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## PROBLEMS OF LEGAL REGULATIONS OF COMPANIES IN LITHUANIA AND MALI

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### Annotation.

**The relevance of the study:** the article describes what a company is and what its legal regulation is. The analysis of case law in civil cases determines when the legal liability of the company's manager arises and when this responsibility falls on the company's shareholders. **The problem of the research** - a legal person may have and acquire any civil rights and obligations other than those which require the appearance of a natural person, such as sex, age and kinship. The subjectivity of a legal person is based on the intellect and will of its founders, managers, he cannot be responsible for himself or perform actions, including misconduct of the legal person, not the company itself but the responsible persons in it (managers, shareholders, etc.).

**The object of the research-** legal regulation of companies.

**The aim of the research** is to analyze the problems of legal regulation of companies, when it is the responsibility of the head of the company.

**Methods** - analysis and synthesis, abstraction, logical and historical, comparative analysis.

### Results.

In many cases, the responsibility for the misconduct in the company lies with the manager, because it is he who makes certain decisions in the company that can be risky. If a claim is made for damages in connection with a transaction concluded by the head of the company, but this has been approved by the board, the responsibility for such transaction lies with the board of the company, unless the manager is at fault. The head of the company is also liable for inaction when, knowing that the company is potentially committing an offense, it does not take any action as a result. This article focuses on the different types of companies in the OHADA space in general and in Mali in particular. Our literature review shows that there are many types of companies. They range from partnerships to limited liability companies, including hybrid companies, namely limited liability companies.

**Conclusion.** A natural person shall be characterized by his or her sex, kinship and age, and a legal person may not possess these characteristics, therefore all civil rights and obligations may be acquired, except those for which the necessary characteristics characterize a natural person. The subjectivity of a legal person is based on the intellect and will of its founders, managers, he cannot be responsible for himself or perform actions, including misconduct of the legal person, not the company itself but the responsible persons in it (managers, shareholders, etc.).

**Keywords:** *civil liability of the head of the company, legal entity, natural person.*

## **INTRODUCTION**

**The relevance of the study** lies in the fact that Company law is changing rapidly. This right is constantly being improved and modernized by adapting modern technologies to the establishment of companies, improving corporate governance, simplifying legal regulation to make it clearer, and removing obstacles faced by companies merging or establishing themselves abroad. For many years, the issue of the legal liability of legal persons has been considered problematic - it is difficult to identify and prove the guilt of a legal person and to apply the sanction for the committed offense properly. Only after some time were solutions found to solve this problem and it was recognized that a legal entity is not the same as a natural person and they cannot be identified. The problem of imposing sanctions on a legal person has been resolved with the imposition of adequate fines, but the second problem has persisted to this day and there are discussions on how to properly determine the fault of the legal person.

**The problem of the research** this article focuses on the different types of companies in the OHADA space in general and in Mali in particular. Our literature review shows that there are many types of companies. They range from partnerships to limited liability companies, including hybrid companies, namely limited liability companies. In addition to these types of companies, there are Crown corporations and participation companies. In the OHADA space in

general and in Mali in particular, the legislator has undertaken a vast reform with a view to facilitating the creation of companies to encourage businesses in the informal sector to formalize. It also emerges from our analysis that the powers of owners and managers of businesses and the rights and obligations arising from them are different. The former determines the medium and long-term strategies of the company while the latter perform management actions in order to achieve the company's objectives.

**The aim of the research** is to analyze the problems of legal regulation of companies, when it is the responsibility of the head of the company.

### **Tasks:**

- To analyze the legal regulation of companies in Lithuania, which laws regulate the law of companies;
- In accordance with the case law in civil cases, to analyze the liability of the head of the company after committing an offense.

**The object** is the case law of civil courts, based on which liability is established for a legal offense committed by a company.

### **Results**

#### **The concept of legal person**

An enterprise, which is an organizational unit that produces and / or provides services and whose activities may include more than one economic activity, which can make its own decisions and be established in more than one place, may also be a plaintiff or a defendant in court. Legal entities can be private, public (municipalities and state institutions,

companies, religious communities as well as public institutions) and limited and unlimited civil liability. The legal identity of a legal person cannot coincide with the identity of the natural person who created it, as is mentioned in the literature abroad.

The most famous legal entities in Lithuania are:

- A limited liability companies.
- Public limited company.
- Individual enterprise.
- Public institution.
- The small community.

