

YURIDIK SHAXS SIFATIDA MAS'ULIYATI CHEKLANGAN JAMIYATNING FUQAROLIK HUQUQIY MAQOMI VA XUSUSIYATLARI

Shukrullaev Siyovush Ulug'bek o'g'li
Toshkent davlat yuridik universiteti Fuqarolik
protsessual va iqtisodiy protsessual huquqi kafedrası o'qituvchisi
E-mail: siyovush.law@gmail.com

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Kalit so'zlar: tashkiliy-huquqiy shakl, MCHJ, ta'sis hujjati, ustav fondi, hissalar, muassis, boshqaruv organlari, fuqarolik huquqlari ega bo'lishi va fuqarolik majburiyatlarini zimmasiga olish.

Шукруллаев Сиёвущ Улугбек угли

Преподаватель кафедры Гражданского процессуального и экономического процессуального права Ташкентского государственного юридического университета

E-mail: siyovush.law@gmail.com

ГРАЖДАНСКОЕ ПРАВОВОЕ ПОЛОЖЕНИЕ И ХАРАКТЕРИСТИКИ ОБЩЕСТВА С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КАК ЮРИДИЧЕСКОГО ЛИЦА

Аннотация

В данной статье дано определение понятия ООО в действующем законодательстве, проблемы и предложения на практике, а также правовой статус и объем ответственности его участников, различные подходы ученых



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в этом отношении, а также совершенствование гражданско-правовое регулирование вопросов деятельности ООО, научно-теоретические проблемы гражданско-правового статуса ООО на основе законодательства Республики Узбекистан, понятие и сущность ООО, его роль и значение в системе гражданского права субъекты, юридические лица и хозяйственные общества.

Ключевые слова: организационно-правовая форма ООО, учредительный документ, уставный фонд, вклады, учредитель, органы управления, обладающие гражданскими правами и принимающие на себя гражданские обязанности.

CIVIL LEGAL STATUS AND CHARACTERISTICS OF LIMITED LIABILITY COMPANY AS A LEGAL ENTITY

Shukrullaev Siyovush Ulugbek ugli

Lecturer at the Department of Civil Procedural and Economic Procedural Law,

TaShkent State University Of Law

E-mail: siyovush.law@gmail.com

Annotation

In this article, the definition of the concept of LLC in the current legislation, the problems and proposals in practice, as well as the legal status and scope of responsibility of its participants, different approaches of scientists in this regard, and the improvement of the civil-legal regulation of LLC activity issues, scientific-theoretical problems of the civil-legal status of the LLC based on the legislation of the Republic of Uzbekistan, the concept and essence of the LLC, its role and importance in the system of civil law subjects, legal entities and economic societies.

Key words: organizational and legal form, LLC, founding document, charter fund, contributions, founder, governing bodies, having civil rights and assuming civil obligations.

The legal meanings of the terms and concepts in the Civil Code and other civil legal documents are specified in Section I, Clause 2 of the Concept of Improving the Civil Legislation of the Republic of Uzbekistan, approved by the Decree of



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the President of the Republic of Uzbekistan No. PF-5464 dated April 5, 2019. defined and improved through uniform application. Accordingly, it is appropriate to define the entrepreneurial activity of legal entities. In our opinion, we can understand entrepreneurial activity as an independent and organized activity that is carried out legally and regularly for the purpose of obtaining profit (income) at the risk of a person and under his own property responsibility.

It should be noted that the term "Legal entity" is recognized as a general conditional name of various organizations, and they have a legal status under this name as a subject of civil law. Usually, the name "Legal entity" comes from the fact that every situation of the establishment and activity of the entities under this name must be legally formalized through certain documents. For this reason, separate organizational and legal forms of legal entities defined in the civil legislation should correspond to the general characteristics and criteria specific to legal entities. These signs are the main criteria required for the recognition of organizations of the appropriate organizational and legal form as legal entities. After all, the absence of these signs in this or that organization denies its recognition as a legal entity and state registration in the appropriate manner.

For limited liability companies (LLCs), as well as for other organizational and legal forms of legal entities, having appropriate legal signs is recognized as the main and main criterion for recognition as a legal entity. This is the sixth part of Article 310-II of the Law of the Republic of Uzbekistan dated December 6, 2001 "On Limited Liability and Additional Liability Companies".[1]is also understood from According to this norm, the society will have separate property, which will be taken into account in its independent balance sheet, it can receive rights and obligations in its own name, be a claimant and be liable in court.

According to HR Rahmankulov, the concept of a legal entity is expressed by the signs given in the law itself (Article 39 of the FC). These symptoms include:

- 1) organizational unit;
- 2) to have own property and separate property;
- 3) to have an independent balance sheet and estimate;
- 4) to be independently responsible for one's obligations with one's property;
- 5) to have property and personal non-property rights in his own name and to be a claimant and liable in court[2].

