

Jan Långstedt
Partner, LL.M.
Email: jan.langstedt@mklaw.fi
Tel. +358400538022

Helsinki
9.1.2012

AMENDMENTS TO THE FEDERAL LAW ON LIMITED LIABILITY COMPANIES

NEW RULES REGARDING THE NET ASSETS AND DECREASING THE CHARTER CAPITAL

Amendments to the Russian Limited Liability Company Law following Federal Law No. 228-FZ of July 18, 2011¹ on improving creditors' rights entered into force on January 1, 2012.

The amendments provide for the establishment of specific rules for the calculation of the net assets of a Russian limited liability company. Under the amended law, limited liability companies are also required to include certain information on the company's net assets in the annual reports and to provide interested parties with information on the net assets upon request.

Further, under the amended law, limited liability companies are required to decrease the company's charter capital only if its net assets remain below the value of its charter capital for two consecutive financial years, excluding the initial year of operations. Earlier a decrease of the charter capital was immediately required (except for the initial year of operations) when the value of the company's net assets were below the value of the charter capital in the end of the financial year.

The rules pertaining to notifying creditors upon decreasing the charter capital are also amended. Instead of notifying known creditors separately, companies are required to publish a notification concerning the decrease in a specified journal (*Vestnik gosudarstvennoy registratsii*) and to inform the authorities of the decrease.

The amendments to the Federal Law on Limited Liability Companies are discussed in detail below.

1. Net assets

Roughly speaking, the net assets of a limited liability company equals its assets less its liabilities.

The amendments to the Russian Limited Liability Company Law provide for the establishment of rules for calculating the net assets of a limited liability company. These rules should be adopted by the relevant state authority, which in regards to joint stock companies constitutes the Ministry of Finance and the Federal Service for Financial Markets. Until the rules for limited liability companies are established, the rules applying to joint stock companies are applied by analogy.

The amendments also introduce a requirement for limited liability companies to include certain information concerning the company's net assets in its annual reports. The information that must be included in the

¹ Federal Law No. 228-FZ of July 18, 2011 on Amending certain Legal Acts regarding the Protection of Creditors' Rights at Decrease of the Charter Capital and Amending Requirements for Legal Entities when the Charter Capital is in Unconformity with the Value of the Net Assets.

MK-Law

annual reports include:

- Information on the company's net assets and its charter capital in the previous three financial years, including the current financial year;
- Information on events and circumstances that, in the opinion of the management, led to that the value of the company's net assets fell below its charter capital; and
- Information on means for bringing the net assets in line with the charter capital.

Under the amended law, limited liability companies are thus required to include information on its net assets in the annual reports. If the value of the net assets is less than the charter capital, the company is required to provide information on the events and circumstances that led to the value of the net assets falling below the charter capital and information on how the situation will be resolved.

Limited liability companies are also, as of January 1, 2012 required to provide a party with an interest in the company's financial standing information on the company's net assets.

2. Obligation to decrease charter capital

Earlier, the shareholders of a limited liability company were required to decrease the company's charter capital when the company's charter capital exceeded the value of the company's net assets in the end of the second or any subsequent financial year. If the value of the net assets were less than the minimum charter capital, the company was required to undergo liquidation.

Beginning from January 1, 2012 shareholders of a limited liability company are required to make a decision on decreasing the charter capital or liquidating the company only if the value of the company's net assets remains lower than the value of the company's charter capital for two consecutive financial years. As under the preceding rules, the initial year of operations is not taken into consideration. The shareholders are not required to liquidate the company even if the value of the net assets would fall below the minimum charter capital value.

If the company's charter capital exceeds the value of the company's net assets for two consecutive financial years subsequent to the initial year of operations, the shareholders are required to make a decision on decreasing the company's charter capital to a level not exceeding the value of the net assets, or alternatively to make a decision to liquidate the company, within six months from the end of the previous financial year.

The authorities' right to demand liquidation of the company when the shareholders do not make a decision to decrease the charter capital or to liquidate the company has been abolished.

3. Notification

A company whose shareholders have made a decision to decrease the company's charter capital is required to provide information to the Unified State Register on Legal Entities of the decision within three working days from the date on which the decision was made. The company shall also disclose the decision to decrease the company's charter capital by publishing a notification thereof in the journal in which information on legal entities is published (*Vestnik gosudarstvennoy registratsii*) twice with monthly intervals.

The notification must contain the following information:

- The company's name, a possible abbreviation of the name, and the company's address;
- The amount of the company's charter capital and the amount to which it is decreased;
- How the charter capital is decreased;

MK-Law

- The manner and order, as well as the address to which creditors may address possible claims; and
- The company's contact details.

Under the new rules the company is no longer required to separately inform its known creditors of the decision to decrease the charter capital.

4. Creditors' claims

Creditors having claims toward the company are entitled to require the company to perform its obligations ahead of schedule, if the relevant obligations were assumed by the company before the notification regarding the decision on decreasing the charter capital was first published.

The creditors must present their demands within 30 days from the second notification. If the fulfilling of the obligations is not possible ahead of schedule, the relevant obligations shall be terminated and damage incurred by a creditor owing to such termination compensated by the company.

Courts may reject creditors' claims if the company either shows that decreasing the charter capital does not violate creditors' rights or if the company places a sufficient security for the fulfilling of its obligations.

Please do not hesitate to contact us should you have any questions regarding the above.

Best Regards,

Jan Långstedt
Partner, LL.M
Email: jan.langstedt@mklaw.fi
Tel. +358400538022