Latin American Journal of Education

www.lajoe.org

THE LEGAL STATUS OF A PARTICIPANT IN A LIMITED LIABILITY COMPANY: CORPORATE LEGAL DOCTRINES AND MODERN APPROACHES

https://doi.org/10.5281/zenodo.22579830

Maksudbek Saidov
Independent Researcher at
Tashkent State University of Law
e-mail:mr.msaidov@gmail.com

Abstract: *This article analyzes the legal status of a participant in a limited liability company based on corporate law theory and the legislation of the Republic of Uzbekistan. The study highlights the participant's role in the company, the content of their rights and obligations, and the aspects of participation relations associated with the institution of a share. The article examines shareholder primacy theory and stakeholder theory from a comparative legal perspective, revealing the participant's economic and legal role in the company's activities, as well as their characteristics as a subject assuming entrepreneurial risk. Furthermore, it analyzes the composition of LLC participants, the legal status of the state as a participant, restrictions regarding a single participant, and the differences between the concepts of a shareholder and a company participant.*

Keywords: *limited liability company, participant, share, corporate law, participant status, shareholder primacy, stakeholder theory, corporate governance.*

Although a Limited Liability Company (hereinafter referred to in the text as LLC/company) is a commercial organization in the form of an association of capital, the significance of the participant's personal factor within it is extremely high. This situation is also confirmed by general theories and modern approaches regarding LLCs. In the theory of corporate law, the issue of the participant's role in the company has always been controversial. The main approaches formed regarding this issue can be conditionally divided into the concepts of shareholder primacy [1] and the consideration of stakeholders' interests (stakeholder theory). According to the principle of shareholder primacy, the primary task of the company is to create maximum economic value for the participants. Proponents of this approach emphasize that the governing bodies of the company are, first and foremost, accountable to the participants. In this context, maximizing profit, increasing participant revenues, and raising the market value of the company are viewed as primary goals. Relying on classical economic theories, this concept advances the idea that the main function of a business is to operate effectively within the legal framework and ensure the

Latin American Journal of Education
www.lajoe.org

interests of the owners. This approach is built on the pillars of "without a participant, there is no company," and therefore, its main goal is to serve the participant and increase their income. Specifically, the economist M. Friedman (in the 1970s) and his colleagues popularized this approach to such an extent that corporate responsibility associated with company activities - including important criteria like ecological balance and social justice-was forgotten [2]. As a result of studies conducted by the author, it is concluded that in continental law, the rights of the corporation and creditors are, in certain cases, prioritized over the rights of the participants.

As an alternative to the principle of shareholder primacy, stakeholder theory asserts that a company's activities should consider not only the interests of participants but also the interests of all groups affected by its decisions. According to this approach, for a company to achieve long-term success, it is necessary to form balanced relationships with employees, customers, suppliers, creditors, government bodies, local communities, and other interested parties. In particular, in recent years, attention has been focused on models in company operations that are not only shareholder oriented but also stakeholder oriented, including ecology oriented, state and society oriented, and labour oriented models[3]. For example, in 2019, major companies in the USA united under the slogan of acting by considering the interests not only of participants but also of employees, customers, and communities. German laws, on the other hand, are imbued with the idea that the task of a company is to serve the company's interests while considering all stakeholders.

In our opinion, all of these models and approaches are correctly chosen in terms of their essence and strategy. However, in commercial companies whose primary activity is aimed at making a profit, shareholder primacy remains the fundamental principle for protecting the interests and rights of participants. This is because the participant assumes entrepreneurial risk through their contribution to the company's capital. Their economic interest in the company possesses the characteristic of a residual interest, which is formed after obligations to creditors, employees, and the state are fulfilled. The participant is considered an interested subject who takes on significant risk, able to extract their own profit from the company's earnings only at the very end (from the remaining funds after creditor claims, employee salaries, taxes, and other mandatory payments, etc.). This situation is harmonious with the classical legal principle of casum sentit dominus[4] (the consequences of accidental loss fall upon the owner), meaning there is no possibility of shifting the economic risks associated with a decline in the value of the participant's share onto the company. This is because there is no guarantee for the participant's

Latin American Journal of Education
www.lajoe.org

risk in the form of capital invested in the company. The theory of shareholder primacy is recognized equally in both the Anglo-American and Romano-Germanic legal systems and is taken into account in any approach within corporate relations. This principle was solidified in the Anglo-American corporate law system through the legal precedent established in the case of Dodge v. Ford Motor Co. (1919) [5], which played a crucial role in the formation of the shareholder primacy doctrine and its establishment as a leading concept in US corporate law. While granting the claim of the company's participants, the Dodge brothers (John and Horace Dodge), the Michigan Supreme Court determined that the primary purpose of a corporation is to bring profit to its participants. Therefore, the legal and institutional protection of the rights and legitimate interests of participants should be preserved as a fundamental approach in corporate law.