A natural person is characterized by his age, kinship and sex, these characteristics are not possessed by a legal person, therefore private legal persons can acquire and have all civil rights or obligations, except those that require the characteristics that characterize a natural person. The main feature that distinguishes a natural person from a legal one is that a legal person does not have its own will and intellect, and a natural person has, so its capacity is based on its own will. The activity of a legal person is based on (i.e. the realization of legal personality) the intellect and will of the persons who established it and their appointed managers. A legal person is an artificial legal entity that does not have the characteristics of a natural person, it cannot control itself, but it can participate in various relationships, this is called *persona ficta*.

The problem of regulating businesses in Africa and more specifically in Mali is posed differently in the developed countries. Two sectors coexist in Mali: the formal sector and the informal sector.

The latter remains, despite its contribution in terms of wealth creation and in terms of job creation, excluded from the process of legal regulations. In this document, we will focus mainly on these first category of companies.

As in developed countries, the regulatory framework for African businesses law in general and Malian businesses in particular is constantly evolving.

From the early years of their independence in 1960s when French-speaking African countries had a private law system closely derived from that of the former colonial power to the creation of OHADA Organization for the Harmonization of Business Law in Africa. This organization created on October 17, 1993 in Port-Louis, Mauritius, gathering several countries of French-speaking Africa which wished to modernize their business law.

The OHADA Uniform Act relative to General Commercial Law, the OHADA Uniform Act on commercial companies, the OHADA Uniform Act on security interests and the OHADA Uniform Act relative to accounting law seem particularly conducive to this achievement. We should note that this community law is constantly evolving in order to best address the realities and needs of the business sector in the OHADA area, as evidenced by the uniform act relative to the revised commercial law.

In this article, we outline the different types of companies that are recognized within the framework of OHADA and in Mali at first, then in a second time we will analyze the legal

implications of these situations on the rights and obligations of the organs of decision and management.

### **Legal regulation of legal entities**

The competence of the Ministry of Economy and Innovation includes the following laws of the Republic of Lithuania attributed to the law of Lithuanian companies: Business Associations, State and Municipal Enterprises, Individual Enterprises, Public Institutions, Small Communities, Joint Stock Companies, European Economic Interest Groups, European Companies, European Cooperative Companies, Vienna cross-border mergers of limited liability companies - and government resolutions based on them. Most of the rules governing private limited companies and public limited company rules are based on the European Community company law directives, and the laws of European companies, European economic interest groups and European cooperative societies ensure the implementation of the relevant European company law regulations.

Although a legal person is an independent entity under civil law, it acts through its appointed managers in economic commercial activities. Paragraph 2 of Article 2.82 of the Civil Code of the Republic of Lithuania provides: “Every legal person must have a sole or collegial management body and a meeting of participants, unless a different structure of bodies is provided in the founding documents and laws regulating the activities of legal persons”. A member of the management body of a legal person

who fails to perform or does not perform his / her duties specified in Article 2.87 of the Civil Code of the Republic of Lithuania or the founding documents must fully cover the damage to the company, unless otherwise provided in the contract, founding documents or laws. It is very important to identify precisely the subject of the misconduct of the company's managers, whether a particular person is a member of the management body and whether he or she can be held civilly liable for the misconduct.

Liability is usually the counterpart of the power that hangs over social leaders. A priori, it is all the heavier since they exercise wide powers. Certainly, the leader acting not for himself but on behalf of a company, he it would be advisable not to discourage the initiatives which it would have to take in a hostile legal and economic environment characterized by fierce competition as well only through excessive sanctions.

In commercial companies, the responsibility of the directors will be retained for the offenses related to the functioning of society such as the abuse of corporate property, violations of the rights of partners, as well as offenses relating to business management to prevent abuse from social leaders who have power to hire the company without justifying a special mandate, and responsible for ensuring stewardship, administration, management of the company, management control and those related to the obstacle control over the mission of the statutory auditors, the verifications or the refusal to disclose

documents. In other words, society is civilly responsible for the acts performed by its representatives, the restrictive power clauses being unenforceable against third parties in good faith. Thus, the company will be committed even if it appears that the social leaders have exceeded their powers or acted beyond the corporate purpose. The AUSC-R lays down rules on the legal risk to which managers are exposed in the exercise of their functions.

The rules applicable to commercial companies occupy a special place in OHADA legislation. They are found in the Uniform Act relating to the law of commercial companies and of the Economic Interest Grouping (GIE).

Under OHADA rules, we have different types of societies and companies. We can mention: A Simple Limited Partnership (SCS), the General partnership (SNC), the Limited liability Company (SARL), The public limited company, The simplified joint - stock company and the economic interest group.

