



## ANALYSIS OF INTERNATIONAL EXPERIENCE IN IMPROVING THE CIVIL LAW REGULATION OF LIMITED LIABILITY COMPANIES

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### Annotation

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.

### Introduction

The first legal provisions on legal entities are also found in Roman law. The Justinian degists also had various structures, companies, and norms governing the co-operation of individuals, similar to legal entities. Although no clear definition of legal entities has been formed by Roman jurists, the signs of property independence of the organization and responsibility for its obligations with its own property have been interpreted as the basic criteria determining the legal status of any organization.

The development of the Institute of Limited Liability Company (LLC) in German law, formed on the basis and under the influence of Roman law, the Codex Maximilianeus Bavaricus Civilis of 1756 in Bavaria, as well as the Law of the Prussian Lands of the Prussian States in 1794 began with the adoption of. The Maximilian Bavarian Code provided for associations to be divided into three species characterized by distinctive features: Societas Particularis, Universalis Bonorum Simplex, Universalis Omnium Bonorum. In this case, the first type of association - Societas Particularis - had the characteristics of today's modern LLC.

The laws of the Prussian states regulated social relations related to the formation, activity and liquidation of a complex legal entity, ie the purpose of its establishment,





founding documents, firm name, registration procedures, keeping trade books, and so on.

The normative definition of the category of a limited liability company was first the adoption in 1892 of the German Law on Limited Liability Companies and the regulation of relations on the establishment, operation and liquidation of an LLC.

According to German law, the main features of the LLC are organizational and functional unity, property independence, responsibility for its obligations.

It is known that according to the tradition formed in the legal system of the Republic of Uzbekistan, the concept of a legal entity is interpreted not only as a combination of capital, but also as a combination of individuals. In Germany, on the other hand, a legal entity is usually recognized only as a combination of capital.

Also, the basis for the classification of legal entities (and other associations) in German law is related to the fact that a person has the opportunity to conduct business. A limited liability company under national law is a commercial organization whose main activity is to generate income systematically and consistently. According to the norms of German law, in the organizational and legal form of an LLC, associations whose main purpose is not profit, but represent the interests of a certain group of persons (for example, an association of doctors, lawyers, journalists "free profession") can be formed. However, under German law, it is not allowed to establish an LLC whose main activity is not intended to carry out business activities.

In German law, as in the legislation of Uzbekistan, the establishment and operation of the LLC is divided into three stages: the period from the conclusion of the agreement on the establishment of the company to the approval of its charter; the period from the approval of the charter to the state registration of the LLC; the period from the state registration of the company to its liquidation.

German corporate law is characterized by the obligation to choose a legal form. Therefore, the law clearly defines the organizational and legal form of legal entities, and in the formation of a legal entity requires the choice of only one of the forms provided by law. German corporate law provides for the establishment of a company or a company based on the attraction of capital, in which the personal (personal) responsibility of the participants is determined.

A personal liability company is a legal form in which at least two members of a company come together to pursue a specific goal.

Personnel liability companies include civil law firms, partnerships, open trade societies, and limited liability companies.

Unlike a company in which capital is raised, a company with personal liability is not a legal entity, ie they do not have the status of a legal entity as a legal entity. However,



as the owners of the common property of the company, they have certain rights and obligations that correspond to the rights of legal entities.

As a rule, participants are personally involved in the activities of the company and assume subsidiary liability for all obligations of the company, not limited to their personal property. Statutory capital is not required in personal liability companies, although it is used in practice.

Unlike companies with personal liabilities, in companies with capital, the responsibilities and liabilities of the participants are limited. The following types of capital-intensive societies in Germany There are: joint-stock companies of a separate form of European joint-stock companies, joint-stock company, limited liability company, as well as a limited liability business company - a special variant of a limited liability company - mini LLC.

Unlike a company with personal liability, all participants in a company in which capital is raised are subjects of law.

The most common forms of capital-intensive companies in Germany are limited liability companies (LLCs) and joint-stock companies (JSCs).

There are currently about 1 million LLCs in Germany. Most of the rules concerning LLCs are provided for in the Law on Limited Liability Companies and the German Commercial Code.

Society is an independent owner of rights and obligations. It should be noted that under German law, the LLC can be established by a single person. For the establishment of the LLC, the charter capital must be 25,000 euros.

