

## PROCEDURE FOR ORGANIZATION AND CANCELLATION OF A LIMITED LIABILITY COMPANY

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### Annotation

This article defines the concept of LLC in the current legislation, the problems and proposals in practice, as well as the legal status and scope of responsibilities of its participants, different approaches of scholars in this regard and the improvement of civil law regulation of the LLC. Scientific and theoretical problems of the civil status of LLC on the basis of the legislation of the Republic of Uzbekistan, the concept and essence of LLC, its role and importance in the system of civil law entities, legal entities and business societies.

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

According to Article 5 of the Law "On Limited Liability and Additional Liability Companies", the LLC acquires the status of a legal entity from the moment of state registration in accordance with the procedure established by law. From this time, he acquires rights and legal capacity.

State registration of LLC is carried out on the basis of the REGULATION "On the procedure for state registration of business entities" adopted on the basis of the decision of the Cabinet of Ministers of the Republic of Uzbekistan dated 02.09.2017 No. 66 "On improving the system of state registration and accounting of business entities".

According to paragraph 2 of this Regulation, state registration and re-registration of business entities is carried out by State Service Centers.

According to it, there are two methods of state registration:

1. On the Single portal through the Internet world information network by means of the System;
2. In person to the competent state body.

For state registration and re-registration of business entities, state duties are paid at



the rates stipulated in the Law of the Republic of Uzbekistan "On State Duties". In particular, when issuing a new type of certificate of state registration in person, a state tax is charged in the amount of 1 times the amount of the basic calculation, and when it is done through the Internet world information network, in the amount of 0.5 times the amount of the basic calculation.

When choosing a company name, the applicant shall respond in accordance with the procedure established by law for non-compliance with the requirements of the Law of the Republic of Uzbekistan "On Company Names", as well as other legal acts on the names of legal entities. For state registration by means of the system, founding documents in the state language must be attached to the appropriate questionnaire.

Of this Regulation According to paragraph 31, if the documents are presented to the system user - the responsible officer of the registration body by the applicant's representative, as well as his identity document (passport, military ID, driver's license, other document confirming his identity and place of residence in the Republic of Uzbekistan) and the application a document confirming the authority of the representative of the provider (power of attorney, contract, decision of the founders of the business entity - legal entity formalized in accordance with the procedure established by law, other documents in accordance with the law) is submitted. As a decision of the founders of a legal entity formalized in accordance with the procedure established by law, the founding decision in the case of one founder, and the founding report in the case of more than one founder, must be submitted.

Reorganization of the economic society in accordance with Articles 49-52 of the Civil Code of the Republic of Uzbekistan, Chapter 7 of the Law of the Republic of Uzbekistan "On Limited Liability and Additional Liability Companies" and Chapter 10 of the Law of the Republic of Uzbekistan "On Protection of Joint-Stock Companies and Shareholders' Rights" regulated.

According to Article 49 of the Law "On Limited Liability and Additional Liability Companies", the company may be reorganized according to the decision of the general meeting of LLC participants in accordance with the procedure provided for in this Law.

The procedure for reorganization of LLC is in articles 50-54 of this law it can be done in the form of adding, combining, dividing, extracting and restructuring based on the stipulated requirements. The LLC reorganization procedure includes the following features:

- Evidence of notification of creditors is required for reorganization;



- Creditors cannot intervene in the processes of reorganization and distribution of assets and liabilities, there is no right to make demands on legal heirs;
- In practice, legal entities whose obligations to creditors have exceeded their obligations to creditors, in order to avoid them and to avoid them, in the process of dividing or separating the legal entity (in the distribution balance sheet), there are cases of transferring assets and liabilities to legal heirs without observing the principle of proportionality. is transferred to the second legal successor who will be responsible. After a while, a bankruptcy case will be opened for a legal entity with remaining obligations, and the creditors will suffer as a result of the fact that the unsatisfied demands of creditors are considered satisfied due to the lack of sufficient assets in accordance with Article 134 of the Law of the Republic of Uzbekistan "On Bankruptcy";
- On the issue of whether or not the consent of the creditors is required for the transfer of the obligations of the reorganized company to the creditors to the legal heirs (another legal entity), according to the general provisions on obligations, Article 322 of the Civil Code of the Republic of Uzbekistan stipulates that the transfer of the debtor's debt to another person is allowed only with the consent of the creditor. This provision means that the creditor's consent must be obtained in order to transfer obligations to creditors to legal heirs on the basis of the distribution balance during the reorganization of a legal entity;
- The agreement to transfer the debt to another person is considered a tripartite agreement, and the consent of the creditor is also required for its conclusion;
- § 7 of the Civil Code of the Republic of Uzbekistan on universal legal succession in the reorganization of a legal entity. when applying the provisions of the right of succession provided for in the section on the analogy of the law, it is concluded that the creditor's consent is not required for the transfer of the legal entity's obligations to the creditors to the legal heirs.

Based on the above, it is appropriate to introduce the provisions of Article 322 of the Civil Code of the Republic of Uzbekistan on the transfer of obligations to legal successors during the reorganization of a legal entity.

