

**ON THE CHOICE OF ORGANIZATIONAL AND LEGAL FORM OF THE
ENTERPRISE IN UKRAINE**

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Annotation: in this article was conducted a comparison between the most popular organizational and legal forms of the entrepreneurial activity in Ukraine (namely, individual entrepreneur, limited liability company and private enterprise). It was determined which form is more suitable in different cases.

Key words: organizational and legal form, entrepreneurship, individual entrepreneur, limited liability company, private enterprise, legislation.

Entrepreneurship is a free, proactive activity of people in various spheres of production, carried out at their own risk and risk in order to make a profit. Entrepreneurship is a necessary defining feature of the market, its mandatory attribute. If there are no entrepreneurs, then there is no market, and vice versa.

The entrepreneur is a central figure in business. He seeks to most effectively combine all factors of production in a single economic process in order to most rationally implement their ideas. In a market economy, it is the entrepreneur who must be the first to figure out what goods and services consumers will need tomorrow.

One of the first questions to be solved by the entrepreneur before starting a business is what organizational and legal form to choose.

Organizational and legal form of management is a form of economic (including business) activities with the appropriate legal basis, which determines the nature of relations between the founders (participants), the regime of property liability for the obligations of the enterprise (organization), the order of creation, reorganization, liquidation, management, distribution of profits, possible sources of funding, etc.

In Ukraine, entrepreneurial activity can be carried out by a natural person-entrepreneur or a legal entity (in the form of a private enterprise, general partnership, limited partnership, limited or additional liability company, joint stock company, through a foreign representative office, etc.).[1] The organization and conduct of business depends on the correct choice of organizational and legal form, so this issue should be approached with special attention.

The most common forms available to anyone who has made a decision to do business are: sole proprietorship (individual entrepreneur, IE), private enterprise (PE) and limited liability company (LLC). [2]

The main difference between these three forms are that IE is a natural person, and PE and LLC are legal entities.

IE is a natural person-entrepreneur (a person who legally works as an entrepreneur).

The advantages of IE:

There are no serious legal requirements for accounting of IE, an entrepreneur can keep his own accounts. In most cases (if it is a sole proprietorship on a single tax), to keep records is to enter the amount of income daily in the income book, and at the end of the quarter or year to file a declaration.

Ability to do business without having to open a bank account.

An individual entrepreneur can dispose of his income and profit at his own discretion.

IEs have the full right to liquidate their activities at any time. However, it is necessary to write an application to the relevant authority to terminate the activities of IE, having passed inspections in the tax and pension authorities.

The price for registration is much lower, compared to a legal entity.

The disadvantages of IE:

An entrepreneur cannot choose a name for his business. According to legal requirements, he must be named after his last name, for example, IE Ivanov I.I.

There are restrictions on activities.

In the situation when the activity is suspended, the sole proprietor, if he is on a single tax, must continue to pay monthly single social contribution (SSC).

The business cannot be re-registered with another investor.

Liability of own property in case of bankruptcy.

A legal entity is an organization that has separate property, can acquire property and personal non-property rights and obligations on its own behalf, be a plaintiff and defendant in court, arbitration court or arbitration court.

The main types of the legal entities, according to the current Ukrainian legislation are the following:

Joint-stock company - a company whose authorized capital is divided into a certain number of shares of equal nominal value, corporate rights for which are certified by shares. The joint-stock company is independently liable for its obligations with all its property. Shareholders are not liable for the company's obligations and bear the risk of losses associated with the company's activities, within the value of the shares owned by them (except as provided by law). Shareholders who have not fully paid for the shares, in cases established by the charter, are liable for the company's obligations within the unpaid part of the value of their shares.

A limited liability company - a company established by one or more persons, the authorized capital of which is divided into shares, the amount of which is established by the statute. The members of a limited liability company are not liable for its obligations and bear the risk of losses associated with the activities of the company, within the value of their deposits. The members of the company who have not made full contributions are jointly and severally liable for its obligations within the value of the unpaid part of the contribution of each of the participants. The name of the limited liability company must contain the name of the company, as well as the words "limited liability company".

An additional liability company - a company established by one or more persons, the authorized capital of which is divided into shares, the size of which is determined by the charter. The members of the additional liability company are jointly and severally liable for the additional (subsidiary) liability for their obligations with their property in the amount established by the company's charter and is equally multiple for all participants to the value of the contribution made by each participant. In case of bankruptcy of one of its participants liability for the obligations of the company is distributed among other members of the company in proportion to their shares in the authorized capital of the company. The name of the company with additional liability must contain the name of the company, as well as the words "company with additional liability".

A full partnership - a company whose members, in accordance with the agreement concluded between them, carry out business activities on behalf of the company and jointly bear additional (subsidiary) liability for its obligations to all property belonging to them. A person may be a member of only one general partnership. A member of a general partnership may not, without the consent of other participants, make transactions on his own behalf and in his own interests or in the interests of third parties that are homogeneous with those that are the subject of the partnership.

A limited partnership is a partnership in which, together with the participants who carry out business activities on behalf of the company and jointly bear additional (subsidiary) liability for the company's obligations with all their property (full participants), there are one or more participants (depositors) who bear the risk of losses associated with the activities of the company, within the amounts of their contributions and do not participate in the activities of the company. The name of a limited partnership must contain the names (titles) of all full members, the words "limited partnership" or contain the name (title) of at least one full participant with the words "and company", as well as the words "limited partnership". If the name of the limited partnership includes the name of the depositor, such depositor becomes a full member of the partnership. [3]

When choosing between the sole proprietorship and legal entity, first of all, it is necessary to take into account legal aspects, such as protection of property rights and limitation of liability.

