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RESEARCH ARTICLE

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## FORMS OF OPERATING A PHARMACY AS A COMPANY: WHICH LEGAL STATUS TO CHOOSE?

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### ABSTRACT

**Introduction:** New pharmacist entrepreneurs are increasingly wondering about the choice of company statuses most suited to their pharmacies. This is why we carried out this work, the objective of which was to study the forms of companies authorized for the operation of a pharmacy. **Methodology:** We carried out a documentary review of legal works on companies and commerce, followed by consultation of websites. **Results/Discussion:** The owner of a pharmacy operated as a sole proprietorship is indefinitely liable for the debts of the pharmacy on his own property. This legal form favors the immediate. As for the general partnership (GP), all partners must be pharmacists, and must be jointly and severally liable for their personal assets. The separation of one of the partners is very delicate, and the transfer of shares requires the agreement of all the partners. Regarding the limited liability company (LLC), all partners must be pharmacists. One of the partners is appointed to act as manager for a period provided for in the company's statutes. If you wish to develop your pharmacy in the future, it is best to directly create an LLC. **Conclusion:** The sole proprietorship favors the immediate and the general partnership would not be the best form. There is no perfect company for operating a pharmacy, but the limited liability company would be the best answer for young pharmacists.

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## INTRODUCTION

For several years, the pharmaceutical profession has been facing difficulties of various kinds which can hinder the sustainability of the sector. The exponential development of the illicit drug market, the poor planning of the creation of pharmacies and the tax pressure, seriously compromise the viability of certain pharmacies (1). With a view to the transition to a formal economy, it is important to encourage the transfer of pharmacies with the status of natural persons to the status of legal persons (companies). The company is established by two or more people who agree to allocate property to a joint enterprise, with a view to sharing the profit that may result. In Senegal, social entrepreneurship can take various forms, and new pharmacist entrepreneurs are wondering about the choice of the legal form of the pharmacy most suited to their economic model. This management model could ultimately contribute to improving results and guarantee them over time (2). The pharmacist who would like to pursue a project of social utility, should, after determination, adapt the most appropriate legal form among those that exist. The objective of our work was to study the legal status of companies adapted to the operation of a pharmacy in Senegal.

## METHODOLOGY

This is a descriptive and transversal study on the forms of operation of the pharmacy in society, which took place from July 1, 2020 to January 31, 2021. We conducted a documentary review on commercial law works, and operated websites on the company forms used for the operation of a pharmacy. The data collected was entered and processed using Excel version 2016 software.

## RESULTS/DISCUSSION

When you have a business creation project, it is advisable to carefully compare all the statuses, especially when you know exactly what kind of activity you would like to embark on, and to seek help from professionals with the used to this kind of problem (3). Article L. 575 of Book V Pharmacy authorizes the licensed pharmacist to operate his pharmacy as an individual business or to form a company (general partnership, limited liability company).

**The individual enterprise (IE):** Exercising as a sole proprietorship, also called exercising in your own name, consists of setting up a professional activity without creating a legal entity distinct from the operator (4 ;5). There is no fiscal separation between the assets of the sole proprietorship and that of the entrepreneur (6). It is the simplest form of business. In fact, the sole proprietorship is a natural person. That is to say, the company merges with the person. At the legal level, the company has no assets of its own, it is confused with that of the entrepreneur. The business manager is completely independent. However, the entrepreneur is personally and indefinitely liable for the company's debts from his personal assets. Hence a real financial risk: the entrepreneur can lose his entire assets in the affair. The latter must also absolutely ensure that his personal assets are separated from that of his spouse.

At the social level, the entrepreneur does not benefit from the general social security scheme: he is covered by the scheme for self-employed workers for illness, and under the scheme for industrial and commercial professions for retirement. He has the possibility of joining complementary plans. However, the benefits of this scheme are much less comprehensive than those of the general social security scheme. The way the sole proprietorship status works makes it an excellent way to test a new activity or benefit from additional income. This status is characterized by its simplicity and its vocation to facilitate the creation of an entrepreneurial activity. It allows you to carry out numerous activities and benefit from a favorable social and tax regime. Finally, if you are afraid to embark on an entrepreneurial adventure or you do not have many means, we advise you to do business with this type of business and to change later if the need arises(7 ;8).

**Please note:** This status may however not be recommended if your activity is growing rapidly and requires significant purchases and costs (stocks, machines) or bank loans (9).

