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Legal Update
special issue



Decrease of a charter capital: protection of creditors

On Amendments to Certain Legislative Acts of the Russian Federation related to Remedies Available to Creditors upon Decrease of a Charter Capital and Change of Requirements to Commercial Organizations in the Event of Discrepancy between the Net Asset Value and the Charter Capital.

On 1 January 2012 the Federal law of 18 July 2011 No. 228-FZ "On amendments to certain legislative acts of the Russian Federation related to remedies available to creditors upon decrease of a charter capital and change of requirements to commercial organizations in the event of discrepancy between the net asset value and the charter capital" (hereinafter - the "**Law**") will enter into force (except for certain amendments). The Law introduces amendments to the Federal laws "On joint-stock companies", "On limited liability companies", "On state registration of legal entities and individual entrepreneurs", "On insolvency (bankruptcy)".

These amendments changes current consequences of discrepancy between the charter capital of a limited liability company (hereinafter - the "**LLC**" or "**Company**") and its net asset value and changes the current remedies available to creditors upon decrease of a charter capital.

The Law sets forth that if a LLC decreases its charter capital it shall notify in writing a registration body about it within 3 days as well as publish the information on this fact in mass media designated for publishing of such information. The creditors of such an LLC still have the right to demand from the Company early fulfillment of its obligations and in cases when it is not possible the creditors can claim for termination of obligations and seek for damages. However, such a right of creditors is not unconditional. In a judicial proceeding the court is entitled to dismiss the claim of a creditor under following circumstances: a) the Company proves that the rights of the creditor have not been violated as a result of a charter capital decrease and b) the provided collateral is sufficient for fulfillment of obligations. Previously this remedy was only available for joint-stock companies.

The conditions for obligatory decrease of the charter capital have been specified. The Law stipulates that where the net asset value is lower than the amount of the charter capital as of the end of a financial year following the second financial year (previously as of the end of the second financial year) or each following financial year, at the end of which the net asset value is lower than the amount of the charter capital, the company has to decide on decrease of the charter capital or on liquidation within 6 months after the end of the corresponding financial year.

The Law sets forth special requirements to the content of an annual report of an LLC in part related to net asset value. In particular the annual report shall contain information about net asset value and charter capital flow, analysis of the reasons that lead to decrease of net assets and a list of measures to be taken to bring the net asset value in compliance with the amount of the charter capital.

The Law also excluded a provision of the Federal law "On Joint-stock Companies" stipulating an obligation of the board of directors (management board) of a joint-stock company to quarterly approve a report on valuation of net assets of a company.

The Law also envisages some additional remedies available for creditors upon charter capital decrease or change of the net asset value. The information on charter capital decrease and on change of the net asset value should be introduced into the Unified Federal Register of Information about Activities of Legal Entities (hereinafter - the "**Register**"). The Law provides for establishment of such a Register, procedure for its formation and maintenance, rules for entering information into it and requirements to such information. The Register shall include the Unified Federal Register of Information about Bankruptcy. The Register will be available in electronic form which should allow for online updates of its content and easy access by interested persons. The provisions of the Law regarding the Register should enter into force on 1 January 2013.

Дополнительную информацию относительно рассмотренных в этом выпуске вопросов и иных аспектов юридического сопровождения деятельности компаний вы можете получить в отделе юридических услуг компании «Эрнст энд Янг» в Москве.

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