

## **Liability of a Limited Liability Company Under Russian Law**

To begin with, let's find out where the bold statements comes from that it is financially safe to conduct business in the form of an LLC? Article 56 of the Civil Code of the Russian Federation states that the founder (participant) is not responsible for the obligations of the organization, and the organization is not responsible for its debts. That is why to the question: "What is the responsibility of the founder of the LLC?" the majority answers – the company is to be liable only within the limits of the share in the authorized capital.

Indeed, if the company is solvent and pays its debts to the state, employees and partners timely, then the shareholder(s) / owners cannot be attracted to pay the company's bills. The created organization acts in civil circulation as an independent legal entity, and is itself responsible for its own obligations.

As a result, a false impression is created of the complete absence of responsibility of the shareholders of the LLC to creditors and the budget. However, the limited liability of the company is valid only as long as the legal entity itself exists. But if the LLC is declared bankrupt, then the participants can be brought to additional or subsidiary liability. True, it is necessary to prove that it was the actions of the participants that led to the company's financial catastrophe, but creditors who want to get their money back will make every effort to do this.

Article 3<sup>1</sup> of the Federal Law of 08.02.1998 N 14-FZ (as amended on 02.07.2021) "On Limited Liability Companies (Федеральный закон от 08.02.1998 N 14-ФЗ (ред. от 02.07.2021) "Об обществах с ограниченной ответственностью"): "In the event of the insolvency (bankruptcy) of the company through the fault of its participants, in the event of insufficiency of the company's property, subsidiary liability may be imposed on the said persons for its obligations."

Subsidiary liability is not limited to the size of the authorized capital, but is equal to the amount of debt to creditors. That is, if a bankrupt company owes a million, then it will be collected from the founder of the LLC in full, despite the fact that he contributed only 10,000 rubles to the authorized capital.

Thus, the concept of limited liability within the authorized capital is relevant only to the organization. And the participant can be brought to unlimited subsidiary liability, which in a financial sense equates him with an individual entrepreneur.

### **Manager and founder rolled into one**

The subsidiary liability of the founder and director of an LLC for the obligations of a legal entity has its own characteristics. In a situation where the organization is managed by a hired director/manager/CEO, some of the financial risk is

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<sup>1</sup> *Статья 3. Ответственность общества*

1. *Общество несет ответственность по своим обязательствам всем принадлежащим ему имуществом.*

2. *Общество не отвечает по обязательствам своих участников.*

3. *В случае несостоятельности (банкротства) общества по вине его участников или по вине других лиц, которые имеют право давать обязательные для общества указания либо иным образом имеют возможность определять его действия, на указанных участников или других лиц в случае недостаточности имущества общества может быть возложена субсидиарная ответственность по его обязательствам.*

*КонсультантПлюс: примечание.*

*О выявлении конституционно-правового смысла п. 3.1 ст. 3 см. [Постановление КС РФ от 21.05.2021 N 20-П](#).*

3.1. *Исключение общества из единого государственного реестра юридических лиц в [порядке](#), установленном федеральным законом о государственной регистрации юридических лиц для недействующих юридических лиц, влечет последствия, предусмотренные Гражданским [кодексом](#) Российской Федерации для отказа основного должника от исполнения обязательства. В данном случае, если неисполнение обязательств общества (в том числе вследствие причинения вреда) обусловлено тем, что лица, указанные в [пунктах 1 - 3 статьи 53.1](#) Гражданского кодекса Российской Федерации, действовали недобросовестно или неразумно, по заявлению кредитора на таких лиц может быть возложена субсидиарная ответственность по обязательствам этого общества.*

*(п. 3.1 введен Федеральным [законом](#) от 28.12.2016 N 488-ФЗ)*

4. *Российская Федерация, субъекты Российской Федерации и муниципальные образования не несут ответственности по обязательствам общества, равно как и общество не несет ответственности по обязательствам Российской Федерации, субъектов Российской Федерации и муниципальных образований.*

transferred to him. According to Article 44<sup>2</sup> of the Federal Law of 08.02.1998 N 14-FZ (as amended on 02.07.2021) "On Limited Liability Companies", the manager is accountable to the company for losses caused by his guilty actions or inaction.

