PROCEDURAL ASPECTS OF PERFORMING NOTARIAL ACTS RELATED TO CORPORATE LEGAL RELATIONS AND THEORETICAL– PRACTICAL PROBLEMS

SULTONOVA TUTIYOKHON SAIDUMAROVNA
Doctor of philosophy in law, researcher at Tashkent State University of Law,
Lawyer

Notarial offices constitute a special legal system that occupies a distinct place among law-protection institutions. One of the main features distinguishing notarial offices from other administrative bodies is that they resolve undisputed legal relations.

It should be noted that the Law of the Republic of Uzbekistan "On Notariat" not only grants rights to a notary, but also imposes obligations on him or her. Today's development and the introduction of digital technologies into notarial activity require a notary to possess knowledge, skills, and a commitment to continuous self-improvement. In our country, notariat is a legal system that occupies its own place as an institution protecting the rights and legally protected interests of individuals and legal entities.

In order to bring this sphere into line with international standards, on May 25, 2018, our respected President Sh.M. Mirziyoyev adopted Resolution No. PQ-3741 "On Measures for Further Improving the Notariat System as an Institution Aimed at Preventing Disputes." For the purpose of implementing this resolution, the current Law of the Republic of Uzbekistan "On Notariat" was supplemented with several provisions, including paragraph 7 of Article 17, Article 23(12¹), and Article 70¹.[1][2]

On the basis of these amendments, the notary was granted the right "to participate, at their invitation, in meetings of the governing bodies of legal entities." This right granted to the notary was also reflected in the scope of his

or her authority. Article 23, which sets out the types of notarial acts performed by notaries, was supplemented by Article 12¹. In accordance with this provision, the notary was empowered to certify "the fact that a decision was adopted by the governing body of a legal entity."[3] Thus, the sectoral law granted the notary the right to certify the fact that a decision was adopted by the governing body of a legal entity, and as a result, a legal foundation was created for performing undisputed notarial acts related to corporate legal relations.

At present, economic courts substantively hear and resolve disputes involving the establishment, reorganization, and liquidation of legal entities, disputes concerning the convening of the general meeting of participants of a legal entity, and disputes seeking to invalidate decisions of the management bodies of legal entities. When courts hear on the merits claims seeking to declare invalid a resolution of the general meeting, which is the governing body of a legal entity, the parties experience certain difficulties in presenting and proving some evidence. In short, this amendment introduced into the current Law of the Republic of Uzbekistan "On Notariat" not only created a basis for preventing such disputes, but also established a legal framework for providing the court with reliable evidence in the event that such a dispute arises and must be resolved lawfully.

Article 30 of the Economic Procedural Code of the Republic of Uzbekistan sets out the procedure for hearing corporate legal relations and disputes arising out of such relations. According to this provision, disputes arising out of corporate legal relations fall within the jurisdiction of economic courts, including disputes concerning the convening of the general meeting of participants of a legal entity, disputes on appealing decisions of the management bodies of a legal entity, and other disputed relations specified by law.

The currently effective Law "On Limited Liability Companies and Additional Liability Companies" does not specify the procedure for notarizing the fact that a decision has been adopted by the governing body of such a legal entity. This rule was expressed for the first time in the Law "On Notariat." It should be emphasized that before the governing body of a legal entity adopts a decision, it passes through a number of stages, and these stages determine the future legal fate of the decision adopted by that governing body.

In particular, Article 29 of the Law on Limited Liability Companies and Additional Liability Companies defines the management bodies of the company and states that "the general meeting of the participants of the company is the supreme management body of the company." Proceeding from this requirement of the law, before certifying the fact that a decision has been adopted by the governing body of a legal entity, the notary must determine such matters as the procedure for convening the general meeting of the company's participants, the total number of participants, and how many participants are required for a quorum. This process is important because it encompasses the specific procedural aspects of performing this notarial act. Formalizing notarial acts related to corporate relations requires knowledge and skill from the notary. In turn, the notary must perform a number of procedural actions. Article 33 of the same law indicates the procedure for convening the general meeting of the company's participants. In the course of performing this notarial act, the notary carries out a number of procedural actions. In particular, in order to prevent future disputes, the notary checks, while performing the notarial act, whether the company has complied with the requirements of this law. Article 34 of the same law records the procedure for holding the general meeting of participants and states that "the general meeting of the company's participants shall be held in the manner established by this Law, the company's charter, and its internal documents."

