

## Starting from 1 September, a notary must certify resolutions to appoint the CEO of a limited liability company

*FAO heads and associates of corporate practices and legal departments of limited liability companies*

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**Pepeliaev Group advises that, on 2 August 2024, Russia's Federation Council approved a law<sup>1</sup> whereby a resolution to appoint the CEO must be certified by a notary.**

Article 40(1) of the Federal Law No. 14-FZ "On limited liability companies" dated 8 February 1998 (the "Law") has been amended to include new paragraph. Under the new wording, the adoption of a resolution to elect (appoint) the single-member executive body of the company must be certified by a notary.

The amendments come into force on 1 September 2024.

When certifying that a resolution has been adopted, the notary checks the legal entity's capacity, determines whether its management body is competent to adopt the resolution, verifies the identity of the members, and checks the members' powers, as well as records the adopted resolutions. This allows it to be ensured that the adopted resolution is lawful and the information in the Legal Register of Companies is accurate.

Starting from 1 September 2024, it will no longer be possible to certify the fact that the general meeting of members (sole member) of a limited liability company has adopted a resolution to elect (appoint) a CEO in an alternative way, if such a way has previously been provided for in the articles of association or in a separate resolution.

The change will not affect companies that are credit institutions, non-credit financial institutions, and specialised companies founded in accordance with Russian legislation on securities.

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<sup>1</sup> Draft law No. 103501-8 "On amending the Federal Law 'On joint stock companies' and individual items of Russian legislation".

## **Pepeliaev Group's comment**

The law currently provides for two matters on which decisions require a compulsory notarial certification. These are a resolution to increase the issued capital and a resolution to agree to enter into a convertible loan agreement, which essentially is also aimed at increasing the company's issued capital in future.

The requirement for having resolutions on these matters certified by a notary has been established because the resolutions in question are very important for controlling the membership in and financial state of the company, as well as how the unlawful erosion of members' interests is prevented. These resolutions also considerably affect the company's stability and welfare.

The new requirement for having a resolution to elect (appoint) the director certified by a notary is quite justified. The concept of having decisions of meetings of members certified by a notary was initially implemented with a view to preventing the forgery of documents and unlawful seizure of assets. The measure has successfully achieved these goals.

Given that, in most limited liability companies, the CEO is solely responsible for adopting resolutions and managing the company (especially in the absence of collective executive bodies), it appears quite reasonable to make a rule that enhances the oversight over how such a person is elected.

Notaries will also have the function of filing documents with state authorities for the relevant amendments to be registered in the Unified State Register of Companies. For instance, no later than the following working day after receiving minutes of the meeting or after certifying the fact that a resolution has been passed by the sole member, the notary must file with the registration authority an application for the corresponding amendments to be made to the Unified State Register of Companies.

## **What to think about and what to do**

We recommend managers and in-house lawyers to start scheduling corporate procedures in advance to prepare for meetings where the agenda includes electing the director, unless the company's articles of association or a resolution provide for an alternative way of certifying that resolutions have been adopted.

In the context of the new developments, it would be prudent to remind oneself of the implications of failing to comply with requirements for the compulsory notarial certification of resolutions:

- A resolution to elect (appoint) a single-member executive body approved in violation of the requirement for compulsory notarial certification will not have legal force and will not give rise to any legal implications (i.e. it will be void).
- The tax authority will refuse to register amendments and, consequently, to amend the Unified State Register of Companies.

### Help from your adviser

Pepeliaev Group's experts have considerable experience of advising companies on various matters of corporate law and governance. They are ready to provide support with resolving matters connected with the new regulation.

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