The liability of the director of an LLC for debts arises if there are such signs culpable acts or omissions:

1. Completing a transaction to the detriment of the interests of the enterprise managed by him, based on personal interest;

2. concealment of information about the details of the transaction or failure to obtain the approval of the participants, when such a need exists;

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<sup>2</sup> *Статья 44. Ответственность членов совета директоров (наблюдательного совета) общества, единоличного исполнительного органа общества, членов коллегиального исполнительного органа общества и управляющего - Responsibility of members of the board of directors (supervisory board) of the company, the sole executive body of the company, members of the collegial executive body of the company and the manager*

**Статья 44. Ответственность членов совета директоров (наблюдательного совета) общества, единоличного исполнительного органа общества, членов коллегиального исполнительного органа общества и управляющего**

*См. Энциклопедии, позиции высших судов и другие комментарии к статье 44 настоящего Федерального закона*

1. Члены совета директоров (наблюдательного совета) общества, единоличный исполнительный орган общества, члены коллегиального исполнительного органа общества, а равно управляющий при осуществлении ими прав и исполнении обязанностей должны действовать в интересах общества добросовестно и разумно.

2. Члены совета директоров (наблюдательного совета) общества, единоличный исполнительный орган общества, члены коллегиального исполнительного органа общества, а равно управляющий несут ответственность перед обществом за убытки, причиненные обществу их виновными действиями (бездействием), если иные основания и размер ответственности не установлены федеральными законами. При этом не несут ответственности члены совета директоров (наблюдательного совета) общества, члены коллегиального исполнительного органа общества, голосовавшие против решения, которое повлекло причинение обществу убытков, или не принимавшие участия в голосовании.

3. При определении оснований и размера ответственности членов совета директоров (наблюдательного совета) общества, единоличного исполнительного органа общества, членов коллегиального исполнительного органа общества, а равно управляющего должны быть приняты во внимание обычные условия делового оборота и иные обстоятельства, имеющие значение для дела.

4. В случае, если в соответствии с положениями настоящей статьи ответственность несут несколько лиц, их ответственность перед обществом является солидарной.

5. С иском о возмещении убытков, причиненных обществу членом совета директоров (наблюдательного совета) общества, единоличным исполнительным органом общества, членом коллегиального исполнительного органа общества или управляющим, вправе обратиться в суд общество или его участник.

3. failure to take measures to obtain information relevant to the transaction (for example, the counterparty's conscientiousness has not been verified or information about the licensing of the contractor's activities has not been clarified, if the nature of the work requires it);
4. making decisions on the transaction without taking into account the information known to him;
5. forgery, loss, theft of company documents, etc

In such situations, the claimant has the right to file a claim against the manager for compensation for damage caused. If the director proves that in the process of work he was limited by the orders or requirements of the owner, as a result of which the business became unprofitable, then he is released from the liability.

But what if the owner acts as the manager of the company? In this case, it will not work to refer to an unscrupulous hired manager. The presence of outstanding debts obliges the sole executive body to take all measures to repay them, even if the owner is the only one, and, at first glance, does not infringe on anyone's interests by his actions.

Indicative in this sense is the ruling of the Arbitration Court of the Jewish Autonomous Region dated July 22, 2014 in case No. A16-1209 / 2013, in which 4.5 million rubles were collected from the founding director. Having a company that has been dealing with heat and water supply for many years, he announced a new company with the same name in the tender for the right to lease communal infrastructure facilities. As a result, the former legal entity was left without the ability to provide services, therefore it did not repay the amount of the previously received loan. The court recognized that the insolvency was caused by the actions of the owner and ordered to pay the loan from personal funds.

### **Tax debts**

The Federal Tax Service of Russia is proud of the high collection of taxes to the treasury. It is with private creditors that you can agree to write off part of the debt or restructure payments, and with the budget, the amount of debt in excess of 300,000 rubles will already be critical.

The responsibility of the founder for the debts of a legal entity to the state is also spelled out in the law.

Article 49/2 of the Tax Code of the Russian Federation<sup>3</sup>: "If the funds of the liquidated organization are not enough to fully fulfill the obligation to pay taxes and fees, penalties and fines, the remaining debt must be paid by the participants of the said organization."

If the amount of tax arrears exceeds 300,000 rubles, and the repayment period is more than 3 months, then the organization is at risk. It is necessary to take all measures to pay off the debt or declare the LLC declared bankrupt, otherwise the tax inspectorate will do it, but already with the requirement that the head and / or founders be found guilty.

Attempts to withdraw assets from the organization so as not to pay tax arrears will also lead to nothing good. For example, in case No. A07-7955 / 2009, the Arbitration Court of the Republic of Bashkortostan brought the founders to subsidiary liability under the following circumstances.

The company, having tax arrears in the amount of 675 thousand rubles, transferred all its assets to another organization created by the same persons. The participants believed that in the absence of funds to pay the tax and the company was declared bankrupt, the obligations of the legal entity would cease. However, the tax inspectorate, having filed a lawsuit, proved the guilt of the owners of the company in the formation of arrears and collected the debt from their personal funds.

