

Legislative changes in methods for protection of creditors' rights and requirements in case the charter capital does not comply to the net assets

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The flash report covers the amendments introduced into a number of Russian Federal Laws by the Federal Law No 228-FZ "On introduction of amendments into the certain legislative acts of the Russian Federation with respect to the reconsideration of methods for protection of creditors' rights during the charter capital decrease, changes of the requirements for commercial legal entities in case the charter capital does not comply to the net assets value" (the "**Law**") which comes into effect on 1 January 2012 (except for the certain provisions which come into effect on 1 January 2013).

The most significant changes introduced by the mentioned Law are the following.

Changes regarding the charter capital decrease in a limited liability company ("LLC")

1. The requirements with respect to the charter capital decrease procedure have been unified with the similar requirements for joint stock companies ("JSCs")

As per the amendments introduced by the Law, LLC having taken the decision on the charter capital decrease is no longer obliged to inform its creditors by written notice. Instead, LLC must notify the registration authorities on the fact that it is undergoing the procedure of the charter capital decrease within 3 days from the date of adoption of the relevant decision. In addition, the information on the charter capital decrease should be published in the magazine "Vestnik of the State Registration" twice within a month.

2. The rules for protection of creditors' rights associated with the LLC charter capital decrease have been amended

The Law retains the right of LLC's creditors to claim for early execution of obligations by LLC within 30 days from the latest date of the publication of an announcement concerning the charter capital decrease. If the early execution of obligations by LLC is impossible, the creditors are entitled to claim for the termination of obligations from LLC and payment of the related damages. The Law stipulates the six-month limitation period for such creditors' claims.

Similar to JSC, LLC has the possibility to refrain from satisfying such creditors' claims if it proves that the charter capital decrease does not imply a violation of creditors' rights or a sufficient guarantee is provided in order to ensure the performance of the respective obligations.

New Register of information on legal entities' activities

The Law introduces the new Unified Federal Register containing the information on activities of the legal entities (the "Register") and provides that this information will be available through the Internet. The Law contains the list of information which should be mandatory included into the Register, imposes on the registration authorities and legal entities the obligation to post the required information in the Register and stipulates that such information shall be posted by the legal entities on a chargeable basis.

The procedure for holding the Register, including the procedure and terms for introduction of the information by the registration authorities and legal entities cost of the information publication, etc., should be adopted by the authorized Federal governmental authority. The provisions of the Law concerning the introduction of the Register should come into effect as of 1 January 2013.

Changes regarding the net assets of LLC and JSC

1. Additional year for improvement of the net assets position has been provided to LLC

Under the Law, LLC like JSC will be granted an additional year in order to improve its unsatisfactory net assets position. In particular, LLC has an obligation to decrease its charter capital after the year **following** the second or any consequent financial year of the LLC's activity, if the value of LLC's net assets as a result of the respective financial year is lower than the charter capital of LLC. It should be noted that unlike JSCs, the additional year shall be granted to LLC even in the case when the net assets of LLC are below the statutory amount of the charter capital.

2. A fixed term for adopting the decision on the charter capital decrease / liquidation by LLC has been introduced

The decision on the charter capital decrease or the decision on LLC's liquidation due to the unsatisfactory net assets position should be adopted within six months from the end of the financial year following two consecutive financial years during which the value of LLC's net assets was lower than its charter capital. Thus, the Law introduces a fixed term for taking the above decisions instead of a "reasonable" term as set forth by the current Law on LLCs.

3. New requirements with respect to the reporting of the net assets position have been introduced

Under the Law, the annual report of LLC must contain the separate section indicating the certain information on its current net assets position. It is not crystal clear from the text of the Law whether the section concerning the net assets position shall be included into the LLC's annual report only when the net assets are below the LLC's charter capital, like with respect to JSCs. It appears that this section should be included into the annual report of LLC even if its net assets position is satisfactory.

The Law also abolishes the requirement for JSCs to report the information on its net assets position to the registration authorities on a quarterly basis. At the same time, the Law stipulates that both JSCs and LLCs must provide the access to the information on their net assets value to any person interested therein.

4. The procedure for evaluation of the net assets has been stipulated for LLCs and JSCs

In accordance with the current legislation the procedure for evaluation of the net assets value is stipulated with respect to JSC only. In particular, the net assets of JSC are calculated based on the accounting records under the procedure stated by the Ministry of Finance and the Federal Service for Financial Markets of the Russian Federation. In practice the respective procedure is applied to LLC by analogy.

Under the Law, the net assets value of LLC shall be calculated like with respect to JSC based on the accounting records. For LLC the procedure for evaluation of the net assets shall be stated by the Government of the Russian Federation or another respective Federal governmental authority. It is also stated that the procedure for evaluation of the net assets value with respect to certain types of activity may be stated by other governmental authorities as well. Also, according to the Law, for credit institutions equity capital value is calculated instead of the net assets value according to the procedure set forth by the Central Bank of the Russian Federation.

What should you consider now?

In case LLC intends to decrease its charter capital for any reason it is preferable to perform this procedure after 1 January 2011, if possible, due to the simplification of the whole procedure and decrease of the risks related to the potential claims of the LLC's creditors concerning the early performance or termination of the relevant obligations.

Since the Law provides for a fixed term for taking a resolution on the charter capital decrease or liquidation of LLC, it should be taken into account that the breach of this term may potentially give grounds for the state authorities to raise claims to LLC including claims for compulsory liquidation.

Generally, the introduction of the information into the Register shall be performed by registration authorities. At the same time a number of information (including the information on the level of net assets) should be filed to the Register by the legal entity once the relevant provisions of the Law come into force. At present there is no established procedure for the filing of such information.

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