Establishing an LLC requires more cost and effort than setting up a personnel responsible company. Notarization of the founding contract, which is required to comply with the basic norms of the law, is a mandatory requirement. Each LLC must be included in the sales register. LLC is a legal entity after registration.

As a rule, the LLC can be established in a week or two. How long the registration process takes will depend on the completeness and accuracy of the documents submitted. Usually, the prolongation and suspension of registration processes are caused by incorrect choice of the type of activity, insufficient formation of the subject of the company's activity or, from a legal point of view, not allowed for corporate purposes. Timely agreement with the German Chamber of Commerce and Industry and qualified lawyers is described to address many of these types of problems.

It is mandatory for the LLC to draw up a balance sheet and submit it to the district judge for review.

The most important advantage of the LLC is the limited personal liability of the participants. For this organizational and legal form of legal entities, a clear boundary



is established between the property of the company and the private property of the participant.

The German Law on Limited Liability Companies was amended, and on November 1, 2008 a new organizational and legal form of LLCs - Limited Liability Company - was introduced. According to him, a limited liability business company is an independent organizational and legal form, representing a separate form of LLC. This organizational and legal form is beneficial for the founders in terms of participation in the establishment of a low-cost enterprise with a small amount of capital (from 1 euro to 24 999 euros).

It is necessary to take into account the rule prohibiting non-monetary contributions in the establishment of Mini-LLC. Restrictions on the distribution of profits among the participants of the company are based on the fact that the annual allocations for the reserve funds of the enterprise, provided by law, should not be less than 25% of total income. These deductions are paid until the company's capital reaches 25,000 euros, and if the company's charter capital reaches 25,000 euros, it becomes a full-fledged LLC. However, the opposite is not the case, ie the LLC cannot become a mini-LLC.

In general, the civil law status of a limited liability company in German law has many similarities to the provisions of the civil law of the Republic of Uzbekistan on the legal status of an LLC. In particular, the establishment of the LLC, the number of its members, the requirements for the formation of the charter capital, the state registration of the LLC, the limitation of liability of members of the LLC are the same as the rules of German law. At the same time, it should be recognized that the existence of a small appearance of LLCs in German law, the fact that the LLC is a legal entity based on the attraction of capital differs from the provisions of our national legislation.

In Germany, the organizational legal form of LLC (Gesellschaft mit beschränkter Haftung, GmbH) is the most successful type of corporation in the system of corporate law. The law on LLC was first enacted by the German Ministry of Justice in 1892 as a separate law. The main goal is to develop small and medium-sized businesses.

Currently, in Germany, the homeland of the organizational and legal form of the LLC, the most popular form of the organizational and legal form of the LLC is one million. Due to the fact that the LLC is a very successful and reliable form of small and medium business, it limits the scope of property liability of its participants and gives them an advantage in their relationship in internal corporate governance.

Management control of the organizational legal form of LLC is designed to be similar to the form of management of joint-stock companies. As a result, the distinction





between the legal features of the LLC and the JSC was somewhat complicated.

The difference between the LLC and the JSC is that the participants of the LLC are not allowed to transfer their shares to third parties. Because these features are reflected in German LLCs, corporate law in most European countries, including France and Switzerland, has adopted these elements.

Under German law, there are five types of partnerships: civil, commercial, professional, limited and limited partnership.

There are many differences between partnerships and corporations. The biggest difference between them is that they are participating entities, while corporations operate on the basis of freedom of membership, limited liability and capital consolidation, while companies operate on the basis of joint interests of partners. In addition, the difference in control over individual organizational management and the limited scope of responsibilities of entities is also not a characteristic of companies.

July 17, 2017 in the Federal Law Gazette merged and published law "Limited Liability Company" - "Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbH"

- We can say that it is a perfect law aimed at legal regulation of the activities of LLC.

To his 1st chapter According to the provisions of this Law, an LLC may be established by one or more persons for any purpose permitted by law.

The requirements for the form of the memorandum of association are as follows:

The memorandum of association requires a notarized form. They must be signed by all founders.

A society can also be formed in a simplified manner if it has no more than three participants and one director. A model protocol will be developed and will serve as a list of participants.

Founding agreements by authorized representatives can be signed only by a notarized or power of attorney representative.