Of course, attracting the founder of an LLC for the debts of his company is more difficult and longer than that of an individual entrepreneur, because the bankruptcy procedure is quite lengthy. However, since 2015, tax inspectors have acquired another instrument of collection - within the framework of the initiation of a criminal case under Article 199 of the Criminal Code of the Russian Federation.

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<sup>3</sup> **НАЛОГОВЫЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ – Tax Code of Russian Federation**

*49/2. Если денежных средств ликвидируемой организации, в том числе полученных от реализации ее имущества, недостаточно для исполнения в полном объеме обязанности по уплате налогов, сборов, страховых взносов, причитающихся пеней и штрафов, остающаяся задолженность **должна быть** погашена учредителями (участниками) указанной организации в пределах и порядке, установленном законодательством Российской Федерации.  
(в ред. Федеральных законов от 09.07.1999 [N 154-ФЗ](#), от 03.07.2016 [N 243-ФЗ](#))  
(см. текст в предыдущей редакции)*

*Art 49/2 If the funds of the liquidated organization, including those received from the sale of its property, are insufficient to fully fulfill the obligation to pay taxes, fees, insurance premiums, penalties and fines due, the remaining debt **must be paid** by the founders (participants) of the specified organization within and the procedure established by the legislation of the Russian Federation.  
(as amended by Federal Laws of 09.07.1999 N 154-FZ, 03.07.2016 N 243-FZ)  
(see text in previous edition)*

Thus, in the RF Armed Forces ruling No. 81-KG14-19 dated January 27, 2015, the court recognized the head and sole owner as responsible for non-payment of VAT on a large scale and confirmed the legality of recovering damage from an individual to the state in the amount of the unpaid tax amount. This decision, in fact, became a judicial precedent, after which all such cases are considered easier and faster. The founder, in addition to the obligation to pay the debt itself, also receives a criminal record.

### **Procedure for prosecution**

From what moment does the founder become responsible for the activities of the LLC? As we said above, this is only possible in the process of bankruptcy of a legal entity. If an organization simply ceases to exist, having honestly paid off all creditors in the process of liquidation, then there can be no claims against the owner.

- The protection of the interests of the budget and other creditors is supported by the law dated 26.10.02 No. 127-FZ "On insolvency (bankruptcy)", the provisions of which are in effect in 2021. It details the procedure (art. 61/10 - 61/22 **глава III.2. Ответственность руководителя должника и иных лиц в деле о банкротстве**)

for conducting bankruptcy and bringing to responsibility the managers and owners of the company, as well as those who control the debtor.

The latter are understood as persons who, although not formally the owners, had the opportunity to instruct the head or members of the company to act in a certain way. For example, one of the most impressive amounts in the case of bringing to subsidiary liability (6.4 billion rubles) was recovered from the controlling debtor of a person who was not part of the company and did not formally manage it (Resolution of the 17th Arbitration Court of Appeal in the case No. A60-1260 / 2009).

The director must file an application for recognizing a legal entity as a debtor, but if he does not do this, then employees, counterparties, and tax authorities have the right to start bankruptcy proceedings. In this case, the party filing the claim appoints the selected arbitration manager, and this is of particular importance in attracting the owner to the LLC's obligations.

In addition, in order to increase the bankruptcy estate, the plaintiff has the right to challenge transactions made during the year before the adoption of the application for declaring the debtor bankrupt. In the event that the transaction

is made at prices below market prices, the challenge period is increased to three years.

In the process of considering an insolvency case, the director, business owner, beneficiary are involved in litigation. If the court recognizes the connection between the actions of these persons and insolvency, then a recovery in the amount of the plaintiff's claims is imposed on personal property.

What conclusions can be drawn from all that has been said:

1. The liability of the participant is not limited to the size of the share in the authorized capital, but can be unlimited, and be paid off at the expense of personal property. There is no point in setting up an LLC just to avoid financial risks.
2. If the company is managed by a hired manager, provide for such a procedure for internal reporting that allows you to have a complete picture of the state of affairs in the business.
3. Accounting statements should be under strict control, loss or distortion of documents is a factor of special risk, indicating intentional bankruptcy.
4. Creditors have the right to demand the collection of debts from the owner himself if the legal entity is in the process of bankruptcy and is unable to answer for its obligations.
5. It is more difficult to attract the owner of an enterprise to pay off debts for a business than an individual entrepreneur, but since 2009 the number of such cases has been estimated in thousands.
6. Creditors must prove the connection between the financial insolvency of the company and the actions / inaction of the participant, but in some situations there is a presumption of his guilt, i.e. proof is not required.
7. Withdrawal of assets from a firm on the eve of bankruptcy is a significant risk of criminal prosecution.
8. It is better to initiate the bankruptcy procedure yourself, but this should only be done with the involvement of narrow-profile lawyers with positive experience in such cases.