



## Legal entity and legal capacity of a limited liability company

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### ABSTRACT

This article discusses the problems and proposals in the practice of civil law regulation of the LLC, as well as the legal status and scope of responsibility of its founders, different approaches of scholars in this regard and the founding documents of the LLC and their registration, legal and legal capacity of the LLC. ziga specific properties are analyzed. The novelty of the study is the study of a wide range of problems, as well as scientifically based and important practical recommendations for improving the legislation in the field of improving the civil regulation of the LLC.

### Keywords:

organizational and legal form, LLC, constituent document, charter capital, Share, founder, governing bodies, possession of civil rights and assumption of civil obligations.

Today, most entrepreneurs in our country consider the organizational and legal form of LLC to be convenient and reliable in conducting their business. So why do entrepreneurs prefer this particular organizational legal form?

If we look at the current statistics of enterprises and organizations in terms of organizational and legal form, the total number of organizations in the organizational and legal form of LLC is 298,800, which is almost half of all organizational and legal forms. . In the current legislation, LLC is a business company, according to the Civil Code<sup>1</sup>In Article 58, commercial organizations that have a charter capital (charter capital) divided into shares (contributions) or shares of the founders (participants) are business companies and companies, contributions made by the founders (participants) or they the property created at the expense of the acquired shares, as well as the property produced and purchased by the business company or company in the course of

its activity on the basis of property rights, business companies and societies full company, limited liability company, liability a limited or additional liability company may be established in the form of a joint stock company.

The difference between business companies and business companies is that in a business company the merger of participants and their active participation in the work of the company is required, and in business companies it is the accumulation of resources, funds (capital) and in this regard. it does not require participants to personally participate in the work of business associations. The difference in the rights and obligations of the participants in business companies is assessed by the scope of their responsibility for their obligations. For example, participants in a limited liability company are not liable for its obligations and are liable for damages related to the company's activities to the extent of the value of their contributions. ladilar. (Article 62 of the FC). That is, the level of risk in their entrepreneurial activity is determined by the amount of their contribution to the charter

<sup>1</sup> Civil Code of the Republic of Uzbekistan Part One // National Database of Legislation, 23.01.2020, No. 03/20/603/0071.

capital of the company.

The property base of the LLC consists of a charter capital (capital) consisting of shares of the company's participants. The absence of a requirement for the amount of authorized capital indicates the advantage of the LLC over other companies. Therefore, the amount of authorized capital is determined by the participants in the charter at an arbitrary value. There is one exception, the minimum amount of the company's charter capital (authorized capital) may be specified in the license requirements. The scope of liability in an additional liability company is slightly wider, and according to Article 63 of the FC [12], the participants of such a company are equal to each other in terms of the value of their contributions with their property under its obligations. different

In the Civil Code of the Republic of Uzbekistan and the Law "On Limited Liability and Additional Liability Companies", the concepts of "founder" and "participant", in particular, when changed from the status of "founder" to the status of "participant", the differences are not clearly stated.

MMSerebrennikovning<sup>2</sup>According to him, the term "founder" and "participant" change from one type to another from the moment of state registration of the Company.

OSRibina<sup>3</sup>in his opinion, the legal status of the founder is determined by the memorandum of association.

In our opinion, the boundary between the status of "Founder" and "participant" is determined from the moment of state registration of the company. Until the state registration of the company, the natural creator of the company has the status of "Founder". The "Founder" is directly responsible to other founders and third parties for its activities and actions for the period before the establishment

<sup>2</sup>Серебренников М.М. Гражданско-правовое положение учредителей и участников обществ с ограниченной ответственностью и обществ с дополнительной ответственностью: Автореф. дис. канд. юрид. наук. – Иркутск: Байкальский государственный университет экономики и права, 2009. – 12 с.

<sup>3</sup>Рыбина О.С. Правовой статус участников обществ с ограниченной ответственностью по континентальному праву: Автореф. дис. канд. юрид. наук. – М.: 2007. – 9 с.

of the company. Only after the state registration of the company, the founder who contributed to 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 constituent documents and the law.

Article 41 of the Civil Code<sup>4</sup>According to the constituent documents, a legal entity has civil legal capacity in accordance with the purposes of its activities, and the special legal capacity of a legal entity is determined by its charter, charter or legislation, but the legislative body which leaves open the date on which legal capacity arises, as well as the concept of legal capacity of a legal entity and does not include a rule on when it arises. In our opinion, a legal entity cannot be a full-fledged subject of civil law without the ability to acquire and exercise civil rights by their own actions, to create and perform civic duties for themselves, that is, without the ability to act. For this reason, we believe that the legislature should give a broader definition of the rights and legal capacity of a legal entity. After all, a legal entity can have and exercise civil rights only if it has the capacity to act, create and fulfill civic duties for itself.

In this case, the legislator, in the narrow sense, states that a legal entity is considered established from the moment of its state registration, implying the time of its legal and legal capacity and from that time onwards it is recognized as a subject of civil law. .

The method of establishing an LLC can be divided into two types depending on the number of founders. Law on Limited Liability and Additional Liability Companies<sup>5</sup>According to Article 10, if the number of founders of the company is two or more, by concluding a memorandum of association and approving the charter of the company, according to Article 11, if the company is established by one person, 'can be misted. Hence, we can understand from

<sup>4</sup> Civil Code of the Republic of Uzbekistan Part One // National Database of Legislation, 23.01.2020, No. 03/20/603/0071.