Who can be a participant in Uzbekistan LLCs?

According to the Law of the Republic of Uzbekistan "On Limited Liability Companies" (hereinafter referred to in the text as the Law), legal entities and individuals have the right to be participants in a company, except for certain prohibitions and restrictions stipulated by law. As a rule, state authorities and administrative bodies cannot be participants in a company. The reason for establishing such a restriction in the law is that their participation in a company is incompatible with their goals, tasks, functions, and overall legal nature. Furthermore, individuals can exercise their rights as participants in a company only after acquiring legal capacity. In the event a share passes to a person before they reach the age of majority (for example, on the basis of legal succession due to the death of their parents), their corporate rights are exercised on their behalf by legal representatives. In addition, the laws regulating the activities of judges, military personnel, state security service employees, and state civil servants impose restrictions on these individuals from becoming founders (participants) of a company. These restrictions were introduced to prevent conflicts of interest, combat corruption, and ensure impartiality in public service. However, in some legislative acts, restrictions on engaging in entrepreneurial activity are set for representatives of specific sectors, and this restriction is considered grounds for them not being participants in a company. For instance, although the Laws "On the Prosecutor's Office" and "On the Internal Affairs Bodies" stipulate that prosecutor's office bodies and internal affairs employees are not allowed to engage in entrepreneurial activities, there was no mention of whether these individuals could or could not be founders (participants) in a company. In fact, although these two concepts are similar, participation in a company and entrepreneurial activity are considered distinct concepts; based on the fact that entrepreneurial activity is a component of

Latin American Journal of Education
www.lajoe.org

economic activity, our proposals made within the scope of the research to explicitly stipulate in law the cases where being a company founder (participant) is prohibited have found their expression in the aforementioned laws.

Furthermore, the Law establishes a prohibition on a company with a single participant from being the sole participant in another company. The purpose of this restriction is to prevent the real owner from being masked and to avoid the emergence of a chain structure in legal liability. Therefore, by introducing this restriction, the legislator aimed to prevent the establishment of companies in the form of multi-level corporate structures via a single participant, to ensure the transparency of the ownership and control structure, and to eliminate the possibility of an artificial distribution of rights and obligations. If such a restriction is not established, the corporate veil in corporate law theory could turn into a tool for concealing the participant's interests. Unfortunately, even though the prohibition is established in the Law, the lack of a mechanism in legislation to prevent this situation is causing the emergence of corporate disputes. For example, in citizen "LX's" claim against the defendant LLC "A" to invalidate the purchase and sale agreement of a share in the authorized capital of LLC "F", the argument was presented that since the sole participant of LLC "A" is one person, this company becoming the sole participant of LLC "F" is contrary to the requirements of the law, and in connection with this, the plaintiff asked to invalidate the share purchase and sale agreement due to non-compliance with the requirements of the law[6]. In order to prevent such situations, it is expedient to introduce an automatic restriction in state service information systems on the state registration of a company with a single participant as the sole participant of another company. Such a mechanism will serve to ensure compliance with the requirements of the fifth part of Article 7 of the Law, prevent violations of the law during the state registration process, and strengthen legal certainty and transparency in corporate relations.

According to the Law, the state also has the right to participate as a founder in an LLC. Although extensive reforms have been outlined in Uzbekistan to reduce state-owned companies (for information, according to the State Assets Management Agency[7], they numbered 2,125 as of June 2025), the state as a participant requires a separate approach. Because the state is the owner of large assets and a powerful entity, it has distinct features compared to other legal and natural persons in terms of its participation procedures, tasks, and goals. At the same time, LLCs with state participation (State-owned enterprise, SOE) also have a significantly different legal status from other LLCs. As a participant in an LLC, the state has more comprehensive goals than other legal entities and individuals; state property is directed towards serving the realization of state functions, it has its own bureaucratic

Latin American Journal of Education
www.lajoe.org

procedures, and most importantly, unlike private participants, the state's goal in relations involving state participation is not limited solely to making an economic profit, but is also linked to the task of ensuring public interests. These characteristics are essential factors that must be taken into account when partnering with the state. For this reason, the corporate governance principles developed by the OECD (Organisation for Economic Co-operation and Development) establish specific principles for state participation, taking into account the unique legal status and governance characteristics of state-owned enterprises.Despite the aforementioned points, based on its legal status, the state as a participant must have the same rights and obligations as other entities. Otherwise, other entities may refrain from working in partnership with the state. The state choosing the right direction for working on a partnership basis undoubtedly serves to encourage other entities to choose to operate in partnership specifically with the state. In this regard, A. Sukhanov notes that the state and other public-law formations act as the most reliable partners in property relations[8].