The procedure for state registration of GmbH is as follows:

The application for inclusion of GmbH in the commercial register must be submitted to the court at the place where the Company is registered. An application for registration may be filed only after a quarter of the nominal value of each founder's share has been deposited, unless material contributions have been agreed. It will not be available until the GmbH is registered in the commercial register at the place of its registered office. If actions are taken on behalf of the company before the entries are made in the register, the persons acting both personally and jointly are jointly and severally liable.

Of this law The second part describes the legal relationship between GmbH and its participants:



GmbH has independent rights and obligations. GmbH may acquire the right to own real estate and other rights, sue and be sued. The company's assets only serve to fulfill the company's obligations to creditors. Under the Commercial Code, a company is recognized as a commercial company.

**Obligation of participants to pay capital costs:**

The amount of the fee to be paid is determined on the basis of the nominal value of the share provided for in the charter after the establishment of the company. Shares can be alienated and inherited. a notarized contract is required for the transfer of shares by the participants. The memorandum of association may provide for the transfer of shares with the consent of the company. If several shareholders have the right to own a single undivided share, they may only jointly exercise the rights arising from that share. They are jointly and severally liable to the company for payments made in respect of shares. A company's claim for payment of fees is prohibited by law ten years after the claim arose.

**Of this law**The third part defines the order of representation and management:

The company is represented by directors in court and out of court. If more than one director is appointed, all of them have the right to jointly delegate, unless otherwise provided by the charter. Directors must ensure that the company's accounting records are maintained properly. The Directors will present the annual financial report and management report to the participants.

**Responsibilities of directors:**

- Directors need to conduct company operations wisely and with care.
- Directors who violate the duties entrusted to them shall be liable to the Company for any damages incurred and are subsidiary responsible. In particular, they are obliged to compensate the assets of the company required to maintain the charter capital in the event of illegal payments or the acquisition of the company's shares in violation of the established rules. Allegations of wrongdoing by directors are prohibited by law after five years.

The rights of the participants in the affairs of the company, in particular, in the management and implementation of its business, shall be determined in accordance with the constituent documents, unless otherwise provided by law.

The responsibilities of the participants include:

Approval of the annual financial report and distribution of income;

Disclosure of separate financial statements in accordance with International Accounting Standards (Article 325 2a of the Commercial Code) and decisions on approval of financial statements prepared by directors;

Approval of the consolidated financial statements prepared by the Directors;



Attracting capital expenditures;

Appointment of directors, as well as their dismissal;

Appointment of those with general commercial authority and those who have received a commercial power of attorney for the entire commercial enterprise.

Rights of minority participants:

Participants whose joint shares make up at least one-tenth of the charter capital have the right to convene a general meeting and demand that it indicate its purpose and grounds. Directors should provide each participant with information about the company's operations at their request and allow them to review company documents. Directors are required to compensate the company for payments made after the company has become insolvent or is considered over-indebted. In the case of payments to participants, directors assume the same obligation if their actions violate the principle of "the due care".

### **Liquidators:**

In cases of liquidation of the company, the directors have the power to liquidate the company, except in cases of insolvency against the company, if this task is not assigned to other persons by the charter or the decision of the participants. At the request of the participants, whose shares are equal to at least one-tenth of the charter capital, the liquidators may be appointed and dismissed by the court for important reasons.

Liquidators not appointed by the court may also be dismissed by a decision made by the participants before the expiration of the term for which they were appointed.

Liquidators are required to complete the company's permanent operations, meet the obligations of the liquidated company, collect its receivables, and monetize the company's assets; they represent the company in court and out of court.

The assets of the company are distributed among the participants in the same proportion as their shares. It is also possible to specify in the founding agreement the application of other rules of distribution.

The distribution may not be made until the end of the year before the company pays its debts or is repaid and from the date the creditors are asked to contact the company through the company's designated publications.

On November 1, 2008, the Law on Limited Liability Company was amended to introduce a modern organizational and legal form of GmbH - another type of GmbH Limited Liability Company, ie Mini-LLC.

Its peculiarity is that it is also an independent organizational and legal form, the requirement for the charter capital of these companies is set from 1 to 24 999 euros.





In addition, there is a rule prohibiting non-monetary contributions to the charter capital in the establishment of a limited liability business.

