aggregate of assets), as well as the existence of a “trading fund”, “commercial establishment” and “business” seems meaningless without an enterprise. Thus, we can say that this approach is an attempt to combine the understanding of the enterprise as an activity and the material component necessary for its implementation, where the *estabelecimento* is an item subject to rights in respect of which the entrepreneur (business partnership) acts as the subject organizing its activities.

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REFERENCES

- Belikova, K.M. 2010. Legal regulation of trade turnover and codification of private law in Latin America. Monograph. Moscow: Justitzinform.
- Belikova, K.M. 2020. “Peculiarities of the legal regulation of the digital intellectual economy based on supply chain management.” *International Journal of Supply Chain Management* 8(6): 81-86.
- Bulgarelli, W. 2000. *Direito Comercial*. 15ª Edição. São Paulo: Atlas.
- Caceres, B.Y.A. n.d. El fondo empresarial en el Perú. Retrieved from: <https://www.monografias.com/trabajos98/fondo-empresarial-peru/fondo-empresarial-peru.shtml>
- Cardona, H.A.A., Rico Balvín, D. 2014. “La empresa familiar, el protocolo y la sucesión familiar.” *Estudios Gerenciales* 30(132): 252-258. <https://doi.org/10.1016/j.estger.2014.02.013>
- Castillo, C.R. 2014. “Las transformaciones del concepto de empresa.” *Revista Latinoamericana de Derecho Social* 18: 133-158. [https://doi.org/10.1016/S1870-4670\(14\)70167-8](https://doi.org/10.1016/S1870-4670(14)70167-8)
- Código civil do República Brasil. 2002. Novo Código Civil. Lei No. 10.406, de 10.1.2002. Lei Ordinária. DOFC PUB 11/01/2002, 000001, 1, Diário Oficial da União.

- Código de Comercio de Colombia de 1971 (Decreto 410 de marzo 27, 1971). Diario Oficial No. 33.339 del 16 de junio de 1971.
- Dudin, M., Frolova, E., Belikova, K., Badaeva, N. 2016. "Particularities of Legal Regulation and Harmonization of Proprietary Rights Legislation in the RSA, Brazil and China." *Journal Of Advanced Research In Law And Economics* 7(5): 1026–1036.
- Efe.com. 2018. El sector agropecuario argentino, el gran beneficiado de la caída del peso. Retrieved from: <https://www.efecom.com/efe/americaeconomia/el-sector-agropecuario-argentino-gran-beneficiado-de-la-caida-del-peso/20000011-3750616>
- Fortes, J.C. n.d. Novo Código Civil - Reflexos nas atividades empresarial e contábil. (7a. Parte). Retrieved from: <https://classecontabil.com.br/o-novo-codigo-civil-reflexos-nas-atividades-empresarial-e-contabil-7a-parte/>
- Fuentes Lombardo, G., Hernández Ortiz, M.J., Vallejo Martos, M.C. 2008. "Razones para crecer en la empresa familiar: un análisis comparativo." *Investigaciones Europeas de Dirección y Economía de la Empresa* 14(3): 15-34. [https://doi.org/10.1016/S1135-2523\(12\)60064-1](https://doi.org/10.1016/S1135-2523(12)60064-1)
- German Commercial Code. 2005. Law on Joint Stock Companies. Law on Limited Liability Companies. Law on production and economic cooperatives. Moscow: Walters Kluver.
- Goddard, E.L. 1966. "El concepto de patrón o empleador en la legislación chilena." *Editorial Jurídica de Chile*: 69.
- Goes, T.H.M., Martins, H.H., Pinheiro Machado Filho, C.A. 2017. "Desempenho financeiro de empresas com características familiares: análise de empresas brasileiras listadas na BM&F." *REGE - Revista de Gestão* Volume 24(3): 197-209. <https://doi.org/10.1016/j.rege.2016.06.011>
- González, P.G. 2015. "Propuesta de un modelo para medir activos intangibles en empresas de software a partir de una herramienta multicriterio." *Estudios Gerenciales* 31(135): 191-201. <https://doi.org/10.1016/j.estger.2014.12.002>
- Lei No. 556, de 25 de junho de 1850. 1850. Código Comercial do Império do Brasil. Coleção de Leis do Império do Brasil.
- Ley general de sociedades mercantiles de 1934. Diario Oficial de la Federación el 4 de agosto de 1934 (Última reforma publicada DOF 02-06-2009).
- Ley No. 11.867 de Transmisión de Establecimientos Comerciales e Industriales (de Transferencia de Fondos de Comercio), de 09 de Agosto de 1934.
- Ley No. 19.550, de Sociedades Comerciales, de 30 de marzo de 1984. B.O. 30/03/1984.
- Ley No. 20.337, de Cooperativas. B.O. 15 mayo de 1973.
- López, A.M., Torres, J.E. 2017. "La expansión internacional de la firma: experiencia de una pyme del sector tecnológico de Argentina." *Estudios Gerenciales* 33(144): 240-249. <https://doi.org/10.1016/j.estger.2017.08.001>
- Machado, D.C. 3003. O Novo Código Civil Brasileiro e a Teoria da Empresa. 02/2002.
- Odintsov, S.V., Koncheva, V.A., Trubina, M.V. 2020. Tokens: Actual Problems of Determining the Legal Status and Classification. In: Popkova, E., Sergi, B. (Eds) *Scientific and Technical Revolution: Yesterday, Today and Tomorrow*. ISC 2019. Lecture Notes in Networks and Systems, vol 129. Cham: Springer. https://doi.org/10.1007/978-3-030-47945-9_125
- Perdomo Charry, G. 2010. "Empresarialidad y empresa: una aproximación desde la escuela austriaca." *Estudios Gerenciales* 26(115): 161-178. [https://doi.org/10.1016/S0123-5923\(10\)70117-0](https://doi.org/10.1016/S0123-5923(10)70117-0)
- Pérez, E. 1999. Cap. IV. La personalidad jurídica. El Poder Ejecutivo en el Derecho Público y en la Constitución.
- Pinheiro, M.A.H. 2008. Cooperativas de Crédito. História da evolução normativa no Brasil. 6ª edição – Brasília.
- Ribó Durán, L., Fernández Fernández, J. 1998. *Diccionario de Derecho Empresarial*. Con los conceptos económicos complementarios. Barcelona: Editorial Bosch, S.A.
- Shershenevich G.F. 2003. *Commercial Law Course*. V. I: Introduction. Eminent Persons in Commerce. Moscow: Statut.
- Volpentesta, J.R. 2017. "Creación de un método de integración de grupos de interés al gobierno de las empresas." *Estudios Gerenciales* 33(143): 195-207. <https://doi.org/10.1016/j.estger.2017.05.002>
- Wesz Jr, W.J. 2010. "Política pública de agroindustrialização na agricultura familiar: uma análise do Pronaf-Agroindústria." *Rev. Econ. Sociol. Rural* 48(4). <https://doi.org/10.1590/S0103-20032010000400004>

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