Based on these circumstances, the national legislation of LLC charter fund is divided into shares; determines that it is an economic society founded by one or

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more persons, whose participants are not responsible for its obligations and are responsible for damages related to the society's activities within the value of their contributions. Based on the provisions of Chapter 4 of the FC, it can be noted that LLC is a separate organizational and legal form of a commercial legal entity.

The difference between business companies and business companies is that in a business company, the unification of participants and their active participation in the business of the company is required, while in business companies, it is created as a result of the accumulation of resources, funds (capital), and from this point of view, the participants in it it is not required to personally participate in the affairs of economic societies. The difference in the rights and obligations of the participants in economic societies is assessed by the scope of their responsibility for their obligations. For example, participants of a limited liability company are not liable for its obligations and are liable for damages related to the company's activities within the value of their contributions. (Article 62 of the FC). That is, the level of risk in their business activities is determined by the amount of their contributions to the charter fund of the society.

The property base of the LLC consists of the charter fund (capital) consisting of the contributions of the society's participants. The fact that there is no requirement for the amount of authorized capital shows the advantage of LLC over other economic companies. Therefore, the amount of the charter capital is determined by the participants in the charter. There is one exception, the minimum amount of the company's authorized fund (authorized capital) may be specified in the license requirements. In an additional responsibility society, the scope of responsibility is a little wider, and Fk[3]According to Article 63, the participants of such a society are jointly and severally liable for its obligations in relation to the value of their contributions with their property, which is the same for everyone, in multiples determined in the founding documents of the society. If one of the participants becomes insolvent (bankrupt), his responsibility for the company's obligations is determined to be distributed among other participants in proportion to their contributions, unless a different procedure for the distribution of responsibility is provided for in the founding documents of the company. .

In the legal literature, a number of opinions are expressed regarding the naming of this organizational and legal form of a legal entity[4]. In particular, according to SISapko, the naming of this organizational-legal form of commercial organization was "unlucky". In our opinion, it is not about the limitation of

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liability due to non-responsibility of the participating company's obligations, but about the risk of loss in the amount of their invested funds and the possibility of losing this fund. Based on this situation, it would be appropriate to use the term "limited liability" in this organizational and legal form of business companies in the name of the risk of losing the funds invested by the participants in the authorized capital. For this reason, it is possible to agree with the proposal to name LLC as "company with limited risk of loss of participants" presented in the literature. After all, LLC is an organization that has an independent legal status separate from the legal status of its participants[5].

SA Makarov stated that the term "limited liability company" does not express the specific features of this organizational and legal form of a legal entity, therefore, the limitation of the liability of participants is not only an aspect characteristic of LLC, but other types of economic companies and also applies to cooperatives (production and distribution cooperatives) and associations of legal entities (associations). This name adopted for LLC originates from the legal tradition formed in Russia and other foreign countries and is considered conditional[6].

It should be recognized that the practice of establishing a company by one person has been in force in the legislation of foreign countries for a long time. For example, in France, this norm was introduced into the legislation in 1895 (Article 1832 of the French Civil Code)[7]. "One-person company" is a universal form of limiting the risk of an entrepreneur in the process of doing business. It should be noted here that according to Articles 24-25 of the FC, a citizen is liable for his obligations with all his property, except for property that cannot be levied according to the law. When forming a "one-person company", a part of the entrepreneur's property is legally allocated to form the authorized capital of the company, and in practice, the entrepreneur's property risk is also limited within this property. At the same time, the legislation of the countries that provide for the possibility of establishing a "one-person company", including the legislation of the Republic of Uzbekistan, always sets restrictions on the establishment of an LLC in the form of a "one-person company". In particular, according to the second part of Article 7 of the Law "On Limited Liability and Additional Liability Companies", the law may prohibit or limit the participation of certain categories of individuals in the company;

4) a legal entity whose participants have obligations towards themselves. This means that the participants of the society do not have material rights to the

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property of the society. In turn. The society is the owner of the property transferred by the participants in the form of savings and other shares, as well as the property acquired by the society on other grounds;

5) participants of a limited liability company are not responsible for its obligations and are responsible for damages related to the company's activities within the value of their contributions;

6) an organization with an appropriate stable structure. The unity and indivisibility of the society is ensured by the fact that the governing structures of the society, which act on behalf of the society in internal and external relations, are determined by legal documents. Describing the powers of the governing bodies, the law does not provide for its internal organizational structure, that is, the society can organize its own internal structural divisions;

7) the society may have civil rights and undertake civil obligations necessary for the implementation of any activity not prohibited by law, if this activity does not contradict the subject and goals of the society's charter.