<sup>5</sup>Law of the Republic of Uzbekistan "On Limited Liability and Additional Liability Companies" // National Database of Legislation, July 22, 2020, No. 03/20/629/1087

the above rule that an LLC is to be established through a memorandum of association and a charter, or only through the charter itself.

Article 12 of the Law on Limited Liability and Additional Liability Companies<sup>6</sup> According to the memorandum of association, the participants of the company undertake to establish the company and set goals for future joint activities to establish it. The memorandum of association provides for:

- The composition of the founders of the LLC;
- The amount of the charter capital of the LLC and the amount of the share of each founder;
- Procedure, amount, methods and terms of contributions to the charter capital of an LLC when it is established;
- liability of the company's founders for breach of their contribution obligations;
- Terms and procedure for distribution of profits and losses among the founders of the LLC;
- The composition of the bodies of the LLC and the order of withdrawal of participants from the company.

The founding agreement focuses on the rights and obligations of the founders.

According to Article 13 of this law, the company's charter must include:

- Full and abbreviated company name of the LLC;
- Subject of activity of LLC;
- Information on the mailing address of the LLC;
- On the composition and powers of the bodies of the LLC, including on matters within the exclusive competence of the general meeting of participants, on the procedure for decision-making by the bodies of the company, including decisions unanimously or qualifying information on issues to be adopted by a majority vote;
- Information on the amount of the charter capital of the LLC;
- Information on the amount and

nominal value of the share of each participant of the LLC;

- Rights and obligations of the participants of the LLC;
- Information on the procedure for withdrawal of a participant from the company and its consequences;
- Information on the procedure for transfer of the share (part of the share) in the charter capital (authorized capital) of the LLC to another person;
- Information on the procedure for storing the documents of the LLC and the procedure for providing information by the company to the participants of the company and other persons;
- Information on representative offices and branches of the LLC;
- other information that does not contradict the legislation.

The main emphasis in the charter of the LLC will be on determining the legal status of the company, the organization of the company's activities. However, in practice, most business entities draw up these two constituent documents, ie the memorandum of association and the charter, in the same context. In our opinion, this situation is legally incorrect. In order to eliminate the above misunderstanding, Article 12 of the Law "On Limited Liability and Additional Liability Companies" states that "the memorandum of association is a constituent document defining the rights and obligations of the founders." "The charter of a company is a constituent document that determines the legal status of the company and the order of organization of the company's activities." it is advisable to add more. Current civil law severely limits the legal capacity of legal entities.

Paragraph 5 of Part I of the Concept of Improvement of Civil Legislation of the Republic of Uzbekistan, approved by the Decree of the President of the Republic of Uzbekistan dated April 5, 2019 No. F-5464 the elimination of legal gaps and conflicts. In this regard, we propose to make the following changes to Article 41 of the Civil Code of the Republic of Uzbekistan:

A legal entity also has rights and

<sup>6</sup>Law of the Republic of Uzbekistan "On Limited Liability and Additional Liability Companies" // National Database of Legislation, July 22, 2020, No. 03/20/629/1087

obligations that an individual can have (civil legal capacity), with the exception of rights and obligations that by nature can only belong to a person. The law may establish special legal capacity and scope for certain types of legal entities. According to Article 10 of this law, the decision to approve the charter of the company, as well as the decision to approve the monetary value of the contributions of the company's founders is made unanimously by the founders, but in practice this category of decisions is not made. Conversely, the decision to establish a company as a pre-approval process in the case of a single founder, if there are two or more founders, the memorandum of association is approved. The decision to establish or the memorandum of association provides for:

1. founding a society, the main activity engaged Determining the type of t, development of design estimates, approval of postal address;
2. confirmation of the name, stamp and round seal of the company;
3. the amount of the charter capital of the company and the foundersing composition and approval of the amount and nominal value of each founder's share;
4. approval of the founding agreement and charter of the company (founder oneif only the charter);
5. appointment of governing bodies and managers of the company;
6. addressing organizational issues: empowering societyThe registration order is issued by the state body.

In our opinion, we consider the process of approval of the founding decision or the memorandum of association as the stage directly before the approval of the constituent documents of the company and the basis on which the constituent documents are formed.

The current civil law does not provide for specific provisions on the decision to establish or the memorandum of association, which is currently confusing for those who are about to start a business and those who are carrying out the registration. This is due to the fact that in the process of registration, in addition to the founding documents, the

entrepreneur is obliged to submit the decision of the establishment or the protocol of the establishment to the competent state body, ie the Center for Public Services.

Instead of a conclusion and a proposal, it should be noted that the constituent documents of the LLC and the basis for its formation should be given a legal description and their legal nature should be disclosed. The current civil legislation provides for the charter and the memorandum of association as the constituent documents of the LLC. However, there are no specific rules regarding the founding decision, the memorandum of association and other agreements between the participants of the society. However, the approval of the founding decision or the founding protocol is the process that precedes the approval of the company's founding documents and serves as the basis for the founding documents.

The lack of rules common to the constituent documents in the organization of an LLC, their interpretation and application give rise to different approaches. Therefore, the provisions of the Civil Code on the constituent documents of LLCs should be supplemented with the provisions of the decision to establish or the memorandum of association.

In addition, in practice, most business entities draft the content of the memorandum of association and the charter in the same context. In our opinion, this situation is legally incorrect. In order to eliminate the above misunderstanding, Article 12 of the Law "On Limited Liability and Additional Liability Companies" states that "the memorandum of association is a constituent document defining the rights and obligations of the founders." It is worthwhile to add that "the charter of the company is a constituent document that determines the legal status of the company and the order of organization of the company's activities."

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