Simple Limited Partnership (SCS). A simple limited partnership is one in which one or more partners co-exist indefinitely and jointly and severally liable for social debts called "limited partners", with one or more partners responsible for social debts within the limits of their contributions called "limited partners" or "Limited partners", whose capital is divided into shares. The simple limited partnership is designated by a corporate name which must be immediately preceded or followed in legible characters by the words:

"simple limited partnership" or the acronym: "SCS". In no case may the name of a limited partner be incorporated into the corporate name, failing which the latter shall be liable indefinitely and jointly for social debts. As for the required share capital, the law does not set the minimum or the maximum.

#### **Responsibility of the company manager**

An entity in administrative law can only be a natural person, if the current administrative legislation is in force, this is the opinion of many authors. P. Petkevičius wrote: "Legal persons cannot be the subjects of administrative law violations. Their officials are responsible for the administrative offenses committed," but the question arises as to how the company is liable if the civil code is violated?

The Supreme Court of Lithuania noted: "The civil liability of different management bodies for damage caused to the company must be delimited and distributed taking into account that the responsibilities of each management body are independent and the performance of one management body does not relieve another management body."

If a claim for damages is made against the company and the transaction has been concluded by the head of the company, with the approval of the company's board, then the responsibility lies with the company's board, if no fault of the manager is found. If the fault of the manager is revealed after the conclusion of the transaction, then the degree of fault is determined for each

of them and they are liable according to partial liability.

The responsibilities of the company and the manager cannot be identified, as the manager is responsible for the omission (without taking any measures to prevent damage) and the company for the actual actions. The question arises as to who is then responsible for the damage caused by the company to a natural person or the damage to the environment.

The liability of the manager arises if he is aware of the ongoing violations in the company and does not take any action to prevent them, in which case the shareholders of the company may file a lawsuit against him. It should also be noted that before making risky decisions, the head of the company must think that his decision may cause harm to the company, so it is his duty to avoid such transactions.

Before applying the civil liability of the head of the company, it is necessary to determine the damage that has occurred, the illegal actions and the connection between them, these are the conditions of civil liability, therefore their determination is necessary. Once the damage caused to the company by the head of the company has been established, his fault is presumed, therefore the plaintiff no longer has to prove the fault of the head of the company.

To avoid civil liability, the head of the company must rebut this presumption himself on the ground of no fault. However, actions are considered illegal, those that are unjustifiably risky (for example, if an

asset is purchased for cash with the company that is worthless or becomes worthless in the future), manifestly harmful (for example, by transferring assets to others), would not meet reasonable business risk, and or) would be contrary to business standards (for example, increasing losses due to the company failing to settle with creditors through the proper or complete non-performance of the company).

## CONCLUSIONS

1. A natural person shall be characterized by his or her sex, kinship and age, and a legal person may not possess these characteristics, therefore all civil rights and obligations may be acquired, except those for which the necessary characteristics characterize a natural person. The subjectivity of a legal person is based on the intellect and will of its founders, managers, he cannot be responsible for himself or perform actions, including misconduct of the legal person, not the company itself but the responsible persons in it (managers, shareholders, etc.).

2. In many cases, the responsibility for the misconduct in the company lies with the manager, because it is he who makes certain decisions in the company that can be risky. The head of the company may carry out transactions with the permission of the board, if third parties are injured as a result of this transaction and compensation is claimed and the manager is not at fault, then the board of the company may be held liable. The head of the company is also liable for inaction

when, knowing that the company is potentially committing an offense, it does not take any action as a result.

3. Thus, a legal person cannot commit an offense itself, it is done by the persons working in the company. The problem arises when it is necessary to determine which natural person in the company is responsible for the misconduct, whether it is the head of the company who acted alone and did not assess the risk of harm to the company, or the board members who knew and gave permission to the company manager to enter a risky transaction.

4. Legal regulations of companies appear to be the key to promote

private sector and create conditions for economic development in developing countries like Mali. Legal regulations define which kind of companies to create. They underline the powers, rights, and liabilities of both owners as well as managers. All the rules forming the legal regulations arsenal should not be neither very soft nor very tough. If they are so soft, controlling companies' activities and the full rights of operators should be difficult. Otherwise, if they are so tough, they can reduce the margin of stakeholders and prevent them from taking initiatives which are necessary for the growth of their companies.

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## ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ КОМПАНІЙ ЛИТВИ І МАЛІ

### Анотація

**Актуальність** дослідження: у статті описано, що таке компанія та яке її правове регулювання. Аналіз прецедентного права у цивільних справах визначає, коли виникає юридична відповідальність керівника компанії та коли ця відповідальність покладається на акціонерів компанії. **Проблема дослідження** - юридична особа може мати та набувати будь-яких цивільних прав та обов'язків, окрім тих, що потребують зовнішності фізичної особи, наприклад, статі, віку та споріднення. Суб'єктивність юридичної особи ґрунтується на інтелекті та волі її засновників, керівників, він не може нести відповідальності за себе чи вчиняти дії, включаючи неправомірне поведіння юридичної особи, не самої компанії, а відповідальних осіб у ній (менеджерів, акціонерів) тощо).