LLC is a commercial organization, the main purpose of its activity is to make a profit. This means that, in contrast to non-profit organizations, material activities that serve to conduct business, which have the right to carry out any type of entrepreneurial activity. Thus, for societies, the principle "everything that is not prohibited by law and regulation is allowed" has a priority right. The society can engage in certain types of activities defined by the law only on the basis of a special special permit (license). In this case, the purpose and subject of the LLC's activity should not go beyond the scope defined in the company's charter. The purpose and subject of the LLC shall be defined in its charter by the decision of the founder or by the minutes of the general meeting of the participants, and by making changes and additions to it.

According to Article 125 of the FC, transactions concluded by an LLC that are contrary to the goals of its activity specified in its founding documents or concluded without a license to engage in business may be invalidated by the court at the request of its founder (participant) or an authorized state body. it is determined that it can be considered not.

LLC is considered to be established as a legal entity from the moment of state registration. If the charter does not specify a term, the LLC is considered to be established for an unlimited period.

Civil law subjects can be created only by the method of establishing legal entities,



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that is, they are created on the basis of the wishes and wishes of natural persons without having arisen naturally. Based on this characteristic of a legal entity, we can describe it as an "artificial entity". According to national legislation, an LLC is an organization formed by one or more persons, and the person or persons who founded the LLC are also its participants.

The Civil Code and the Law "On Limited Liability and Additional Liability Companies" define the concepts of "Founder" and "Participant", in particular, when it changes from the status of "Founder" to "Participant", and its different aspects are clear. not expressed.

MMSerebrennikov's[8]In his opinion, the terms "Founder" and "participant" were defined as the legal status of the Society changes from one type to another from the moment of state registration.

OSRibina's[9]in his opinion, the legal status of the founder is determined on the basis of the founding agreement.

In our opinion, the boundary between the status of "Founder" and "participant" is defined from the moment the company is state registered. During the period before the state registration of the society, the natural person who artificially creates the society has the status of "Founder". "Founder" is directly responsible to other founders and third parties for his activities and actions in the period before the establishment of the company. Only after the state registration of the society, the founder who invested in it receives the status of "participant" and the LLC is created as a new subject of law. The status of the participant is determined by the founding documents and the law.

Articles 7-9 of the Law "On Limited Liability and Additional Liability Companies" define the rights and obligations of the participants and participants of the company.

Article 10 describes the rights and obligations of the founders regarding the procedure for establishing the Society.

According to Articles 10 and 12 of the Law, the founder has the following rights:

- conclusion of the founding agreement;
- approval of the charter;
- election of executive bodies;
- confirmation of their monetary value when non-monetary contributions are added to the charter fund.

According to Article 41 of the Civil Code of the Republic of Uzbekistan, a legal



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entity shall have civil legal capacity in accordance with the goals of its activity stipulated in its founding documents, and the special legal capacity of a legal entity shall be determined by its charter, statute or legal documents. stated, but the legislator left it open from when the legal capacity of a legal entity comes into being, and also did not introduce a rule about the concept of the legal entity's legal capacity and when it comes into being. In our opinion, a legal entity cannot be a full-fledged subject of civil law without the ability to acquire civil rights and exercise them, to create civil duties for himself and to perform them, that is, the capacity to act. . For this reason, we believe that the legislator should provide a separate description of the legal entity's rights and ability to act in a broader framework. After all, a legal person can have civil rights and exercise them, create civil duties for himself and fulfill them only when he has legal capacity.

In this case, the legislator meant only in a narrow sense that a legal entity is considered to be established from the moment of state registration, the time of its creation of rights and legal capacity, and from that time it is recognized as a subject of civil law. .

The method of establishing an LLC can be divided into two types based on the number of founders: according to Article 10 of the Law "On Limited and Additional Liability Companies", the number of founders of the company is two or more by drawing up the founding agreement and approving the charter of the company, according to Article 11, if the company is founded by one person, it can be established by the charter approved by that person. So, from the above rule, we can understand that it is envisaged to establish the LLC through the founding agreement and charter or only through the charter itself.

Article 12 of the Law "On Limited and Additional Liability Companies"[10]according to the founding agreement, the participants of the society undertake to establish the society and define the joint future goals of its establishment. The founding agreement stipulates the following:

- Composition of founders of LLC;
- The amount of the charter fund of the LLC and the amount of each founder's share;
- The order, amount, methods and terms of making contributions to the charter fund of the LLC when it is being established;
- liability of the founders of the society for violation of obligations to make contributions;



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- Conditions and procedure for distribution of profits and losses among the founders of the LLC;

- The structure of LLC bodies and the exit procedure of company participants.