At the same time, it is appropriate to distinguish between the status of company members in corporate-legal relations and their status in civil-legal relations. Although members have equal rights and obligations as participants in civil legal relations, in corporate law, their position (influence) in the company is intricately linked to their contribution to the company. The influence of a member who contributes more to the company on managing the company will be higher compared to a member who holds a smaller share in the company. Based on this, participants are divided into majority and minority participants. Based on the participants' position in the company, certain preferential rights and additional obligations may be stipulated for them. However, one should not conclude from this that corporate relations are not based on the principle of equality. This is because the equality of subjects in civil-legal relations is determined not by their functions (authorities) in a specific legal relationship, but by their status in the civil legal relationship[9]. Equal treatment is a fundamental legal principle in corporate relations that guarantees the creation of identical rights and opportunities for all participants, regardless of the size of their share in the company, and the purpose of this principle is aimed at maintaining an atmosphere of fairness and trust within the company.

In addition, considering that the concept of a company covers several persons and thus implies that the charter of an LLC is, as a rule, established by two or more persons, Saul Levmore asserted that limited liability is suitable only when it is necessary for pooling capital, advancing the idea that the establishment of an LLC by a single person should be absolutely impermissible[10]. Although this idea has been supported by many

Latin American Journal of Education
www.lajoe.org

scholars, it has not been taken into account by states when adopting laws. In particular, in most Western European countries (Germany, France, Austria, Belgium, Italy, the Czech Republic, Denmark) and East Asian countries (China, Japan, Malaysia) [11] with developed corporate law systems, the minimum requirement for the number of participants is 1 (one). Including in Uzbekistan, the Law stipulates that the number of participants can be from 1 to 50. However, it should be noted that an LLC established by a single person can become a source of high risk for creditors. Apart from being managed and conducting financial and economic activities differently from a private firm and a private enterprise, an LLC is primarily distinguished by the liability of its owner. The owner of a private firm and a private enterprise bears subsidiary liability with all their personal property for its obligations in the event that the enterprise's property is insufficient. However, such liability is not directly provided for an LLC participant in the Law. It should be taken into account that the conditions and procedures for exercising the rights of a sole participant differ from those of a company with two or more participants. From this point of view, in our opinion, in order to prevent the abuse of rights by participants, it is necessary to define the legal status of the sole participant, the conditions for exercising and protecting their rights, and their liability through separate norms in the Law.

Participant's contribution (share in the company): Since the status of a participant in an LLC is inextricably linked with the concept of a share, it is expedient to study the participant's legal status by analyzing the legal nature of the share, which constitutes its foundation. After all, as M. Imadaeva noted, a share in the authorized capital of an LLC is the basis for the emergence of the participant's legal status, leading to the exercise of rights arising from it when certain conditions are present; a founder purchasing a share in the authorized capital acquires an abstract possibility that leads to the emergence of specific subjective (i.e., personal) rights [12]. The share reflects the extent of the participant's involvement in the management of the LLC and serves as a legal basis for the participant to exercise their rights and obligations within the framework of corporate governance.

The absence of a material form of a share (its abstractness) and its specificity have led to various views and approaches in defining it. There is no definition of the concept of a share in the legislation. Among scholars who have conducted research on the nature of a share, L. Novoselova emphasizes that the subject of certain transactions consists of objects whose legal nature has not been determined and whose theoretical views are not fully formed, noting that a share in the authorized capital of an LLC is precisely one of such objects[13]. Meanwhile, R. Fatkhutdinov defines the concept of a share as a type of right to

Latin American Journal of Education
www.lajoe.org

participate in a company's activities, asserting it is a subjective right of a company participant to partake in organizing the company's activities, consisting of an exclusive and unrestricted set of powers[14]. In Halsbury's Laws of England, a share is defined as a right establishing certain rights and obligations toward a company's authorized capital during the course of its activities[15]. R. Bevzenko emphasizes that a share is the ratio between the portion of the authorized capital paid by a person and the total volume of the authorized capital (this being simply a percentage or fraction, representing a calculable indicator)[16].

