



Notary certification for resolutions of a sole participant (shareholder) of a Russian legal entity

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What happened?

Following the position stated by the Russian Supreme Court in par. 3 of the Judicial review for certain issues on application of legislation about legal entities as approved by the Presidium of the Russian Supreme Court dated on 25.12.2019 (the “**RSS Position**”), *the requirement for notary certification is applicable also to the resolutions taken by a sole participant.*

This new approach applies to all the resolutions that are taken by Russian legal entities with a sole participant after the date of the Judicial review approval (i.e. after 25 December 2019).

What is the legal background?

According to article 67.1, paragraph 3, of the Russian Civil Code all decisions taken by the participants (shareholders) of legal entities, must be confirmed as follows:

- for joint stock companies: by the registrar responsible for keeping the shareholders' register or by the notary;
- for limited liability companies: by the notary or by having the decision signed by all participants (or a part thereof), using specific technical means, etc., as provided by the charter or by a decision of the participants taken unanimously.



It has been clarified by the judicial review for the disputes with participation of registering authorities No. 4 (2016), as well as by the Letter of the Russian Central bank dated 25 November 2015, that the requirements set forth by article 67.1, paragraph 3, of the Russian Civil Code do not apply to legal entities with a sole participant (shareholder).

Article 39 of the Federal Law No. 14-FZ dated 8 February 1998 and article 47, paragraph 3, of the Federal Law No. 208-FZ dated 26 December 1995 clearly state that all resolutions of a sole participant (shareholder) shall be executed in written form, except for the resolution of a sole participant concerning capital increase, which according to article 17, part 3, of the Federal Law No. 14-FZ, must be certified by the notary. The notary in this case only certifies the authenticity of the signature on such resolution.

What is the impact of the RSS Position?

It seems that compliance with the RSS Position concerning the requirement for notary certification shall be ensured in the following manners:

- Limited liability companies with a sole participant shall execute their

resolutions with participation of the notary or alternatively stipulate in the charter or in the resolution of a sole participant that the resolutions can be certified by means of signatures of all the participants (or part thereof). In any event, the resolution stating such alternative, as well as the resolution approving the charter that includes in its text such alternative, shall be executed with participation of the notary.

- So far it is not clear whether the RSS Position applies also to the resolutions of a sole shareholder in joint-stock companies as it is not clearly stated by the Supreme Court. If the analogy applies, joint stock companies with a sole shareholder shall execute their resolutions with participation of the registrar or notary.

Even though the RSS Position is formally not a part of the Russian legislation, the direct application of the requirement for notary certification cannot be excluded and compliance is to be ensured. Otherwise, it may not be excluded the risk that the resolutions of a sole participant (shareholder) of a Russian legal entity (limited liability companies and joint stock companies) may be considered invalid.



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