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Is it risky to be a founder?

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By carrying out entrepreneurial activities, i.e. independent activities carried out at its own risk, aimed at systematic profit from the use of property, sale of goods, performance of works or provision of services, in conditions of market instability, exchange rate fluctuations and consumer demand, the company may experience signs of bankruptcy.

It is known that when a debtor is declared bankrupt and the bankruptcy estate is distributed, creditors do not receive the desired amount, according to the statistics of the Federal resource, creditors receive only 1/18 of the expected amount of money, which negatively affects the financial condition of the debtor. To the aid of creditors comes the institution of subsidiary liability, which serves as a means of protecting creditors.

According to the General rules, the founder (participant) of a legal entity or the owner of its property shall not be liable for the obligations of the legal entity. The fact of bankruptcy of the debtor is insufficient to attract the founder to subsidiary liability for the obligations of the debtor. However, if the causal relationship between the introduction of bankruptcy proceedings and the actions or omissions of the founder is proved, the founder is held liable for subsidiary liability.

The emergence of the institution of subsidiary responsibility in Russian law is associated with the Western trend - "piercing the corporate veil". The idea of the so-called "breaking the corporate veil" is an opportunity to assure the counterparty that if the company acts in a clearly unfair manner, then there is a possibility of protecting the rights of creditors by holding its participants liable for the obligations of the company.

The founder may be held vicariously liable for obligations arising after the expiration of the established term for convening, preparing and holding a meeting of participants, as well as the decision to compel the General Director to file for bankruptcy of a legal entity. In this period, which can be called the founder of the debtor's obligations begin after 10 days from the date when the person involved learned or should have learned about the failure of the head of the liquidation Commission of the debtor's obligation to apply to the court for bankruptcy.

Founders of General partnerships, peasant (farmer) farms, production cooperatives cannot escape from subsidiary liability, since subsidiary liability of such persons is fixed by the norms of the Civil code of the Russian Federation. The application of the arbitration Manager will be satisfied in one hundred percent of cases.

Not all founders of legal entities (except those mentioned above), in accordance with article 61.10 of the bankruptcy Law, but only those who independently had the right to dispose of more than half of the authorized capital of a limited (additional) liability company / shares of a joint-stock company or jointly with interested parties, may be brought to subsidiary liability.

The above article even contains the phrase "more than half", but the term "person controlling the debtor" refers to those who have 50 percent of the shares or the company, when there are only two parties in the company.

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