

RUSSIA ALERT

AMENDMENTS TO THE BUSINESS COMPANY LAWS

On December 31, 2009, Federal Law No. 352-FZ *On Amendments to Certain Statutory Acts of the Russian Federation Relating to Review of Restrictions Imposed on Business Companies in Connection with Formation of Charter Capital, Review of the Creditor Rights Protection in Case of Charter Capital Reduction, Change of Requirements to Business Companies Where the Charter Capital Does Not Comply with the Net Asset Value Test, Review of Restrictions Relating to Issuance of Bonds by Business Companies* dated December 27, 2009, (the “Law”) came into force.

In particular, the Law amends certain material rules, restrictions and requirements applicable to formation and modification of the charter capital of joint stock companies (JSCs) and limited liability companies (LLCs).

RIGHT TO CONVERT DEBT INTO CONTRIBUTION

The Law amends the prior general rule that prohibited a set-off of monetary claims to the company against the obligation to make a contribution to the charter capital (to pay for the shares), such set-off having been qualified as a form of release of a participant/shareholder from such obligation.

The Law allows a contribution to the charter capital of an LLC or payment for the shares of a JSC by way of set-off of the relevant person’s claims to the company, subject to the following rules and conditions—

- the set-off is only permitted with respect to monetary claims
- in relation to an LLC, the set-off of monetary claims is only permitted—
 - with respect to additional contributions to the charter capital of the LLC (by participants or third parties)
 - if the resolution on an additional contribution to be made by way of such set-off is adopted unanimously by all LLC participants;
- in relation to a JSC, the set-off of monetary claims is only permitted—
 - with respect to payment for additional shares
 - if shares are placed through closed subscription.

PROCEDURE FOR COMPLIANCE WITH THE NET ASSET VALUE REQUIREMENT APPLICABLE TO JOINT STOCK COMPANIES

Regarding JSCs, the Law amends the requirements and rules relating to the decrease of the charter capital if the JSC's net asset value falls below its charter capital:

- The JSC's obligation to reduce the charter capital accordingly does not arise immediately upon the end of the second or any subsequent fiscal year in which such decrease in the net asset value occurred (the "Decrease Year"), but rather upon the end of the next fiscal year (the "Additional Year"), if the net asset value remains below the charter capital at the end of such Additional Year. Provided that—
 - Information on the JSC's net asset status, including a list of actions to be taken to bring the net asset value into conformity with the charter capital, must be included by the board of directors (supervisory board) in the relevant section of the JSC's annual report for the Decrease Year submitted to the annual general shareholders meeting held in the Additional Year.
 - If, during the Additional Year, the JSC's net asset value falls below its charter capital by more than 25 percent at the end of any of the calendar quarters, the JSC must make two announcements (once a month) to that effect in the relevant mass media.
 - If the JSC makes an announcement regarding its net asset value decrease as required above, its creditors may demand acceleration of the JSC's obligations to them or termination thereof, subject to indemnification. Such acceleration may be required within 30 days after the date of the last announcement. The statute of limitations for such acceleration demands is six months from such date.
- The Law defines the exact period during which the JSC must reduce its charter capital or resolve on liquidation:
 - If the net asset value is less than the JSC's charter capital but does not fall below the statutory minimum charter capital, the resolution on the relevant reduction of the charter capital must be adopted within six months after the end of the Additional Year;
 - If the JSC's net asset value falls below the statutory minimum charter capital the JSC must resolve on liquidation within six months after the end of the Decrease Year.
- In relation to an LLC, the existing rules and conditions regarding the consequences of a LLC's net asset value decrease have not changed.

JSC LOSS COVERING

The Law eliminates the prohibition (previously provided in part 2 of Article 100 of the Civil Code of the Russian Federation) against JSCs increasing their charter capital for the purpose of covering losses.

CONTACT INFORMATION

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