The procedure for distribution of profits among the participants of a limited liability company is also specific, the amount of annual payments to the reserve funds of the company is set at not less than 25% of the total income of the company. These deductions will be paid until the charter capital of the Company reaches 25,000 euros. When the charter capital of the limited liability company is 25,000 euros, it is set to become a full-fledged GmbH. However, it is important to note that the opposite is true, ie GmbH cannot become a limited liability company.

According to German law, we can summarize the following specific features of GmbH:

- Requirement for the formation of the charter capital of GmbH - after the approval of the constituent document, the bank must open an account and the founder must pay his share;
- The minimum requirement for the charter capital of GmbH is 25,000 euros. In the USA, England, France, the Netherlands the requirement of the minimum amount of the authorized capital is not established;
- GmbH has two levels of government:

1. One board of directors with only executive members;
2. A single supervisory board consisting of an unauthorized representative.

In the United Kingdom and the United States, the governing body consists of a single board of directors with both executive and non-executive members, i.e., a one-tier management system. In doing so, the executive members make the day-to-day decisions of the company. Non-executive members are appointed from independent individuals to oversee the executive members;

- Participants in GmbH are prohibited from transferring their shares to third parties free of charge;
- GmbH is expected to pay 15% corporate tax and 7-17% sales tax (Geverbesteuer) (depending on geographical location);
- The process of establishing a GmbH: the certificate of accession and the founding document must be notarized. Half of the 25,000 euros invested in the charter capital must be paid at the time of addition. The other half is paid at the time management requires. Opening a bank account and concluding a lease agreement is carried out only after notarization. The founders are jointly and severally liable (notarization and registration) during the period of mutual organization;
- Individuals convicted of one or more intentional crimes may not be appointed as GmbH directors;
- Decision-making within the competence of the participants in the affairs of the





society is carried out by decision-making by a majority of votes. In this case, each euro in the share is set equal to one vote;

- The application for inclusion of GmbH in the commercial register in accordance with the procedure of state registration is scheduled to be submitted to the court at the place of location of the registered office of the Company;
- Directors must conduct company operations prudently and with care, i.e. a fiduciary obligation is established. Directors who violate the duties assigned to them shall be jointly and severally liable to the company for any damages incurred;
- In our national legislation, both the capital and the merger of individuals are observed in the establishment of LLCs, while in German GmbHs, only the merger of capital is organized;
- GmbH is registered as a legal entity after registration;
- Limited personal liability of GmbH participants.

In short, LLCs in the Republic of Uzbekistan have many similarities with German GmbHs in their organizational and legal form, the scope of responsibility of their participants.

Civil Status of a Limited Liability Company under U.S. Law:

Traditionally, a separate legal entity and limited liability have been key defining features of U.S. corporations. The notion that a corporation owned by a separate legal entity is a legal entity separated from its shareholders includes directors, employees, creditors and other participants. Being a separate legal entity means that the property of the LLC and its members is divided. This situation reduces the risk of entrepreneurship for the participant.

Limited liability means that the participants in the business organization are liable for the indebtedness of the LLC in the amount of the capital they have invested. Compared to corporations, U.S. LLC offers additional advantages:

- Structural flexibility
- partnership
- taxation procedure. In this thesis, LLC is considered as a form of partnership with limited liability. This feature is more similar to a partnership than a corporation.

The first Limited Liability Company in the United States was established in 1977. This form includes limited liabilities, excellent central management capability with specific features of taxation. More than fifty U.S. states have adopted a charter of the LLC.

Section 201 of the Limited Liability Company Law (RULLCA) states that, like a corporation, an LLC is a legal entity that is separate from its members. Members do not have specific authority to exercise management, so if a member is authorized to represent an LLC, he or she must have a power of attorney. In order to create hybrid



entities, partnerships and corporations can intervene to provide the best example of important features designed to meet the needs of investors.

In 1996, the National Conference of Commissioners for Unified State Legislation (NCCUSL), a quasi-political organization aimed at ensuring uniformity of legislation, published the first version of the Uniform Limited Liability Company Act (ULLCA) at the national level..

The regulations provided by the NCCUSL are an example that each state is free to choose whether or not to accept.

ULLCA 1996, 2006 and 2013An updated version was adopted in, and therefore the laws of the United States LLC vary in many respects.