In addition, in practice, there are cases of reorganizing one legal entity with another insolvent legal entity in the form of merger or merger, and bankruptcy of a single legal entity.

LLC, excluding cases of reorganization in the form of consolidation, LLCs created as a result of reorganization are considered reorganized from the moment of state registration.



When an LLC is reorganized in the form of merging another LLC, the first of them is considered to be reorganized from the moment an entry is made about the termination of the activities of the merged company in the unified state register of legal entities.

When the LLC is reorganized in the form of merger or consolidation, the LLC shall notify all creditors of the LLC known to it in writing no later than thirty days from the date of the decision on the reorganization of the LLC by the last of the LLCs participating in the merger or consolidation must make and announce the decision in the mass media. In this case, the creditors of the LLC have the right to demand in writing that the relevant obligations of the LLC are terminated or fulfilled and that the losses incurred are compensated within thirty days from the date of notification or within thirty days from the date of the announcement of the decision.

**Basis for adding communities:** we can understand the establishment of a new society by transferring all the rights and obligations of two or more societies that have ended their activity as a merger of societies. The general meeting of the participants of each LLC participating in the reorganization in the form of annexation is carried out by issuing decisions on such reorganization, on the approval of the annexation agreement and the charter of the company formed as a result of the annexation, as well as on the approval of the act of transfer. At the time of merger, the agreement on merger and the charter signed by all participants of the newly established LLC are accepted as founding documents of the new LLC. These actions are carried out at a joint general meeting of LLC participants. The terms and procedure for holding such a general meeting should be reflected in the merger agreement. When LLCs are merged, all rights and obligations of each of them are transferred as legal succession to the society established as a result of merger in accordance with the deeds of transfer.

**Basis of merger of LLC:** liquidation of one or several LLCs with the transfer of their rights and obligations to another LLC is considered as merger of the company. In this case, the general meeting of participants of each LLC must make a decision on such reorganization, approval of the agreement on unification, and the general meeting of participants of the merging company must also make a decision on approval of the act of transfer. When one LLC is merged with another, all rights and obligations of the merged LLC are transferred to the merging LLC as a legal successor according to the transfer deed.

**LLC basis of division:** liquidation of the LLC with the transfer of all its rights and obligations to the newly established companies is considered as the division of the



LLC. The general meeting of the participants of the LLC being reorganized in the form of division must make a decision on such reorganization, on the procedure and conditions for dividing the LLC, on the establishment of new companies and on approving the balance sheet of the division. When a society is divided, all its rights and obligations are transferred on the basis of legal succession to the societies established as a result of the balance of division. If the division balance does not allow to determine the legal successor of the reorganized company, the LLC established as a result of reorganization retains joint and several liability to its creditors for the obligations of the reorganized LLC.

LLCbasis of separation: creation of one or more LLCs without terminating the reorganized LLC, transferring part of its rights and obligations, is considered as LLC separation. The general meeting of the participants of the LLC being reorganized in the form of spin-off must make a decision on such reorganization, on the procedure and conditions of spin-off, on the establishment of a new LLC and on approving the division balance sheet. If the sole participant of the split-off LLC is the re-organizing LLC, its general meeting must decide on the reorganization of the LLC in the form of spin-off, on the procedure and conditions of spin-off, as well as approve the charter and balance sheet of the split-off LLC, elect the bodies of the split-off LLC. When one or more companies are separated from the LLC, the rights and obligations of the reorganized company are transferred to each of them on the basis of legal succession in accordance with the balance sheet. If the division balance does not allow to determine the legal successor of the reorganized company, the legal entities formed as a result of the reorganization shall be jointly and severally liable to its creditors for the obligations of the reorganized company.

LLCbasis of reorganization: LLC can be reorganized into a commercial organization of another organizational and legal form.

The general meeting of the participants of the LLC that is being reorganized in the form of reorganization is about such reorganization, about the procedure and conditions of reorganization, about the procedure for exchanging the shares of the participants of the company for shares (shares, shares) of the legal entity that is being established as a result of the reorganization, and about approving the founding documents of this legal entity. and must make a decision on approving the handover document.

All rights and obligations of the reorganized LLC are transferred to the legal entity created as a result of the restructuring of the LLC on the basis of legal succession in accordance with the deed of transfer.





The nature of the reorganization is based on the voluntary consent of all participants of the LLC being reorganized and on the requirement that it be carried out based on the requirements stipulated in this law.

As we know from practice, the reckless activity of business entities harms the interests of the state and society. Every state, society, and entrepreneur wants the stable operation of its business entities. However, some business entities are not always able to maintain stable activity.

In short, the issue of liquidation of a legal entity remains a very important topic. In order to solve this situation on the basis of the procedure established by the legislation, relevant legal norms and procedural principles have been developed. The relevant articles of the Civil Code of the Republic of Uzbekistan are the main legal documents that fully centralize the civil-legal regulation of liquidation of legal entities, while the special laws on business companies are norms aimed at solving legal entity liquidation, taking into account the specific features of this field.