The notary must determine the legal basis for the procedure of holding the general meeting of the company's participants. According to the law, company participants have the right to participate in the general meeting either personally or through their representatives. The power of attorney issued to the representative of a company participant must be formalized in accordance with the requirements of the law and notarized. It should be emphasized that Article 70^1 of the Law "On Notariat" is entitled "Certification of the Fact that a Decision Has Been Adopted by the Governing Body of a Legal Entity," and first of all this provision must be analyzed correctly. The reason is that the law does not authorize the notary to certify the adoption of just any decision, but specifically the fact that a decision has been adopted by the governing body of a legal entity.

When certifying the fact that a decision has been adopted by the governing body of a legal entity, the notary must pay attention to whether the decision of the legal entity gives rise to, modifies, or terminates a particular legal relationship, and whether these listed circumstances produce certain legal relations or legal consequences. These aspects are aimed at substantiating the specific procedural and legal features of the notarial act being performed.

When certifying the fact that a decision has been adopted by the governing body of a legal entity, the notary must first verify the legal status of that legal entity and also become closely acquainted with the law regulating the activity of that legal body. Pursuant to Article 70^1 of the Law "On Notariat," when certifying the fact that a decision has been adopted by the governing body of a legal entity, the notary shall be present at the holding of the meeting at the request of the body or person convening the meeting of the governing body of the legal entity and shall issue a certificate confirming the fact that the decision was adopted by the governing body of the legal entity, as well as the composition of the participants (shareholders) who were present when the decision was adopted.

In order to determine the fact that a decision has been adopted by the governing body of a legal entity, the notary verifies the legal capacity of the legal entity, determines the authority of the governing body of the legal entity to adopt the decision, establishes the existence of a quorum at the meeting, and, based on the counting of votes, determines whether the number of votes necessary to adopt the decision exists, in accordance with legislative acts and the constituent documents of the legal entity.

In such a case, the notary must examine whether the decision being adopted by the governing body of the legal entity complies with the laws and subordinate regulations governing the activity of that legal entity, whether the legal entity has undergone proper state registration, and the Charter, Founding Agreement, and other documents. At present, in the implementation of this provision introduced into Article 70^1 of the Law "On Notariat," there are a number of debates and differing opinions among scholars. In particular, according to the interpretation of the procedural scholar Gleb Vladimirovich Sintsov, when certifying the fact that a decision has been adopted by the governing body of a limited liability company or an additional liability company, the notary certifies the resolution of the general meeting or the fact that representatives of the legal entity participated in the meeting, and the certification of these facts applies to all legal entities.[4] Continuing his opinion on this matter, Gleb Vladimirovich Sintsov emphasizes that the main purpose of introducing this norm into the Law "On Notariat" is to prevent disputes arising in economic courts.[5]

In order to prevent such disputes, the legislator granted the notariat the authority to legally formalize corporate legal relations when they remain undisputed. For this reason, procedural scholars such as Gleb Vladimirovich Sintsov[6] and Lyubov Nikolaevna Rakitina[7] emphasize that when certifying the fact that a decision has been adopted by the governing body of a legal entity, the notary should pay attention to whether the minutes of the meeting have been

signed by all participants or by some of them. We also support this view. In most cases, when filing claims with economic courts, plaintiffs argue that the general meeting was not actually held and that, for this reason, the decision adopted by the legal entity is contrary to law. Therefore, the law granted the notary the right to participate in the general meetings of legal entities. In this regard, an appropriate question arises: can a notary certify the fact that a decision was adopted by the body of a legal entity at a meeting in which the notary did not personally participate? Absolutely not.

In order to clarify this issue, our legal scholars[8] note that even if the notary did not personally participate, if the general meeting was held and the decision was adopted in compliance with the procedures and requirements set out in the law, subordinate legislation, charter, or regulations governing the decision-making process of the supreme body of the legal entity, and if this fact is clearly reflected in technical means, that is, in video or audio recordings, then the notary may certify the fact on the basis of such electronic evidence. However, since this situation has not yet been reflected in our national legislation, for the time being we remain distant from this view. Legal scholar V.K. Andreev notes that “the decision of the general meeting of economic entities and other corporate organizations that are legal entities is an equal legal act of all members of society participating in civil legal relations, which gives rise to rights and obligations on lawful grounds.”[9]

In conclusion, when performing notarial acts related to undisputed corporate legal relations, the notary carries out a number of procedural actions, including certifying the fact that a decision has been adopted by the governing body of a legal entity and issuing a certificate to that effect.

LIST OF REFERENCES

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