Duties of loyalty, goodwill and care of directors Legal analysis of fiduciary obligations of the executive body (director, management) of the LLC in the implementation of corporate governance: on the example of England and Germany:

In Germany, the director's caring and loyal duties are performed directly. Directors must serve the interests of the company (appointed by employees and unions, or elected by shareholders) regardless of who they are appointed by.

According to DGCL, the duties of prudence and fidelity imposed on directors are based on the interests of their participants, fiduciary obligations to creditors:

- The company becomes insolvent;
- For violating the trustworthy tasks in front of the participants.

In the UK, the use of Duty of care rules serves as a key factor in determining fiduciary obligation.

It usually covers all of the following situations where a conflict of interest occurs:

1. Full disclosure of the terms of the contract must be approved by the shareholders for a period of more than two years during the term of any service agreement between the Director and the company.
2. During his term as director, he may not receive any material benefits from persons other than the company.
3. The director should avoid all existing or potential, direct or indirect interests that may or may conflict with the interests of the company (e.g. use of company property or use of its capabilities).
4. The director's disclosure to others before making a decision on an "agreement or agreement" can lead to conflict.
5. It is not possible to buy or sell "Corporation's net assets" without the consent of shareholders.



6. When the terms of the loan are fully disclosed, the company may not lend to the director without the consent of the shareholders, with some minor exceptions that cover business expenses.

## References

1. Krasavchikova L. I. Pravovoe polozhenie obshchestva s ogranichennoy otvetstvennostyu po zakonodatelstvu Rossiyskoy Federatsii i Federativnoy Respubliki Germaniya (sravnitelno-pravovoe issledovanie): Avtoref. dis. ... Kand. jurid. nauk. - M.: 2013. - S. 18-19.
2. Chapter 2 of Book 3 of the German Civil Statutes
3. Civil Code of the Republic of Uzbekistan and Law No. 310-II of December 6, 2001 "On Limited Liability and Additional Liability Companies" According to the fourth part of Article 7, the society can be established by one person, who becomes the sole participant of the society. The community can then become a community with one participant.
4. Christina Mayer. Corporate law of Germany: legal forms of society and their premiums for foreign investors // German-Russian Association of Lawyers Sbornik statey o prave Germaniyi, issue № 1 (August 2015), www.drjv.org. - S. 149-149.
5. Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)
6. Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)
7. Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)
8. Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)
9. Act on Limited Liability Companies, as consolidated and published in the Federal Law Gazette III, Index No. 4123-1, as last amended by Article 10 of the Act of 17 July 2017 (Federal Law Gazette I p. 2446)
10. Christina Mayer. Corporate law of Germany: legal forms of society and their premiums for foreign investors // German-Russian Association of Lawyers



Sbornik statey o prave Germanyii, issue № 1 (August 2015), [www.drjv.org](http://www.drjv.org). - S. 149-149.

11. A business corporation has five defining characteristics: (1) legal personality; (2) limited liability; (3) transferable shares; (4) centralized management; (5) ownership shared by equity investors. See Reinier Kraakman, Paul Davies, and Henry Hansmann, *The Anatomy of Corporate Law: a Comparative and Functional Approach*, (Oxford: Oxford University Press, 2009), p 5.
12. P Davies, *Introduction to Company Law* (Oxford: Oxford University Press 2010), p 9.
13. HM Friedman, "The Silent LLC Revolution - The Social Cost of Academic Neglect," *Bepress Legal Series* (2004): 371, 391-401.
14. Andreas Cahn, David C. Donald. *Kong. Comparative Company Law*. Cambridge University Press. 2018.
15. BH Kobayashi and Larry E Ribstein, "Delaware for Small Fry: Jurisdictional Competition for Limited Liability Companies," *Illinois Law and Economics Research Papers Series No. LE09-017*, 2009, <http://illinoislawreview.org/wp-content/ilr-content/articles/2011/1/Kobayashi.pdf> (accessed on August 20, 2013).
16. The number of states that have adopted the ULLCA can be found at <http://www.uniformlaws.org/Act.aspx?title=Limited%20Liability%20Company%20> (accessed on November 12, 2013).
17. Andreas Cahn, David C. Donald. *Kong. Comparative Company Law*. Cambridge University Press. 2018.
18. Andreas Cahn, David C. Donald. *Kong. Comparative Company Law*. Cambridge University Press. 2018.