The Civil Code of the Republic of Uzbekistan stipulates the liquidation of legal entities in two different ways.

The first is voluntary termination, which is carried out on the following grounds:

- in accordance with the decision of the founders (participants) or the body of the legal entity authorized to liquidate by the founding documents;
- at the end of the term of operation of the legal entity;
- in connection with the achievement of the intended purpose of its organization;
- when the court found the registration of the legal entity to be invalid due to violations of legal documents during the establishment of a legal entity, if these violations cannot be eliminated;
- with recognition by the founders (participants) or legal entity body of other reasons sufficient to liquidate the organization.

The latter can be terminated in a compulsory manner by a court decision on the following grounds:

- carrying out activities without the appropriate permit (license);
- in cases where he has performed activities prohibited by law or repeatedly and grossly violated the law or legal acts;
- in other cases provided for by the Civil Code, in accordance with the court's decision, in particular, for 6 months (and for a trade brokerage enterprise - for three months), financial and economic activities related to the transfer of money transactions on bank accounts have not been carried out (except for farmers and farms) and (or) lead to its liquidation even if the charter fund is not formed in the



amount stipulated in the founding documents within one year from the moment of state registration.

The liquidation of the LLC means the termination of its activity without the transfer of its rights and obligations to other persons in the order of legal succession.

The decision to liquidate the LLC is made by the decision of the general meeting based on the proposal of the company's supervisory board, executive body or participant. A decision on the appointment of a liquidator is issued at the same time as the decision on liquidation.

From the moment of appointment of the liquidator, all the powers related to the management of society's affairs are transferred to the liquidator. He has the right to appear in court on behalf of the company that is being liquidated.

LLC can also be terminated by the decision of the Registration Authority. This is based on the fact that the company's activity is not restored within three years from the time when the company was put into inactive mode due to non-performance of financial and economic activities. In such cases, a liquidator is not appointed.

In liquidation of a company with a state share in the charter fund, a liquidation commission is appointed and a representative of the state property management body is included in its composition.

FC According to Article 54, certain requirements are imposed on persons who have made a decision to liquidate a legal entity.

Founders (participants) of a legal entity or a body that has made a decision to liquidate a legal entity must immediately notify the state registration body of legal entities in writing, the state registration body will enter the information that the legal entity is in the process of liquidation into the unified state register of legal entities.

The founders (participants) of the legal entity who made the decision to liquidate the legal entity or the body appoint the liquidator - the liquidation commission or an individual and determine the procedure and term of liquidation in accordance with this Code. In the case of a decision to liquidate a legal entity, the liquidator is appointed in agreement with the state registration body of legal entities.

From the moment the liquidator is appointed, the powers to manage the affairs of the legal entity are transferred to the liquidator. The liquidator participates in court on behalf of the liquidated legal entity.

The liquidator announces the liquidation of the legal entity in the mass media. The announcement on the voluntary liquidation of the business entity, which is a legal entity, is posted by the registration body on its official website.

The announcement of the liquidation of a legal entity shall specify the procedure and



terms for notifying the demands of its creditors. This period should not be less than two months from the date of publication of the notice of termination.

The liquidator takes measures to identify creditors and collect receivables, and also informs creditors in writing about the liquidation of a legal entity.

After the expiration of the deadline set by the creditors for filing claims, the liquidator prepares an interim liquidation balance, which includes the composition of the liquidated legal entity's property, a list of creditors' demands, as well as information on the results of their consideration.

The interim liquidation balance is approved by the founders (participants) of the legal entity or the body that made the decision to liquidate the legal entity. In the case of the decision to liquidate a legal entity, the interim liquidation balance is approved in agreement with the state registration body of legal entities.

If the funds at the disposal of the liquidated legal entity (except for institutions) are not sufficient to satisfy the demands of creditors, the liquidator will sell the property of the legal entity through an auction in accordance with the established procedure for the execution of court decisions.

The payment of sums of money to the creditors of the legal entity under liquidation shall be made by the liquidator in accordance with the interim liquidation balance sheet, as determined by Article 56 of this Code, from the date of its approval.

After settlement with creditors, the liquidator draws up a liquidation balance, which is approved by the founders (participants) of the legal entity or the body that made the decision to liquidate the legal entity. In the case of the decision to liquidate a legal entity, the liquidation balance is approved in agreement with the state registration body of legal entities.

If the assets of the state enterprise being liquidated, and the funds of the institution being liquidated, are insufficient to satisfy the demands of creditors, the creditors have the right to apply to the court for the satisfaction of the rest of their demands at the expense of the owner of this enterprise or institution.

The remaining property of a legal entity after the creditors' claims are satisfied shall be transferred to its founders (participants) who have material rights to this property or binding rights to this legal entity, unless otherwise provided by law.

Liquidation of non-performing enterprises, as well as liquidation in the absence of their founders, are regulated by legislation.

The liquidation of the legal entity is completed, and the activity of the legal entity is considered to be completed after the record of the liquidation of the legal entity is entered in the unified state register of legal entities.





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