If the plan is to conduct the business activity on one's own, then both forms will be suitable. However, if the plan is to have partners, and it is wanted to legally establish property relations (proportions of distribution of profits and property between the participants, responsibilities for the formation of authorized capital), it is better to choose a legal entity. The statute of a legal entity defines the rights and obligations of the participants, and allows them to apply to the court for protection in case of violation of their rights by the company or other participants. As for the IE, in the case of joint venture activities with other persons, it is also possible to enter into an agreement on joint activities, which provides for mutual obligations, but in practice, this method of protection of property rights can not always be applied.

The next consideration should be to reduce the total tax burden on business. Because each business has a unique combination of activities, business models and financial indicators, it is not possible to provide universal recommendations on this issue. Most often, for small businesses, an attractive form from a tax point of view is an IE on a single tax, but this rule is not universal. Firstly, the application of a simplified taxation system is not always possible, and secondly, it sometimes happens that the general taxation system provides less tax burden.

If the entrepreneur's personal income is controlled by government (for example, they receive a utility subsidy or pay alimony), then, on the contrary, it makes sense to consider creating a company, because in this case they can decide for themselves what income to pay in the form of wages or dividends.

The most popular types of legal entities, as was mentioned above, are private enterprise (PE) and limited liability company (LLC).

Limited Liability Company - is a company that has a share capital divided into shares, the amount of which is determined by the constituent documents, and is responsible for its obligations only with its property. Company members who have

paid their contributions in full bear the risk of losses associated with the company's activities within their deposits.

Private enterprise - an enterprise operating on the basis of private property of one or more citizens, foreigners, stateless persons and his (their) work or with the use of hired labor is recognized. An enterprise operating on the basis of private property of an economic entity - a legal entity is also private.

In order to compare these types of legal entities, let's consider the following points:

Legal regulation of activity.

The establishment and operation of a limited liability company is more regulated than the activity of a private enterprise. The activities of LLCs are regulated by the Central Committee of Ukraine and the Civil Code of Ukraine, as well as the Law of Ukraine "On Limited and Additional Liability Companies". [4] PEs are managed according to the general provisions on legal entities from the Central Committee of Ukraine and the Civil Code of Ukraine.

Founding documents.

In LLC - this is the statute and decision (minutes) of the general meeting of founders. If desired, when establishing a company, you can enter into an agreement to establish a limited liability company. In PE - it is usually also the statute and the decision of the owner on creation of the enterprise. However, the owners of PE can additionally enter into a memorandum of association.

Share capital.

The authorized capital of a limited liability company consists of shares of the company's participants. Its total amount is defined as the nominal value of such shares. The share size can be further determined as a percentage. The authorized capital of the PE may not be divided into shares.

Participants (owners) and their responsibility.

One or more individuals can establish a private enterprise. Also, its founder may be one legal entity. So, in the case of PE, we see a legal restriction on the composition of the founders. Any number of individuals and/or legal entities may

establish a limited liability company, as the law does not limit the number and composition of the company's members. The owner of the PE, as well as the participant of the LLC, is liable only within the deposit to the legal entity.

Restrictions on the activities of the director (manager).

Restrictive provisions of the Law of Ukraine "On Limited and Additional Liability Companies" do not apply to PE. For example, the director of a limited liability company cannot enter into a contract with a value of more than 50% of net assets without the consent of the general meeting. And the director of PE - can.

Dividends.

In LLC dividends can be paid for any period multiple of a quarter (unless otherwise provided in the charter). Restrictions on payment are provided by Art. 27 of the Law of Ukraine "On Limited and Additional Liability Companies". The statute may impose additional restrictions. In case of PE the procedure for profit distribution and payment of dividends is not established by the current legislation. Peculiarities of dividend payment to owners may be fixed in the statute.

Based on all points, mentioned above, it is possible to reach a conclusion that if you plan to provide services or sell goods to end users - individuals, the IE will be the easiest solution. It is also very suitable for people who are just starting their entrepreneurial career. It is easy to manage the accounts, the price for registration is much lower and the activity can be terminated at any given time.

But if the customers are legal entities, then the IE may have some problems, as they tend not to work with such form of a company. Opening a business entity would be a much more reliable solution in such a case.

As was mentioned before, the most popular types of business entities in Ukraine are private enterprise (PE) and limited liability company (LLC). Therefore, it might be best to consider them first if there is no experience in the field.

When making a choice between PE and LLC, one should keep in mind that LLC is usually more trustworthy for the counterparties, because its activity is more regulated and, therefore, understandable. It is also more favorable to non-resident

contractors, as most countries have a similar form of legal entity. [5] Another important advantage is the unrestricted composition of founders.

However, if the restrictive provisions of the Law of Ukraine "On Limited and Additional Liability Companies" do not appeal to the founders, then PE is a better choice.

It should be emphasized that there is no ideal business model, and its creation and implementation depends on the nature of the owner, its counterparties, strategic and tactical goals and the general legal environment at a particular time. This article considers only the most common types of organizational and legal forms and is mostly aimed at the new entrepreneurs who are making a choice between them.

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