In the founding agreement, the main emphasis is on the rights and obligations of the founders.

of this law[11]According to Article 13, the following must be specified in the company's charter:

- Full and abbreviated name of LLC;

- Subject of LLC's activity;

- Information about the postal address of the LLC;

- About the composition and powers of the bodies of the LLC, including the issues that fall under the exclusive authority of the general meeting of the society's participants, about the procedure for making decisions by the society's bodies, including the decisions made unanimously or qualified information on issues to be adopted by majority vote;

- Information on the amount of the authorized fund of the LLC;

- Information on the amount and nominal value of each participant's share of LLC;

- Rights and obligations of LLC participants;

- Information on the procedure for the withdrawal of the LLC participant from the company and its consequences;

- Information on the procedure for transferring a share (a part of a share) in the authorized fund (authorized capital) of the LLC to another person;

- Information on the procedure for keeping the documents of the LLC and the procedure for providing information by the society to the participants of the society and other persons;

- Information about representative offices and branches of LLC;

- other information that does not contradict the law.

In the charter of the LLC, the main emphasis is on determining the legal status of the company and organizing the company's activities. However, in practice, most business entities draw up these two founding documents, that is, the founding agreement and the charter, with the same content. In our opinion, we believe that this situation is legally wrong. In order to eliminate the above misunderstanding, Article 12 of the Law "On Limited Liability and Additional Liability Companies" states that "the founding agreement is a founding document defining the rights and obligations of the founders", Article 13 and it is appropriate to add that "the



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charter of the society is the founding document that defines the legal status of the society and the order of organization of the society's activities." Current civil legislation excessively limits the legal capacity of legal entities.

Paragraph 5 of Section I of the Concept of Improving the Civil Legislation of the Republic of Uzbekistan, approved by the Decree of the President of the Republic of Uzbekistan No. F-5464 dated April 5, 2019, states that citizenship prevents effective protection of the rights and legal interests of participants in civil-legal relations. elimination of legal gaps and conflicts in the legislation is envisaged. Taking this into account, we propose the following amendment to Article 41 of the Civil Code of the Republic of Uzbekistan:

A legal entity also has the same rights and obligations as a natural person (civil legal capacity), with the exception of rights and obligations that can belong only to a person by nature. The law may determine special legal capacity and its scope for certain types of legal entities. According to Article 10 of this law, the decision to approve the charter of the society, as well as the decision to approve the monetary value of the contributions made by the founders of the society, must be adopted unanimously by the founders, but in practice, decisions of this category are not adopted. On the contrary, as a preliminary process to the approval of the company's founding documents, if there is only one founder, the foundation decision is approved, and if there are two or more founders, the founding document is approved. Incorporation decision or memorandum of association provides for the following:

1. establishing a society, determining the main type of activity, developing project-estimate documents, confirming the postal address;
2. approval of the company's name, stamp and circular seal;
3. approval of the amount of the company's charter fund and the composition of the founders and the amount and nominal value of each founder's share;
4. approval of the foundation contract and the charter of the society (if there is only one founder, only the charter);
5. appointment of management bodies and managers of the society;
6. solving organizational issues: the task of registering the society from the competent state body is assigned.

In our opinion, we consider the process of approval of the founding decision or memorandum of association to be the stage directly before the approval of the founding documents of the society and the basis for creating the founding

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documents.

The absence of special provisions on the decision of incorporation or memorandum of incorporation in the current civil legislation causes misunderstanding for persons who are about to start business activities and persons who are carrying out registration. The reason is that during the registration process, in addition to the founding documents, the entrepreneur is responsible for presenting the founding decision or founding statement to the authorized state body, that is, the state service center.

Instead of the conclusion and proposal, it should be mentioned that the founding documents of the LLC and the grounds for its creation should be given a legal description and their legal nature should be disclosed. In the current civil legislation, the charter and founding agreement are provided as founding documents of the LLC. However, there are no specific rules regarding the incorporation decision, the memorandum of association and other agreements between the participants of the society. However, the approval of the founding decision or the memorandum of association is the stage before the approval of the founding documents of the society and serves as the basis for creating the founding documents.

The lack of general rules for founding documents in the creation of an LLC, their interpretation and application creates different approaches. Therefore, it is necessary to supplement the norms of the Civil Code on the founding documents of LLCs with the provisions of the founding decision or founding document.

In addition, in practice, most business entities draw up the content of the founding agreement and charter with the same content. In our opinion, we believe that this situation is legally wrong. In order to eliminate the above misunderstanding, Article 12 of the Law "On Limited Liability and Additional Liability Companies" states that "the founding agreement is a founding document defining the rights and obligations of the founders", Article 13 and it is appropriate to add that "the charter of the society is the founding document that defines the legal status of the society and the order of organization of the society's activities."

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