Some industry experts do not recognize a share as an object of civil rights. However, our views in this regard differ. In our opinion, a share in a company should be viewed as a legal concept representing a comprehensive system of the founder's right to participate in the LLC and the property and non-property powers belonging to them. This is because a share is not merely an economic indicator determining the extent of participation in the company's authorized capital, but a complex legal institution that creates and defines the participant's corporate-legal relations with the company. Through a share, a participant gains the opportunity to partake in the activities of the LLC, participate in company management, vote in the general meeting, receive information about the company's activities, receive income in the form of dividends from the company's profits, and also exercise other rights stipulated in the law and foundation documents. At the same time, the share also imposes certain obligations on the participant towards the company, including tasks such as contributing to the authorized capital and complying with corporate obligations related to the company's activities. From this perspective, a share in an LLC can be evaluated as a complex legal category that determines the legal status of the participant in the company, expressing their property interests, participation in management, and position in corporate relations. Consequently, the right of participation is not limited to the economic value of the share but covers a set of corporate rights and obligations that determine the participant's mutual legal relations with the company. Therefore, we consider a share to be a separate object of civil law and approach the share from this perspective. We have several bases for arriving at this conclusion. First, a share has the characteristic of being an object that is simultaneously in free circulation and restricted in circulation. According to the Law, the alienation of a share in full or in part is permitted. Second, a share possesses the characteristic of divisibility found in objects of civil law. Third, while inside the company (among members), a share demonstrates characteristics as a freely circulating object (transferability), toward third parties, the characteristics of a share manifest as a restricted object. Furthermore, as confirmation of our view,

Latin American Journal of Education
www.lajoe.org

we can also cite the resolution of the Presidium of the Russian Federation's Supreme Arbitration Court No. 3640/14 dated July 15, 2014. This resolution is dedicated to the essence of corporate relations and clarifies that a share in an LLC is not a thing, but a set of certain property and non-property rights and obligations of a company participant, being other property falling under the group of objects of civil rights[17].

The share itself does not automatically guarantee any rights directly, but rather creates certain opportunities for the person who acquires it[18]. Because a share represents a set of rights and obligations, it confers specific rights and obligations to its owner. For example, if an LLC receives income, receiving a profit proportionate to their share (dividend), or participating through voting if a management-related issue arises, are among these. The analysis of academic views regarding the nature of a share indicates that up to the present, various views exist in legal doctrine regarding the concept of a share and its legal nature, each serving to elucidate the nature of a share in a particular form. We define the concept of a share as follows: a share in a company is the contribution of a shareholder to the company's authorized capital, expressed in percentages or fractions, and it is a distinct object of civil law that guarantees specific subjective rights (property, non-property, and organizational-managerial rights) and engenders obligations for the participant in accordance with legally established procedures.

It is not without reason that we used the term shareholder in one instance and participant in another within the given definition of the concept of a share. Because although these two concepts are outwardly close to each other, they are not categories with the same legal content. The concept of "shareholder" primarily implies that a person has property rights over a specific share in the company's authorized capital, whereas the concept of "company participant" expresses that this person has entered into corporate-legal relations with the company, meaning they have acquired participant status in the manner prescribed by law. From this standpoint, merely owning a share in the authorized capital of an LLC does not always automatically grant a person the status of a company participant. Indeed, participant status encompasses not only the legal connection to a share but also a set of corporate rights, such as participating in company management, voting in the general meeting, receiving information, and partaking in the distribution of profits. Therefore, although there is a certain legal connection between owning a share and participant status, the grounds for their emergence and their legal consequences differ from each other.

For instance, according to the Law, shares in the authorized fund of an LLC pass to the heirs of physical persons and the legal successors of legal entities that are participants in the company. In such a

