

Shareholders' Decisions in LLC: New Rules

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The Supreme Court of the Russian Federation (**SCRF**) issued a Review of the court practice dated 25.12.2019 (**Review**)¹, in which it de facto set out new rules on affirmation (execution) of the shareholders' decisions in the limited liability companies (**LLC**, or "OOO", in Russian). It also covers the cases when there is a sole shareholder in an LLC.

1. PREVIOUS RULES

Before 25.12.2019, the following approach regarding the affirmation (execution) of the **decisions of the shareholders' meetings** of an LLC was in use²:

- ▶ as a rule, such decisions were affirmed by the notary;
- ▶ however, the shareholders were allowed to issue a decision on using alternative (usually – more convenient, but less reliable) form of affirmation of the decision. For that, unanimous decision of the shareholders was necessary, but such decision itself **was not required to be notarized**.
- ▶ increase in the charter capital must be adopted by a notarized decision in any case.

Before 25.12.2019, the following approach regarding the affirmation (execution) of the **decisions of the sole shareholder** of an LLC was in use:

- ▶ as a rule, such decisions were **not notarized**;
- ▶ increase in the charter capital must be adopted by a notarized decision in any case.

The alternative (as to notarial) means of affirmation (execution) of the decisions are:

- ▶ signing a protocol of the shareholders' meeting by all shareholders or part of them;
- ▶ using special technical devices or means that help to confirm the fact of the decision;
- ▶ other means that do not contradict the law.

2. NEW RULES

From 26.12.2019, there are new rules on affirmation (execution) of the **decisions of the shareholders' meetings** in an LLC:

- ▶ as a rule, such decisions must be affirmed by the notary;

- ▶ however, the shareholders are allowed to issue a decision on using alternative form of affirmation of the decision.
For that, unanimous decision of the shareholders is necessary, but such decision itself **must be notarized**.
- ▶ increase in the charter capital must be adopted by a notarized decision in any case.

From 26.12.2019, there are new rules on affirmation (execution) of the **decisions of the sole shareholders** in an LLC:

- ▶ as a rule, such decisions **must be affirmed by the notary**;
- ▶ however, the sole shareholder is allowed to issue a decision on using alternative form of affirmation of the decision.
For that, **a notarized decision** of the sole shareholder is required.
- ▶ increase in the charter capital must be adopted by a notarized decision in any case.



Alternative means of affirmation of the decision can be used only if there was a notarized decision that approved such alternative means of affirmation for future

The above mentioned alternative means of affirmation have not been changed.

New rules are supposed to be applicable only to future decisions, that is, after 26.12.2019; and previous decisions issued by shareholders not in compliance with these rules will not be void.

3. RECOMMENDATIONS

Since most LLCs in Russia tend to using alternative (simplified) means of affirmation of decisions of the shareholders (both if it is a decision of the shareholders' meeting or one of the sole shareholder), we recommend the following:

- ▶ To issue a decision in which the appropriate alternative means of affirmation of decisions is fixed for the future. Such decision must be notarized (only once).

It is even more reliable to adopt a new version of the **Charter** (Articles of Association) of the company by such a notarized decision. New version would contain provisions on alternative means of affirmation of decisions of the shareholders. However, it is not mandatory.

- ▶ We also recommend that such notarized decision contain approval of the prior decisions (in case of corporate dispute or risks that it emerges – we recommend that copies of such prior decisions be attached).

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¹ Review of the court practice on certain issues of application of the legislation on commercial corporations (approved by the Presidium of the SCRF on 25.12.2019) («Обзор судебной практики по некоторым вопросам применения законодательства о хозяйственных обществах» (утв. Президиумом Верховного Суда РФ 25.12.2019)).

² For decisions made on the shareholders meetings in person (as opposed to absentee voting).