**Об'єкт дослідження** - правове регулювання компаній. Метою дослідження є аналіз проблем правового регулювання компаній, коли це відповідальність керівника компанії. **Методи** - аналіз та синтез, абстрагування, логічний та історичний, порівняльний аналіз. **Результати.** У багатьох випадках відповідальність за проступки в компанії лежить на менеджері, адже саме він приймає певні рішення в компанії, які можуть бути ризиковими. Якщо подано позов про відшкодування збитків у зв'язку з транзакцією, укладеною керівником компанії, але це було затверджено правлінням, відповідальність за таку операцію несе рада правління компанії, якщо винен не менеджер. Керівник компанії також несе відповідальність за бездіяльність, коли, знаючи, що компанія потенційно вчиняє правопорушення, вона не вживає жодних дій у



результаті. Ця стаття присвячена різним типам компаній у просторі OHADA та в Малі, зокрема. Наш огляд літератури показує, що існує багато типів компаній. Вони варіюються від товариств до товариств з обмеженою відповідальністю, включаючи гібридні, а саме товариства з обмеженою відповідальністю.

**Висновок.** Фізична особа повинна характеризуватися її статтю, спорідненістю та віком, а юридична особа може не володіти цими характеристиками, тому можуть бути набуті всі цивільні права та обов'язки, крім тих, для яких необхідні характеристики характеризують фізичну особу. Суб'єктивність юридичної особи ґрунтується на інтелекті та волі її засновників, керівників, він не може нести відповідальності за себе чи вчиняти дії, включаючи неправомірне поведіння юридичної особи, не самої компанії, а відповідальних осіб у ній (менеджерів, акціонерів) тощо).

**Ключові слова:** цивільно-правова відповідальність керівника підприємства, юридична особа, фізична особа.

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## **ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ КОМПАНИЙ ЛИТВЫ И МАЛИ**

### **Аннотация**

Актуальность исследования: в статье описано, что такое компания и какое правовое регулирование она осуществляет. Анализ прецедентного права в гражданских делах определяет, когда возникает юридическая ответственность руководителя компании и когда эта ответственность полагается на акционеров компании. Проблема исследования - юридическое лицо, которое может иметь и приобретать любые гражданские права и обязанности, кроме тех, которые нуждаются внешности физического лица, например, пола, возраста и роднит. Субъективность юридического лица основывается на интеллекте и воле ее основателей, руководителей, он не может нести ответственность за себя или совершать действия, включая неправомерное поведение юридического лица, не самой компании, а ответственных лиц в ней (менеджеров, акционеров). Объект исследования - правовое регулирование компаний. Целью исследования является анализ проблем правового регулирования компаний, когда наступает ответственность руководителя компании. Методы - анализ и синтез, абстрагирование, логический и исторический, сравнительный анализ. Результаты. Во многих случаях ответственность за проступки в компании лежит на менеджере, ведь именно он принимает определенные решения в компании, которые могут быть рискованными. Если подан иск о возмещении убытков в связи с транзакцией, заключенной руководителем компании, но это было утверждено правлением, ответственность за такую операцию несет совет правления компании, если виноват не менеджер. Руководитель компании также несет ответственность за бездействие, когда, зная, что компания потенциально совершает правонарушение, не совершает

никаких действий в итоге. Настоящая статья посвящена разным типам компаний в пространстве OHADA и в Мали, в частности. Обзор литературы показывает, что существует много типов компаний. Они варьируются от обществ к обществам с ограниченной ответственностью, включая гибридные, а именно общества с ограниченной ответственностью.

Вывод. Физическое лицо должно характеризоваться полом, родством и возрастом, а юридическое лицо может не владеть этими характеристиками, потому могут быть приобретены все гражданские права и обязанности, кроме тех, для которых необходимые характеристики, которые характеризуют физическое лицо. Субъективность юридического лица основывается на интеллекте и воле ее основателей, руководителей, он не может нести ответственность за себя или совершать действия, включая неправомерное поведение юридического лица, не самой компании, а ответственных лиц в ней (менеджеров, акционеров) и тому подобное).

**Ключевые слова:** гражданско-правовая ответственность руководителя предприятия, юридическое лицо, физическая личность.

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