Latin American Journal of Education
www.lajoe.org

case, the person who receives the certificate of inheritance primarily becomes the legal owner of the said share. However, with the transfer of the share, they do not automatically acquire the status of a company participant. This is because the emergence of participant status may depend on additional conditions stipulated in the law or the company's charter. Specifically, if the company's charter stipulates that the consent of other participants is required to accept an heir (legal successor) as a participant, this person will acquire the status of a company participant only after the specified consent is obtained. Otherwise, although they remain the holder of the property right regarding the share, they will not have the right to participate in the company's corporate governance processes. Also, if the company's charter prohibits the entry of heirs into the composition of the company's participants, it is precluded for such a person to obtain participant status. In this case, their legal status is limited to a property claim arising from the corporate legal nature of the share, meaning they have the right to demand payment of the actual value of the share from the company. This situation confirms once again that the right to a share and the right of participation are interconnected but independent legal categories. Thus, a share in an LLC should not be evaluated merely as an object expressing economic participation in the authorized capital, but as a juridical fact that creates participation rights based on specific conditions. Clearly distinguishing the difference between a shareholder and a company participant holds significant theoretical and practical importance in ensuring legal certainty in corporate relations, properly forming the composition of participants, and resolving disputes related to shares.

By way of conclusion, it is appropriate to note that although an LLC is a commercial organization in the form of an association of capital, the personal factor of the participant and their position in corporate relations hold significant importance within it. From this perspective, the concept of shareholder primacy in corporate law remains one of the primary approaches to protecting the interests of participants.

The legal status of an LLC participant is one of the essential institutions of corporate law, encompassing not only participation in the company's capital but also the set of property, non-property, and organizational-managerial rights and obligations of the participant. The institution of a share forms the basis of the legal status of an LLC participant. This is because a share is a distinct object of civil law that not only determines the extent of participation in the authorized capital but also establishes the corporate-legal relations of the participant with the company, granting them property, non-property, and managerial rights. From this point of view, the legal status of an LLC participant is a complex legal institution formed on the basis of the

Latin American Journal of Education
www.lajoe.org

interconnection of the share, corporate rights, and participation relations. Improving this institution holds critical importance for protecting the interests of participants, ensuring legal certainty in corporate relations, and the effective operation of LLCs.

REFERENCES:

1. Robert J. Rhee, A Legal Theory of Shareholder Primacy, 102 Minn. L. Rev. (forthcoming 2017).

2. Milton Friedman, The Social Responsibility of Business Is to Increase Its Profits, N.Y. TIMES, Sept. 13, 1970, § 6 (Magazine), at 33

3. Hansmann, Henry and Kraakman, Reinier H., The End of History for Corporate Law (January 2000). https://ssrn.com/abstract=204528

4. Casum sentit dominus is a principle derived from Roman law under which the owner of a thing is primarily the one to bear the risk of accidental destruction or damage of a thing. See, e.g., R. Lieberwirth. Latein im Recht. 3. Aufl . Berlin: München 1993, sv “casum sentit dominus“.

5. Dodge v. Ford Motor Co. (1919)

6. Case No. 4-1001-2227/6362 of the Tashkent Interdistrict Economic Court

7. Note: The Strategy for the Management and Reform of State-Owned Enterprises for 2021-2025 sets a target of reducing the number of such enterprises by 75 percent.

8. Sukhanov E. A. On the liability of the state for civil obligations // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2001. No. 3. P. 125.

9. Ioffe, O.S. Legal Relationships under Soviet Civil Law//Selected Works on Civil Law. Moscow, 2000. pp. 539-540.

10. Levmore, supra note 23, at 492.

11. https://www.dlapiperintelligence.com/goingglobal/corporate/index.html?t=28-minimum-number-of shareholders-required

12. Imadaeva M. S. Legal nature of a share in the authorized capital of a limited liability company // website: URL: http://www.law.edu.ru/doc/document.asp?docID=1251561

13. Novoselova L. A. Turnover of a share in the authorized capital of a limited liability company // Objects of civil turnover: collection of articles. Moscow: Statut, 2007. P. 207.

14. Fatkhutdinov R. S. Assignment of a share in the authorized capital of an LLC: Theory and practice. Moscow: Wolters Kluwer, 2009. - P. 22.

15. Halsbury's Laws of England. URL:https://www.lexisnexis.co.uk/products/halsburys-laws-of-england.html

Latin American Journal of Education
www.lajoe.org

16. Bevzenko R.S. Amendments to the legislation on the pledge of shares in the authorized capital of a limited liability company // Security measures and liability measures in civil law: collection of articles / ed. M.A. Rozhkova. Moscow: Statut, 2010. P. 75.

17. Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated July 15, 2014 No. 3640/14

18. Tissiéres J. La part sociale de la société à responsabilité limitée en droit suisse. Saint-Maurice: St. Augustine, 1939. P. 61–62; Gallego Sánchez E. Las participaciones sociales en la sociedad de responsabilidad limitada. P. 51, 189, 193.