#### ***On commercial companies***

**The general partnership (GP):** It is a group of entrepreneurs with at least two partners. She must have capital, but no minimum is imposed. At the legal level, this form of company allows two spouses to join together in the same SNC. The operating rules are simpler and less onerous than those of an SARL, but the partners are indefinitely and jointly liable for the company's debts. If they want to leave the company, they can only transfer their shares with the consent of all the partners. The death of a partner puts an end to the partnership. At the tax level, the partners are subject to the same tax regime as the individual entrepreneur: each partner is subject to income tax on the share of profits which accrues to him in proportion to his share in the capital of the company. However, the partners are taxed according to a costly regime and do not benefit from the tax credit like the shareholders of a company. At the social level, all partners are affiliated to the social security scheme for self-employed workers under the same conditions as an individual entrepreneur. It is a little-used legal structure because it combines the disadvantages of the sole proprietorship and those of companies: indefinite and joint liability for the personal assets of each partner, heavy taxation regime, disadvantageous social protection regime, sharing of power. and collegial decisions... However, several independents may wish to join together to carry out similar or complementary activities and share premises, equipment, etc. However, you really have to be sure of your partners because the failures of some will have repercussions on others (10 ;11).

**The limited liability company (LLC):** At the legal level, LLC remains the simple, easy and recommended legal form of corporate partnership for pharmacies. In fact, it is made up of one person (single partner) or several partners, bearing losses only up to the amount of their contributions. This is a huge advantage compared to the natural person, who is responsible for the debts of the pharmacy on their entire assets. In the event of multiple partners, the management of the pharmacy must be ensured by all the associated pharmacists, which makes it possible to pool the contribution, organization and management. At the social level, the salaried partner benefits from the

advantages and benefits of the National Social Security Fund. In terms of management: around 30% of pharmacists (natural person status) experiencing major difficulties. In fact, the pharmacist finances, through the operator's account, all personal expenses, professional charges and investments, without taking into consideration the pharmacy's results and cash flow. This necessarily leads to an unbalanced balance sheet with negative equity and problems with suppliers and banks, endangering the assets of the pharmacist who has personal responsibility for all of his debts. In addition, the legal entity manager-partner cannot take out loans from his company, nor have it grant him an overdraft, in a current account or otherwise.

Consequently, the managing pharmacist must carefully check that operating income covers operating expenses and generates a gross surplus, in order to repay loans, pay taxes and cope with the increase in stocks.

At the tax level, one of the flagship measures of the 2011 finance law concerns measures intended for VSEs (Very Small Enterprises) whose turnover excluding tax does not reach the threshold of 3,000,000 F excluding tax:

- a reduced IS tax rate of 15% will be applied instead of 30%.
- the natural person (PP) who does not transform into a legal entity (PM) will be taxed at the IS reduced to 15% instead of 38% IR (according to the scale).
- fiscal neutrality concerning capital gains made on the contribution of the assets of a natural person to a new legal entity, in relation to non-depreciable elements (customers, lease rights, etc.)(12).

**The single-member company with limited liability (SLLC):** The single-member (or single-member) company with limited liability is an SLLC which has only one partner. At the legal level, the company has its own assets, distinct from that of the sole partner. The EURL can easily become a SARL. In theory, even if the entrepreneur benefits from protection of his personal assets, he is often required to provide a personal guarantee, which then places him in the risky situation of an individual entrepreneur. Their situation in terms of social protection is also identical to that of an individual entrepreneur, which is not very advantageous. This is partly why this legal structure has little success compared to the status of individual entrepreneur: although it offers the possibility of opening the capital to other partners, it does not offer sufficient other advantages to compensate for its heavier and more expensive operation (13 ;14).

## **CONCLUSION**

The acquisition, the creation of a pharmacy, its future in the pharmacist's assets according to the latter's matrimonial regime, or even its mode of operation, are all decisive questions that interested parties are commonly confronted with. The objective of our work was to study the forms of companies authorized for the operation of a pharmacy. We carried out a review of legal works on companies and commerce, followed by consultation of websites. In accordance with article L. 575 of Book V pharmacy, the owner of a pharmacy can operate it either as a sole proprietorship, a general partnership, or a limited liability company. The sole proprietorship does not require the creation of a company or minimum capital. It is advisable to trade with it and change it later if the need arises. Concerning the general partnership (SNC), there is no minimum capital, but all partners must be pharmacists, and must be jointly and severally liable for their personal assets. The SNC would not always be the best form to adopt. The separation of one of the partners is very delicate without the consent of the others and this can be the cause of serious disputes. As for the limited liability company (SARL), if you wish to develop your pharmacy in the future, but at the beginning it would be rather small, it is recommended. There is no perfect company for operating a pharmacy, but the limited liability company would be the best response to the expectations of young pharmacists. Two things can

influence the choice of pharmacist, notably a tax constraint and a financial constraint.

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